

THARAKA NITHI COUNTY ASSEMBLY

THE HANSARD

2nd March 2021

*The County Assembly met at the
County Assembly chambers in Kathwana at 10.05am
[The Speaker (Hon. D.J. Mbaya) in the Chair]*

PRAYERS

Hon. Speaker: Honourable members let's get seated. Next order.

COMMUNICATION FROM THE CHAIR

Hon. Speaker: Honourable Members good morning and welcome to this sitting. I wish you all the best as you discharge your constitutional mandate. To the guests in the Speaker's gallery feel welcomed. Thank you.

PAPERS LAID

THARAKA NITHI COUNTY FISCAL STRATEGY PAPER 2021

Hon. Speaker: Yes, honourable Peterson Mwirigi, the Majority leader.

Hon. Kathanya: Thank you honourable Speaker I lay on the table of this House the Tharaka Nithi County Fiscal Strategy Paper 2021. Thank you Mr. Speaker.

(The paper was accordingly laid on the table)

Hon. Speaker: Thank you. The Tharaka Nithi County Fiscal Strategy Paper 2021 stands committed to the committee on Finance, Budget and Appropriations. Yes, honourable member for Karingani, the chair.

(Hon. Muchiri stood in his place and bowed to acknowledge)

Hon. Speaker: Thank you.

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THARAKA NITHI COUNTY DEBT MANAGEMENT STRATEGY PAPER 2021

Hon. Speaker: Yes, honourable Peterson Mwirigi, the Majority leader.

Hon. Kathenya: Thank you honourable Speaker I lay on the table of the House the Tharaka Nithi County Debt Management Strategy Paper 2021. Thank you Mr. Speaker.

(The paper was accordingly laid on the table)

Hon. Speaker: Thank you. Honourable members, the Tharaka Nithi County Debt Management Strategy Paper 2021 stands committed to the committee on Finance, Budget and Appropriations.

(Hon. Muchiri stood in his place and bowed to acknowledge)

Hon. Speaker: Thank you honourable Godfrey Murithi.

REPORT OF THE COMMITTEE ON WATER, ENVIRONMENT AND NATURAL RESOURCES
ON THE THARAKA NITHI COUNTY PUBLIC NUISANCE BILL, 2019

Hon. Speaker: Yes, honourable Margret Gitari, member for Chogoria.

Hon. Margret: Thank you Mr. Speaker. I lay on the table of the House the Report of the Committee on Water, Environment and Natural Resources on the Tharaka Nithi County Public Nuisance Bill, 2019.

(The paper was accordingly laid on the table)

Hon. Speaker: Thank you honourable Margret Gitari.

Hon. Speaker: Honourable members, the Report of the Committee on Water, Environment and Natural Resources on the Tharaka Nithi County Public Nuisance Bill, 2019 stands laid before the House. Next order.

BILLS

THE THARAKA NITHI COUNTY PUBLIC NUISANCE BILL, 2019

Hon. Speaker: Yes, honourable Margret Gitari, member for Chogoria.

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Hon. Margret: Thank you Mr. Speaker. I rise to present the report the Report of the sectoral Committee on Water, Environment and Natural Resources on the Tharaka Nithi County Public Nuisance Bill, 2019.

Hon. Speaker: Kindly proceed.

Hon. Margret: Thank you Mr. Speaker I will skip the preface, the committee's membership and the chairperson's foreword and go straight to the committee's findings and observations.

Mr. Speaker Sir, the Tharaka Nithi County Public Nuisance Bill, 2019 is to provide for the regulation and management of public nuisances including air and noise pollution and to empower the county to take all lawful, necessary and reasonably practicable measures for maintenance of county at all times in a clean and sanitary condition.

Part I of the Bill has 3 sections, preliminary consisting Short title, interpreting of words and expressions used in the Bill and objective and purpose of the Bill.

Part II- provides for the Administrative provisions and sets out the administration of the Act, Functions and powers of the Department, declaration of public nuisance, abatement of public nuisance and protected areas.

Part III of the Bill provides for licenses and permits and makes provisions for application, refusal suspension and cancellation of licenses, permitted operations, entry and inspection and power of authorized officers.

Part IV of the Bill provides for miscellaneous provisions which include public participation in certain matters, establishments of pounds, direct or indirect nuisance including air and noise pollution, offences and penalties, power to make regulations and savings of certain provisions of repealed laws or by-laws.

