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EMBU COUNTY BILLS, 2019

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**THE EMBU COUNTY PUBLIC PARTICIPATION IN
GOVERNANCE BILL, 2019**

A Bill for

AN ACT of the County Assembly of Embu to give effect to paragraph 14 of Part 2 of the Fourth Schedule of the Constitution, to provide for public participation in the governance of the County and for connected purposes

ENACTED by the County Assembly of Embu as follows-

Short Title

1 This Act may be cited as Embu County Public Participation in Governance Act, 2019

Interpretation

2 In this Act, unless the context otherwise requires-

"Assembly" means County Assembly of Embu

"civic education" means the provision of information and learning experiences to equip and empower citizens to participate in democratic and governance processes pursuant to sections 98, 99, 100 and 101 of the County Governments Act of 2012,

"County" means Embu County

"County Executive Committee" means the Embu County Executive Committee established in accordance with Article 179 of the Constitution of Kenya, 2010,

"County Executive Committee member" means the County Executive Committee Member for the time being responsible for public Administration,

"Director" means the Director for the time being in-charge of public participation in the County,

"*Gazette*" means a Kenya Gazette published by the authority of the County Government or a supplement of such *Gazette*

"marginalised group" has the meaning assigned to it by Article 260 of the Constitution,

"Steering Committee" means the Embu County Steering Committee for Public Participation established under section 5 of this Act,

"the public", when used in relation to public participation in this Act, means-

- (a) the residents of the County,
- (b) the rate payers of the County,
- (c) any civic organization, non-Governmental, private sector or labour organization with an interest in the governance of the County, and
- (d) non-resident persons who because of their temporary presence in the County, make use of services or facilities provided by the County,

"public participation" means the involvement of individuals and groups that are positively or negatively affected by, or that are interested in, a proposed project, program, plan, legislation or policy that is subject to a decision-making process in an open, accountable and inclusive process through which individual citizens, community and interest groups, and other stakeholders can exchange views and make or influence the decisions that affect their lives,

"Sub-County Committee" means the Sub-County Committees for Public Participation established under section 10 of this Act, and

"Ward Committee" means the Ward Public Participation Coordinating committee established under section 11 of this Act

Objects and purpose of the Act

3 The object and purpose of this Act is to enhance, promote and facilitate public participation in the County Government and specifically to,

- (a) facilitate the implementation of constitutional provisions set out under- ,
 - (i) Article 1 on sovereignty of the people,
 - (ii) Article 10 on national values,
 - (iii) Article 35 on access to information
 - (iv) Article 37 on right to petition,
 - (v) Article 48 on access to justice,
 - (vi) Article 174 on the objects of devolution,
 - (vii) Article 196 on participation of public in County Assembly businesses,
 - (viii) Article 201 on principles of public Finance,
 - (ix) Article 232 on values and principles of Public service,

- (x) Section 14 of Part 2 of the Fourth Schedule to the Constitution, and
- (xi) Any other provision related to public participation
- (a) provide a framework for participation by the public in the affairs of the County through actively informing the form and content of legislation, policy and development plans formulated by the County Government,
- (b) community empowerment and support,
- (c) provide for a framework for informed, effective, efficient and sustainable engagement of the public in the County in the formulation of policy, legislation, budgeting and implementation of the development plans and programmes by the Government,
- (d) promote transparency and accountability in decision making,
- (e) promote partnership and collaboration in public processes and participatory democracy,
- (f) give effect to public participation framework stipulated under the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Urban Areas and Cities Act, 2011,
- (g) enhance public awareness and understanding of Government processes,
- (h) reduce conflicts related to public or Government decisions, and
- (i) enhance community ownership decisions of public decisions

Guiding principles

5 Subject to section 87 of the County Governments Act, public participation in the activities of the County Government shall be guided by the following principles

