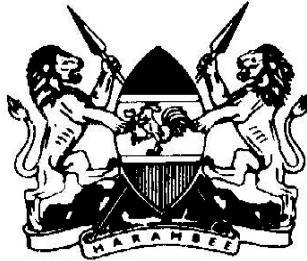


REPUBLIC OF KENYA



COUNTY GOVERNMENT OF NYANDARUA

**Guidelines for Public Hearings
For
Select Committees and the Members of the Public**

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A PUBLICATION OF THE NYANDARUA COUNTY ASSEMBLY'S HOUSE BUSINESS COMMITTEE - 2016
PURSUANT to Article 155 (5) (j) of the Nyandarua County Assembly Standing Orders, the House Business Committee publishes these guidelines for the orderly and effective conduct of public hearings by the Select Committees of the County Assembly and shall be binding upon all Committees.

OVERVIEW

Public hearings are created for the presentation of facts and opinion by the public on matters under scrutiny by an Assembly Committee. It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the county will prosper and enable the governmental process to operate for the benefit of those who created it.

When a public body lets citizens know when they are meeting and the issues to be addressed, it takes an important first step in establishing a climate of government based on respect for constituents' judgment. By facilitating public attendance at its meetings, the Assembly can ensure the circulation of first-hand information about why it acted as it did, and prevent the spread of misinformation. Although concerned citizens may not have been permitted to participate in the debate on a particular issue, and may in fact not agree with the decision(s) reached, they will nonetheless have had the opportunity to witness the decision-making process, and, it is hoped, to hear the true rationale behind the decision.

PURPOSE

Public hearings are open committee meetings that are aimed at obtaining input from the stakeholders, civil society organisations (CSOs), public officials and the general public about proposed or existing policies, Bills, regulations and other issues or changes that would significantly affect the public if introduced. During these proceedings, the public is accorded the right to be heard.

The Constitution has made these hearings a requirement under Article 196, unless waived in accordance with Article 196 (2). During a public hearing, the Assembly acts in a quasi-judicial role for purposes of allowing the public to make representation on matters referred to the public hearing.

Public hearings should attempt to seek information from the public. Almost always, public hearings:

- Inform the public and interested parties about proposed changes and implications of public policy;
- Obtain public views and recommendations on public and policy programmes;
- Facilitate an appreciation of government policies and legislation and, therefore, reduce/eliminate chances of difficulty in policy implementation. This should help to foster future partnerships that bring about change; and
- Sensitise policy makers to popular sentiments and to get first-hand feedback from the public about local concerns, perspectives and suggestions for improvement through open interaction.

It bears emphasis that any hearing held by a public body, and in this case the Assembly, will necessarily constitute “conducting public business”. Many public hearings are required by law on particular matters, such as those that

must be held prior to the enacting of a law. Many others need only be held at the option of a public body, because it may desire merely to gauge public opinion on a matter. Where a public hearing is required by law, the particular statute governing the subject matter usually sets forth the applicable procedural requirements. In this case, the Nyandarua County Public Participation and Civic Education Act, 2016, applies to the County Assembly.

The ensuing guidelines provide for the procedures of and the participation in public hearings of Committees:

1. Scheduling of Public Hearings

- 1.1 A Committee needs to determine, before the hearing, and clearly define its intentions, objectives and purpose of the public hearing. This is necessary to ensure that meetings maintain focus and direction. At this stage, it should be remembered that public hearings:
 - (a) Provide an opportunity for members of the public to influence the legislative process; and
 - (b) Give Members of County Assembly an opportunity to collect more information about the details and potential consequences of a matter of public concern.
- 1.2 It is, therefore, imperative that the Committee selects the dates and time of holding the public hearings guided by the business of the Assembly, among others. When selecting a date for public hearings, the Committee shall:
 - (a) Consult the Assembly's diary-of-events for the month, or alternatively, consult the Office of the Clerk regarding the most appropriate timeslots.
 - (b) Public hearings shall be scheduled on dates and at times when there are no other significant or important events at the Assembly that could conflict with the hearings. For example, hearings shall not be scheduled on public holidays and other national or public events.
 - (c) The times and dates should be convenient and reasonable for the public to attend.

- (d) The Committee selects a date at least three weeks (21 days) ahead of time to allow for logistical arrangements.