The enactment of the Public Nuisance Bill, 2019 will not occasion significant additional expenditure of public funds save for expenditure on employment of additional enforcement officers who will be provided for through estimates in the county budget.

Public participation;

Public participation in Kenya is considered a crucial pillar of the Kenyan constitution. It promotes democracy by providing the public with the opportunity to take part in decision

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making process in Government. Governments are mandated to give effect to public participation through the Fourth Schedule Part 2 (14) which states the county will ensure and coordinate the participation of communities and locations in governance at the local level. Counties are also to assist communities to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level. Article 201(a) also outlines public participation as one of the principles of public finance alongside openness and accountability. It is upon this premise that the Tharaka Nithi County Assembly organized public sector ward level consultative forums between 12th, 14th and 19th March 2020 for the preparation of public participation forum.

Standing Order 152(1) provides that ‘A Bill having been read a First Time shall stand committed to the relevant Sectoral Committee without question put’.

Standing Order 152(3) provides that ‘the 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 Assembly.

Standing Order 152(4) further provides that ‘subject to the provisions of Section 87 of the County Governments Act, in conducting public participation on a Bill, the Committee shall seek the views of the concerned County Executive Committee Member and persons or institutions within the County relevant to the subject of the Bill and may seek the views of the general public by way of written submissions, public hearings, surveys, focus group discussions, direct mail or electronic platforms.

Mr. Speaker, views on the Tharaka Nithi County Public Nuisance Bill, 2019 by the public;

During the public participation held on 12th, 14th and 19th March 2020, the members of the public appreciated the importance of the Bill and requested the committee to ensure that motorcycles with high sound emitting mufflers are removed from the roads.

Views on the Tharaka Nithi County Public Nuisance Bill, 2019 by the National Environment Management Authority;

The National Environment Authority made the following submission;

- a. Under clause 2 include the definition of Noise pollution to mean the emission of uncontrolled noise that is likely to cause damage to human health or damage to

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environment. Sound to mean an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that cause compression and rarefaction on the medium.

- b. Under clause 7(1) to include motor cycles without mufflers and with mounted electronic sound emitting devices.
- c. Under clause 15 consider to add: the emissions of noise for purposes of alerting persons to the existence of an emergency, the emissions of noise in the performance of emergency response, the emission of noise in connection with protection of health and safety of residents or property during emergency condition, warning devices necessary for the protection of public safety, such as police, fire and ambulance sirens and train horns and during parades and National celebrations.

Submissions by the County Executive Committee Member in charge of environment;

Mr. Speaker, on 3rd March 2020 the CECM in charge of Environment and Natural resources sent a memorandum, attached in Appendix iii, to the committee requesting that the committee harmonize the Public Nuisance Bill 2019 with The Tharaka Nithi County Environmental (regulation and Control) Act 2020 to cover the four broad areas i.e. Air pollution, Noise pollution, Public Nuisance and Outdoor Advertising.

The committee consideration of the submissions by the stakeholders;

Mr. Speaker, while examining the Tharaka Nithi Public Nuisance Bill, 2019 and the submissions from the public and stakeholders the committee made the following recommendations:

- i. From the public participation include 7(u) to capture noise from motor cycles without mufflers and with mounted electronic sound emitting devices.
- ii. From National Environment Management Authority, the Bill had captured all the aspects raised but the committee agreed to include the definition of sound under clause 2 and add clause 15(e) to include parades and national celebrations.
- iii. From the CECM in charge of Environment the committee was of the opinion that the executive wanted to introduce a new Bill by the name The Tharaka Nithi County Environmental regulation and Control Act, 2020 which is contrary to the provision of Assembly Standing Order 151 on introduction of the Bill. The committee was of the opinion that the executive should submit their proposed Bill for consideration.

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The committee recommendations;

Mr. Speaker, it is the committee's humble submission that the County Assembly approves the Tharaka Nithi County Public Nuisance Bill, 2019 with the following amendments.

- i. Under Clause 2 include the definition of "sound" as an oscillation in pressure, particle displacement, particle velocity or other Physical parameter in a medium with internal forces that causes compression and rarefaction of that medium.
- ii. Include Clause 7.1(u) to read Any motor cycles without mufflers and with mounted electronic sound emitting devices.
- iii. Include Clause 15 (e) emissions of noise for the purposes of alerting persons to the existence of an emergency and emissions of noise in performance of emergency response.
- iv. Include Clause 15 (f) parades and National Celebrations.