- (a) Provision of meaningful information in a format and language that is readily understandable and tailored to the needs of the target groups,
- (b) the communities, organizations and citizens to be affected by a decision shall have a right to be consulted and involved in the decision-making process,
- (c) Provision of information in advance of consultation activities and decision making,

- (d) contributions by the public shall be taken into consideration when making decisions,
- (e) openness and transparency,
- (f) promotion of sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers,
- (g) constructive dialogue between County Government and the public or stakeholders,
- (h) feedback to the public on how their input is included in the policy decision,
- (i) inclusiveness in representation of views including vulnerable groups and the marginalized,
- (j) clear mechanism for responding to people's concerns, suggestions and grievances, adherence to the principles of leadership and integrity set out in Chapter Six of the Constitution,
- (k) objectivity in engagement and non-politicization of issues, and
- (l) adherence to the national values and principles of governance set out under Article 10 of the Constitution,

PART II—ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF PUBLIC PARTICIPATION COMMITTEE IN THE EXECUTIVE

Establishment of steering Committee

6 There is established a Steering Committee at the County level to be known as the Embu County Public participation steering committee which shall be a Committee within the Department responsible for Administration the County

Composition of the Committee

7 (1) The County Executive Committee Member shall appoint members of the Committee to be comprised of—

- (a) Directors of the various County Government Departments, and
- (b) Sub-County Administrators,

(2) The Chairperson of the Steering Committee shall be the Chief Officer for the time being responsible for public participation and civic education

(3) The Secretary of the Steering Committee shall be the Director for the time being responsible for public participation and civic education

Responsibilities of the Secretary

8 (1) The Secretary shall be—

- (a) responsible to the Committee for the day-to-day management of the affairs of the committee,
- (b) the head of the secretariat,
- (c) custodian of all records of the Committee,
- (d) responsible for executing decisions of the Committee,
- (e) facilitating, coordinating and ensuring execution of the Committee's mandate, and
- (f) Ensuring performance of such other duties as may be assigned by the law and the Committee

Functions of the Committee

9 (1) The Committee shall co-ordinate public participation in the governance of the County as provided under the Constitution, this Act and any other law applicable to the County

(2) In the performance of its functions under subsection (1), the Committee shall oversee the effective coordination of public participation and shall—

- (a) propose policy directions for the conduct of public participation,
- (b) ensure public participation activities are inclusive of the broad spectrum of the public,
- (c) Collect and collate public participation plans from all county Departments,
- (d) develop civic education programmes to promote public participation in public affairs,
- (e) ensure that clear and reasonable timelines are established for public input and comment and that these timelines are communicated to the public,
- (f) ensure that the public participation device used is appropriate to the nature of the policy initiatives, issues involved and the target groups affected,

- (g) establish a feedback process to the public including opportunities for the public to forward additional comments or input to the decision taken,
- (h) develop an evaluation framework to the public participation plan,
- (i) ensure that public participation processes adhere to the relevant legislation, regulations, policies or guidelines affecting the rights and responsibilities of the public, officers and the different participants involved,
- (j) establish whether there is support for the development of new public participation techniques and technologies,
- (k) maintain an up to date database or inventory of all its activities,
- (l) carry on research on matters relating to public participation generally,
- (m) Draw up comprehensive public participation plans,
- (n) Prepare and submit quarterly reports to the County Executive Committee member for onward transmission to the County Assembly on the status of the implementation of its functions and obligations under this Act, and
- (o) perform any other function as may be assigned by County Executive Committee Member or any other law

(3) In the performance of its function and obligations under this section, the Committee shall be guided by the guidelines provided in the First Schedule

Powers of the steering Committee

10 (1) The Committee may do or perform all such other things or acts as may be necessary for the proper discharge of its functions under this Act or as may lawfully be done by a public office

(2) Without prejudice to the generality of subsection (1) the Committee shall have power to—