2. Public Notification

Some form of public notice is required for **all public hearings**.

- 2.1 The Committee Clerk shall, as soon as the Committee agrees on holding a public hearing, write a memorandum to the Speaker and Clerk of the Assembly and copied to the Directorate of Information and Corporate Communications Services stating the following:
 - (a) Subject of the public hearing/Content of Agenda;
 - (b) Proposed date and time of the public hearing; and
 - (c) Venue/location of the public hearing.
- 2.2 If the statute that requires a public hearing in a particular instance identifies the type of notice to be provided, those notice requirements must be followed. Such notice requirements may include publication in a newspaper and/or Assembly website, posting on and/or near real property that may be affected by the matter being addressed in the hearing, and mailing notice to specific parties. The County may, however, choose to provide any additional notice beyond whatever statutory notice requirements may exist.
- 2.3 Where the hearing notice calls for circulation through the media, the Clerk of the Assembly shall cause such notice to be placed in at least two (2) dailies with wide national circulation and may in addition cause an advertisement in a popular radio or TV station based on the target population.
- 2.4 Besides the notice by advertisement, the hearing intent may be forwarded to specific stakeholders and persons as determined by the Committee. This communication should be done not less than seven (7) days to the hearing date.
- 2.5 Persons or representatives desiring to make submissions during a public hearing, other than those

notified shall communicate their intention to do so before the hearing date. Written submissions shall be submitted not less than 48 hours before the actual hearing date while those wishing to make oral submissions shall register not less than 24 hours to the hearing day.

- 2.6 Despite the provisions of rule 2.5, the Chairperson may allow persons who have not registered for oral submissions to make their submissions and may receive unregistered written submissions.

3. Media Coverage

- 3.1 Pursuant to the Standing Orders¹, the Assembly or a Committee shall not exclude any person, or any media, from a sitting of the Assembly or of a Committee unless, in exceptional circumstances, the Speaker has determined that there is justifiable reasons for the exclusion.
- 3.2 A member may, at any time, rise to claim that the public or any particular person be, for reasons stated, excluded from the Assembly or from a Committee, and if the Speaker is of the opinion that there are justifiable reasons for the exclusion, he or she may order that the public or such person withdraw from the Assembly or the Committee.
- 3.3 Standing Order 228 shall apply on guidelines 3.1 and 3.2 and in case the Speaker cannot be reached, the Chairperson of the Committee shall consider and determine any request to exclude the public or any person and thereafter give a written explanation of the reasons for the exclusion to the Speaker.
- 3.4 The Directorate of Information and Corporate Communication Services shall facilitate the attendance of journalists to cover the hearing and shall prepare all the necessary logistical support at least seven (7) days to the hearing.

1 Nyandarua County Standing Order Nos. 181, 226 and 228.

- 3.5 Pursuant to the provisions of the Standing Orders², any media institution whose representative infringes the Standing Orders or any rules made by the Speaker for the regulation of the attendance of the public to the Assembly or to committees or persistently misreports the proceedings of the Assembly, or neglects or refuses on request from the Speaker to correct any wrong report in respect of the proceedings of the Assembly to the satisfaction of the Speaker, may be excluded from representation for such period as the Speaker shall direct.
- 3.6 Broadcasting of public hearings shall be pursuant to the Standing Orders or such other Regulations as may be adopted by the Assembly from time to time.

4. Protocol/Order of Business at Public Hearings

Protocol at the public hearing shall be as laid down, except as modified by the Chairperson of the public hearing as considered necessary, pursuant to the authority granted by the Standing Orders or other written law.

4.1 Registration

- (a) Registration of the attendees by supply of forms to sign-in and indicate whether they would like to speak at the hearing. Registration shall commence at least forty five (45) minutes to the hearing;
- (b) Persons wishing to speak at the hearing must register in person and must indicate their name, address and other information as may be required;
- (c) For Public Hearings where a large number of participants are anticipated, the Clerk may establish advance registration for the Speakers' list. Persons wishing to speak must register in person on the participants' list and will be heard in the order in which their names appear;
- (d) The Directorate of Information and Corporate Communication Services shall also provide at the

2 *Supra*, No. 229.

registration desk news releases, brochures, exhibits, publications and other information material that is useful to the public;

- (e) All attendees shall be seated at least ten (10) minutes to the commencement of the hearing.