Mr. Speaker, I now move that the Tharaka Nithi County Public Nuisance Bill, 2019 be now read a second time. I request honourable Leonard Gitonga to second.

Hon. Speaker: Thank you honourable Margret Gitari, yes honourable Gitonga Leonard, member for Nkondi.

Hon. Gitonga: Thank you Mr Speaker. I rise to second the report of the committee. I happen to be a member of this committee. In deed we took our responsibilities and duty as enshrined in the constitution. We took this Bill to the public for public participation and we received the views of the members of the public and these views are captured in our report. Majorly, what was seen to have been left out in the Bill, was the issue of motor cycles which emits a lot of noise which affects our ears and can cause damage. As a committee, those are some of the views that we considered.

You will note from the Bill, there are certain exceptions in the Bill. Some of these things can produce a lot of noise, but it is in an effort probably to alert people from certain dangers that could be befalling them. Therefore, the equipment that are used to alert people, these are exempted from punishment. These equipment includes the firefighting equipment, police sirens, or even human beings because for example if there is fire here, you will find us shouting everywhere. I believe we are exempted from any act or punishment that comes from

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passing this Bill. The Bill is good, and that is why we are seeking the approval by this House so that we can move on to assist this County of ours Mr Speaker.

I therefore second Mr Speaker. Thank you.

Hon. Speaker: Thank you Honourable Gitonga Leonard. Honourable members, allow me now to propose the question that the Tharaka Nithi County Public Nuisance Bill 2019, be now read a second time.

Honourable members, the floor is now open for debate. Yes, honourable member for Magumoni.

Hon. Kithinji: Thank you Mr Speaker. I have kept social distance because my mask misbehaved as I was entering this honourable House. So I am not disregarding the rules which have been given by the honourable Speaker.

(Interjection)

Hon. Speaker: Noted honourable Kithinji. Kindly proceed.

Hon. Kithinji: Thank you Mr Speaker. I am rising to support the Bill that is before this House. First of all, I want to congratulate the honourable committee for the job that they have done though they have used words which are not easily comprehensible but we thank God that we have a Speaker in this honourable House that whenever we may get some problems, he may interpret for us some of these words.

I will go straight to where they have talked of issues to do with motorbikes. Motorbikes came as a blessing, but of late they have become a tool for drug trafficking. Mostly, the motorcycles emit that loudest voice whether it is at 4:00am. I am told, it is used to alert the would be buyers, to come out and purchase the narcotics. It is a menace that should be capped, and the only way of doing it, it is by making sure that those sounds are controlled. We have the NEMA and of course we have laws governing control of noise, but I really do not know why we chose not to implement them. When you ask them, they will tell you that they belong to the National Government as if we have people who belong to the National Government and others who belong to the County Government. I really find that idea to be quite misplaced, but thank God that we now have a County Bill that is enforceable through our County enforcement team. If my memory serves me right, I remember the other time we

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had such a Bill here. We passed a Bill on the inspectorate department. If we pass this Bill, we call upon the County through that department, to enforce. I am very sure that this is something that can be enforced within a day or two. I know it is not in the content of this Bill to talk much about the effect of drugs, but we are coming from wards where we are very much worried. The usage of drugs in this County is not good at all especially in Magumoni ward, because we are very near to the source where they get it. i.e. from the forest, then they just move it around with these motorcycles.

Therefore, I support this Bill. Thank you Mr Speaker.

Hon. Speaker: Thank you honourable Justin Kithinji. Yes, honourable minority leader.

Hon. Derebia: Thank you Mr Speaker Sir. I rise to support the approval or the adoption of this report regarding the Bill. One thing I know, that is in our constitution that was promulgated in 2010, there is a law pertaining sounds which originated from the late minister for interior security, honourable Michuki. As the honourable member for Magumoni has said, sometimes, it becomes difficult to implement when you get people arguing that it is a national issue. This committee has done us a favour.

This also goes to the smokers. Knowing very well that even in this Assembly, we have smokers. As we pass these laws here, some of us will be caught by the same laws. This committee has done a lot of work, and I want to thank them for coming up with this report, so that the moment we pass this Bill today, people will know where they are situated. Again, as we pass this Bill, I urge the honourable members, and also the members of staff, to do civic education to our members of public so that when someone is arrested because of sound and smoking, he will be understanding why he/she is being arrested. People should not be caught off-guard by the law, whereby they do not understand what is transpiring within our County.