- (a) advice the County executive committee on matters of policy relating to public participation,
- (b) enter into agreements or arrangements with approval of the County Executive Committee Member with any institution, association or professional organizations as the Committee may consider appropriate in furtherance of the purpose for which the Committee is established,

- (c) enforce set standards regarding public participation,
- (d) receive and consider reports, budgets and work schedules from the Ward Public Participation Coordinating Committees,
- (e) oversee operations of the Ward Public Participation Coordinating Committees
- (f) delegate any of its powers to any officer, employee, agent, section or technical committee established by the Committee,
- (g) facilitate public participation activities, citizen participation forums and civic education programmes at the County level, and
- (h) undertake any activity necessary for the fulfilment of any of its functions under this Act

Sub-County Committees

11 (1) The Committee may establish sub-county Committees, when there is need for the better carrying out of its functions

(2) A sub-County Committee established under section 10(1) shall be chaired by the Sub- County Administrator and shall consist of such number of Public officers from the Various County Government Departments working at the sub-county level as may be approved by the County Executive Committee Member

(3) No resolution of the Sub-county Committee shall be effective unless the County Committee has approved it

Establishment and composition of Ward Committees

12 (1) There is established a ward Committee at each ward within Embu County to be known as Ward Public Participation Coordination Committee

(2) The Executive Committee Member shall appoint members of the Committee at each Ward falling under the relevant Sub-County, and the membership shall comprise of—

- (a) the Ward Administrator who shall be the Chairperson of the ward Committee,
- (b) a representative of each of the County Executive Portfolios at the Ward level

(3) The line Department of the Public Ward Coordinating Committee shall provide a secretary from amongst the public officers in the Department

Functions of the Ward Committees

13 The functions of the Ward Committees shall be to—

- (a) inform the public of existing or potential public participation activities including an opportunity for the public to forward additional comments or input on topical issues and platform for the public to air out their views,
- (b) establish a feedback mechanism on topical issues,
- (c) coordinate, manage and facilitate public participation activities and citizen participation forums at the Ward level,
- (d) create awareness at the County level on the importance of Public Participation activities,
- (e) Advise the Steering Committee on the best public participation modalities for conducting Public participation,
- (f) identifying the relevant stakeholders to be included in the Public Participation activities,
- (g) inform the Public on the Existing Mechanism of petitioning the County Government and
- (h) perform any other functions as may be assigned to it by the Steering Committee

Meetings

14 (1) The business and affairs of the Committees shall be conducted in accordance with the Second Schedule

(2) Except as provided in the Second Schedule, the Committees may regulate their own procedures

(3) The Committees may invite any person to attend any of its meetings and to participate in its deliberations, but that person shall not vote on any matter requiring decision of the Committee

Protection from personal liability

15 No matter or thing done by a member of the Committee or any officer, employee or agent of the Committee shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the Committee, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever

PART III— CO-ORDINATION OF PUBLIC PARTICIPATION IN THE COUNTY ASSEMBLY

Public involvement in Assembly Business

16 The Assembly shall—

- (a) conduct its business in an open manner, and hold its sittings and those of its committees, in public, and
- (b) Involve the public in its legislative and other business and its committees

(2) The Assembly may not exclude the public, or any media, from any sitting unless in exceptional circumstances the speaker has determined that there are justifiable reasons for doing so

Establishment of a Committee

16 (1) There is established a County Assembly Committee to be known as the Public Participation Committee

(2) The committee shall consist of a Chairperson and not more than six other members appointed in accordance with the provisions of the Standing Orders

(3) The Clerk of the Assembly shall designate staff of the assembly to be part of the Secretariat

(4) The committee shall Co-ordinate Public Participation in the Assembly

Committee role in public participation

17 The Assembly Public Participation Committee shall be responsible for—

- (a) Coordinating public participation activities and programs to ensure they are inclusive of the broad spectrum of the public,
- (b) Coordinating and promoting co-operation between all participants in public participation
- (c) ensuring that clear and reasonable timelines are established for public input and comment and that these timelines are communicated to the public,
- (d) ensuring that the public participation platforms and modalities used are appropriate to the nature of a specific initiatives, issues involved and the target groups affected