4.2 Order of Business during Hearings

- (a) The meeting shall commence promptly at the time stipulated in the notice;
- (b) The subject matter of the hearing as contained in the notice shall be the only business under deliberation by the Committee;
- (c) After the preliminaries, the Chairperson of the Committee shall open the hearing by introducing the subject matter of the hearing;
- (d) Opportunity for presentation by the sponsor of the business;
- (e) Participants for and against the subject matter;
- (f) Questions by the Committee to the participants;
- (g) Adjournment;
- (h) Closing the hearing.

4.3 During the hearing, the Committee may by a resolution approved by a majority, enter into an executive session. This resolution must identify the area(s) of the subject(s) to be considered in the executive session. The Chairperson shall direct the public and the press by stating that “**The Committee resolves to enter into an executive session to discuss (business to be discussed)**”. The Serjeant-at-Arms shall execute the resolution by guiding the public and the press to leave the venue for such time as has been directed.

4.4 A Committee may only go into executive session if the matters to be discussed:

- (a) will imperil public safety if disclosed;

- (b) may disclose the identity of a law enforcement agent or informer;
- (c) relates to a current or future investigation or prosecution of a criminal offense;
- (d) would imperil effective law enforcement if disclosed;
- (e) relates to proposed, pending or current litigation;
- (f) relates to public employee collective-bargaining negotiations;
- (g) involve the medical, financial, credit, or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal, or removal of a particular person or corporation;
- (h) pertain to the preparation, grading or administration of examinations;
- (i) relate to the proposed acquisition, sale, or lease of real property, or the proposed acquisition, sale, or exchange of securities, but only when publicity would substantially affect their value; or
- (j) such other matters that are deemed reasonably privileged.

4.5 Time Allocated to each Participant

- 4.5.1 All persons willing to participate in a public hearing shall be afforded a reasonable opportunity to be heard or to provide written submissions;
- 4.5.2 Written submissions received prior to the Public Hearing shall be circulated to Committee and recorded as part of the official record by the Clerk. Submissions received during the Public Hearing will form part of the official record;
- 4.5.3 Each participant shall be heard according to the order in which they appear in the participants' list;
- 4.5.4 On average, five (5) minutes shall be allocated to each presenter. The Committee Clerk shall keep time and guide the Chairperson on the same. Depending on the issue at hand and the number of participants,

the Committee may alter the time allocated for submissions. The Chairperson shall set the ground rules for the session;

- 4.5.5 Committee Members who are asking questions to a participant shall limit themselves to seeking clarification or additional information directly related to the subject matter under question, and shall avoid engaging the participant in debate on the merits of the subject matter under discussion. The chair shall have the discretion to regulate the persons contributing.

4.6 General provisions on protocol

- (a) If a member of the general public is disrupting a meeting, the Chair may order that such person be removed from the venue and/or may order that the Public Hearing be recessed until the matter has been dealt with.
- (b) If there is no one present to speak on the subject matter, the Committee may hear an introduction of the matter, ask relevant questions and then move that the hearing on that matter be closed.
- (c) When the Chair considers that reasonable opportunity has been provided for all who wished to make submissions and be heard, and there are no other matters to be considered, the Chair may call for a motion to close the public hearing.
- (d) Once the hearing on a matter is closed, the Committee may not receive additional information from the applicant/petitioner or the public regarding any of the matters or applications that were the subject of the hearing, unless it is prepared to hold a further public hearing. The Committee may receive clarification for an issue raised at the hearing, however, the Committee may not receive any new information until after final adoption of the bylaws and/or approval of the project.

5. Language to be used during Public Hearings

Participants may use either English or Kiswahili which are the official languages. If need be, the following forms of communication may be used:

- (a) communication forms for persons with hearing impairments;
- (b) sign language;
- (c) braille;
- (d) native language;
- (e) simplified and popular versions; and
- (f) large print publications.

Where the Committee decides that any other form of communication is necessary, the Clerk shall take up such action as is necessary to facilitate the same.

6. Joint Public Hearings

Where it is considered necessary for two or more committees to hold public hearings, the provisions of Article 182 of the Standing Order shall apply. The public hearings of joint sittings shall be conducted in the same manner as that of a Committee.