I once again thank the committee, because like myself I enjoy recreation so much. I normally visit recreation centres but whenever I tell people to stop smoking around, and you know when the smoker is smoking around you, what he is inhaling, it is bad for him but what he is exhaling, also harms other people's lungs. It is normally very well described that the carbon monoxide produced when burning tobacco, it is harmful to our health.

I am therefore supporting the committee 100%, and I am waiting to approve the Bill. Thank you Mr Speaker.

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Hon. Speaker: Thank you honourable Wilson Nyaga. Yes, honourable Godfrey Murithi, member for Karingani.

Hon. Muchiri: Thank you honourable Speaker. First let me congratulate and thank the committee for doing such a good job. This Bill was brought to this House quite some time ago, in 2019. Maybe the delay in processing it was due to the corona virus. However, Mr. Speaker I don't know whether this is a Motion because I never heard the notice of Motion though it was moved as a Motion but I believe because you allowed us we can continue with it.

This is one of the best Bill to come into the House if well implemented. I want to say something on article 7 that is talking about what is public nuisance that needs to be dealt with. Allow me Mr. Speaker to read 7 (a) that says any vessel and any railway carriage or any conveyance in such a state on condition to be injurious or dangerous to health. Even though this Bill is yet to be approved by this House, and I believe it will be, already I have an issue within my ward in Chuka town where there are some rails that have been put near the stage and they are more dangerous than anything else because they are very sharp. So as we make these laws thinking they are for our people remember that even as the county we need to be very serious when it comes to the implementation of such issues.

This Bill will be very useful within my ward because when we talk about the sewerage and we talk about the dirty water and the waste material in my ward we use the health office frequently because this is a nuisance as we speak. I support the Bill as we go to the second reading and even the proposed amendments.

When we were doing the public participation I was part of it because I went with the committee and I think the county needs to be more serious when it comes to the Bills that have been passed in this House.

Honourable Wilson spoke about the issue of smoking. There was a Motion that was passed in this House about designated smoking zones. We passed a Motion that we are supposed to have designated smoking areas especially in our towns that is Chuka, Chogoria and Marimanti and other areas. Some of these issues that we have discussed and passed in this Assembly, the implementation committee needs to follow up on them. This is because as much as we say they are part of the committee's duties to follow up, mostly the implementation committee should follow up so that they can task the CEC concerned when it

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comes to implementation. This is because if we pass and they don't implement and also we don't inform the public what has been passed in this House... this house need a desk where our people should be informed what we passed in this House so that before it is implemented our people are aware and when they are caught up in such messes they won't blame the MCAs.

I support the Motion and the proposed amendments with a lot of trust that it will be implemented soonest possible. Thank you honourable Speaker.

Hon. Speaker: Thank you honourable Muchiri. Yes, honourable Anita Karimi.

Hon. Anita: Thank you honourable Speaker. First I welcome the guests in the Speakers gallery. Feel at home in Tharaka Nithi County Assembly. I wish the all the best in their undertakings.

I rise to support this Bill. We have had issues. I have sought statements. Other members have sought statements and if this Bill is implemented to the letter I believe most of the things that we are dealing with will be a thing of the past in the County Assembly. If you remember I sought a statement in this House last year that I am supposed to seek again. If this Bill is passed and assented to will handle some of the issues.

First I want to go first to clause 7 honourable Godfrey has handled. If you look at it closely part (b) is tackling a Motion that we dealt with in the Assembly. Those things will be a thing of the past. If you go to 7 (b), (c), (e), (m) and (i) and then (n) and (s) they deal with all the issues that they have been talking about. I don't want to go through the Bill because members have it. And Mr. Speaker...

(Interjection)

COMMUNICATION FROM THE CHAIR

SPEAKERS RULING ON WHETHER THE MOTION IS PROPERLY BEFORE THE HOUSE

Hon. Speaker: Honourable Anita I beg your kind indulgence. If you could, allow me to address the issues that were raised by the honourable Godfrey Murithi for avoidance of doubts. Honourable members, the laws governing the second reading of a Bill is obtained under Standing Order 153 and 154. That read with Standing Order 67 and Standing Order 72.

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Standing Order 72 is clear because it states the motions which can be moved without notice.

If you read 72, (1) (f):

The following Motions may be moved without notice-

(f) Motion made in accordance with the Standing Orders governing the procedure as to Bills;

Your question is answered and this is a Motion that needed no notice. Thank you.

Kindly proceed.