7. Recordings of Public Hearings

- 7.1 All hearings shall be recorded verbatim by the Hansard Department in both audio and video format.
- 7.2 The Committee Clerk shall minute the proceedings of the meeting.
- 7.3 Written submissions must be kept as part of the records.
- 7.4 English shall be the language of record.

8. Security at the Hearings

The Department of the Serjeant-at-Arms shall ensure that security is maintained during public hearings. The following rules shall be observed:

- (a) Offensive weapons shall not be brought into the venue of public hearings;
- (b) Use of cell phones, cameras, computers and other information gadgets is prohibited unless the express permission of the Chairperson has been obtained prior to the meeting;
- (c) Smoking is prohibited in or near public hearings;
- (d) Applauding or interrupting the Chairperson, Honourable Members, staff or the press is prohibited;
- (e) Any disorderly or disruptive conduct shall result to the hearing being adjourned or may lead to withdrawal of the individual from the venue. It may be followed by arrest and prosecution;
- (f) Participants shall restrict themselves to matters under scrutiny;
- (g) Participants are not subject to the privilege rule and shall not enjoy parliamentary privileges pursuant to provisions of the County Assemblies (Powers and Privileges) Act, 2017. Each participant who makes a presentation should be alive to the defamation and slander laws;
- (h) Participants shall be decently and modestly dressed;
- (i) Any participant with an interest on a matter under scrutiny shall declare such interest before participation;
- (j) Participants may be asked to give their evidence under oath pursuant to provisions of the County Assemblies (Powers and Privileges) Act, 2017;
- (k) Giving false evidence, refusing to be examined, speaking defamatory words of the Assembly or its Committees and failing to produce required documents shall be dealt with pursuant to provisions of the County Assemblies (Powers and Privileges) Act, 2017.

APPENDIX 1

Motion of Introduction of Subject Matter

“I am Hon.and will be presiding over this public hearing today of the Committee on

The purpose of the hearing is to invite submissions from members of the public regarding that is pending before this Committee. The Committee will hear submissions from persons present who wish to speak for, against, or neither for nor against the aforementioned matter to be heard today. With leave of the Chair, Committee members may ask questions of any person testifying today.

Other questions are not permitted. Whether or not you make submissions, you may submit written submissions to the Committee. Please be mindful that submissions made are public and available to all once presented. Written submissions will be distributed to Committee members and will also be posted on the Assembly’s website for viewing by interested persons.”

If you wish to testify, please state your name, residence and the organisation you represent (if any), and sign-in at the podium. Testimony will be heard in the following order:

- The Sponsor who will present the bill, followed by any cosponsors;
- Those speaking in favour of the bill;
- Those speaking in opposition to the bill; and
- Those speaking neither for nor against the bill.

“If you have any written materials to accompany your testimony, please give at least 20 copies to the Committee Clerk prior to testifying.”

“There will be no smoking or eating during this hearing, and in deference to others here today, please keep all conversation to a minimum.”

APPENDIX 2

Motion to Commence the Hearing

“We will now begin the hearing on; AN ACT to _____.”

- [Speak to Sponsor] “I ask that **MCA(Hon)** _____, the sponsor present the bill at this time”
- “Are there cosponsors who wish to testify?”
- “Is there anyone who wishes to speak in favour of the bill?”
(hear testimony of all those in favour)
- “Is there anyone who wishes to speak in opposition to the bill?”
(hear testimony of all those in opposition)
- “Is there anyone who wishes to speak neither for nor against this bill, but wishes to offer additional information?”
(hear all remaining testimony)

APPENDIX 3

Motion to Close the Hearing

“All testimony having been taken, this hearing on is now closed. A Committee work session for this business will be scheduled. Notice of work sessions will be posted outside the Committee room and on the Assembly’s website. If you wish to be notified of the work session, check with the Committee Clerk.

APPENDIX 4

Form of Notice

NOTICE OF HEARING FOR PUBLIC REVIEW AND COMMENT

The Office of the Clerk will be holding a hearing for public review and comment concerning
.....

The hearing will be held on day/date/year/time/place

Further, written comments will be accepted until day/date/year/time. Written submissions should be delivered to:

The Office of the Clerk
Nyandarua County Assembly
Assembly Chambers –Near Huduma Centre
P. O. Box 720-20303
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