Hon. Anita: Thank you Mr. Speaker. Thank you for the clarification. It is always good to put points of order across so that members do not feel left out.

I also want to go to Clause 8 where we have the purpose of this Bill. We have areas that have been left open after construction companies have extracted marram and those open places are a nuisance to the public. We have lost lives. I also remember I sought a statement on them. I don't want to keep referring to my friend honourable Godfrey but there is an issue that has been disturbing the people of Karingani. The dumpsite. People have been complaining whenever it rains. I believe part c of Clause 8 will sort out these issues. When this is done we will live in peace and harmony because most of the diseases that we have around come from this unfriendly environment.

Lastly there was a Motion that was moved by the chair environment committee about smoking, we have not seen anything implemented. As I have said, if this Bill is implemented... last week the committee on public service and administration passed an enforcement Bill and as honourable Kithinji has said, if the enforcement does the work of enforcing these laws we will have a very clean environment. An environment where everybody will be safe, free of many complains and we can move ahead as a county because the less we spend on health the more we get to spend on the other activities.

With that I support the Bill and pray that the implementation committee will be on its toes to see to it that it is implemented. Thank you Mr. Speaker.

Hon. Speaker: Thank you honourable Anita Karimi. Yes, honourable John Njagi Mucee, the Deputy Speaker and the member for Ciakariga.

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Hon. Mucee: Thank you Mr Speaker Sir for granting me this opportunity. I will support the Bill in regard that this is a Public Nuisance Bill. It concerns the public. When the Chair was going through the report, she talked about public participation and I believe that the members of public were informed and it was clear to them regarding the public nuisance Bill. I want to be clear there because, all machines. e.g. vehicles, motorbikes produce some noise. There is some noise that can be accommodated whereas others cannot. I do not think the Bill has any method or formula that can state that a machine can move without producing noise. Even human beings when they move, they cause some noise. Abnormal noise that can cause nuisance to the public, is unwanted because some of the nuisance, they bring pollution. Pollution normally causes abnormal alterations that causes diseases to human beings. Those nuisances that cause pollution and that are dangerous to human health, they are unwanted.

Therefore, I support the Bill Mr Speaker Sir.

Hon. Speaker: Thank you honourable John Njagi Mucee. Yes, honourable Peterson Mwirigi.

Hon. Kathenya: Thank you honourable Speaker. I also rise to support this Motion. It is so timely because we have had a lot of nuisance especially in our towns mostly from these young motorbike riders. I am also happy that the Bill has exempted the others that we cannot refer as noise but it is a way of alerting people of a certain emergency like the police sirens, the ambulance, all these have been exempted from paying licenses in the Bill. In that case, there are also some of our vehicles with huge exhaust pipes which will may be pass through Chuka town making a lot of noise and interfere with the electorates of honourable Godfrey Muchiri. In that case honourable Speaker, I support this Bill and I commend the committee for job well done. Thank you honourable Speaker.

Hon. Speaker: Thank you honourable Peterson Mwirigi. Honourable members, the floor is still open for debate.

(Loud Consultations)

Honourable members, regard being taken to the mood in the house, allow me now pursuant to provisions of standing order 106(4), to call upon the mover to respond. Yes, Honourable Margret Gitari.

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Hon. Margret: Thank you Mr. Speaker for giving me a chance to reply. I want to thank the honourable members so much because of debating so well on this Bill. This is a Bill that is going to help us in Tharaka Nithi County to ensure that the loudest noise, is curbed. It will also depend on if this Bill will be enforced by the relevant authority. It has come out very clearly from honourable members, that we have passed Motions here, some are touching on some of the issues that are in this Bill, but those Motions are just gathering dust in the cabinets of officers which myself or the honourable members might not be able to mention. It should not be taken lightly that this Assembly has to be honoured by making sure that what is passed here, has actually been enforced on the ground. Without talking much, I thank the honourable members so much for the good debate that they have made to ensure that the Bill has been passed. Thank you Mr Speaker.

Hon. Speaker: Thank you honourable Margaret Gitari. Honourable members, allow me now to put the question.

(Question put and agreed to)

(Orders for the second reading read for the second time)

Honourable members, the Tharaka Nithi County public nuisance Bill 2019, having been read a second time, stands committed to the committee of the whole Assembly.

ADJOURNMENT

Hon. Speaker: Honourable members, having no other business in our Order Paper, the House stands adjourned until the next sitting.

****The House rose at 10:15am****