- (e) establishing a feedback process to the public including opportunities for the public to forward additional comments or input to the decision taken,
- (f) investigate and inquire into and report on all matters relating to coordination, effectiveness and monitoring of public participation within the county as they may deem necessary, and as may be referred to them by the County Assembly,
- (g) providing advice to the Assembly on managing public participation process,
- (h) oversight the public participation committees by studying their programmes, policies and plans and effectiveness of public participation activities,
- (i) preparing reports on Assembly Public Participation processes for consideration by the Assembly,
- (j) developing networks and partnerships with key stakeholders for the purposes of enhancing public participation,
- (k) Conduct civic education on County Assembly activities, and
- (l) carrying out any other function that may be assigned by the Assembly

PART IV—CITIZENS' PARTICIPATION FORUMS

County Citizens' Participation Forum

18 (1) There shall be at least two county citizen participation forums in every financial year convened by the County Executive Committee Member to discuss any matter of public importance affecting the public or any community in the county and to provide a platform for consultations, review and deliberation on critical matters affecting delivery of services by the County Government

(2) The Committees shall, when a forum is convened, ensure that the forum is fully publicized to enable the attendance and participation of a wide section of the population including gender, marginalized groups and communities and persons living with disability

(3) The Secretaries of the Committees shall ensure that the minutes of the proceedings of the forum are taken and publicized throughout the County—

- (a) taking note of the issues arising from the forum for action or response by the relevant organ or organs of the County Government or other entity, and

- (b) giving feedback on the action taken on the issues raised
- (4) The Committees shall facilitate meaningful participation of the citizens in the forum including—
 - (a) ensuring accessibility to the forums, and
 - (b) the use of language that is understandable by the citizens including person with disabilities
- (5) No meeting shall be convened for the purpose of promoting, opposing or discussing the election of any person as a member of that County Government or as a Member of Parliament
- (6) Nothing in this section shall be construed as derogating from the provisions of any other written law relating to the holding of public meetings

Sub-County Citizen Participation Forum

19 (1) There shall be county citizen participation forums in every Sub-County convened by the sub- county administrator to discuss and give views on—

- (a) issues of interests in the Sub-County,
- (b) the implementation of County policies and plans in the sub-County,
- (c) the administration and functioning of the sub-County, or
- (d) the delivery of services by the County public service in the Sub-County

(2) The provisions of subsections (2) to (6) of section 22 shall apply to a forum convened under this section

Ward Citizen Participation Forum

20 (1) There shall be county citizen participation forums in every Ward convened by the Ward administrator to discuss and give views on the following—

- (a) issues of interests in the Ward or Village, as the case may be,
- (b) implementation of County or Sub County policies and plans in the ward or village,
- (c) the administration and functioning of the Ward or Village, or
- (d) the delivery of services by the County Public Service in the Ward or Village

(2) The forum shall be open to all citizens of the Ward or Village who desire to attend and citizens shall be allowed to speak through representatives or directly

(3) The convener of the forum shall appoint a Secretary to take the minutes of the proceedings of the forum and shall, with the assistance of the Committee publicize the minutes throughout the Ward or Village and shall-

(a) taking note of the issues arising from the forum for action or response by the relevant organs of the County Government, and

(b) giving a feedback on the action taken on the issues raised

(4) The convener of the forum must ensure that the forum is fully publicized to enable attendance and participation of a wide section of the population, including marginalized groups and communities

PART V—FINANCIAL PROVISIONS

Appropriation of Funds

21 The County Government shall ensure that a budgetary provision is made for public participation and civic education in every Department pursuant to the provisions of Parts VIII, IX and X of the County Governments Act, 2012, and any other written law

Funds of the Committees

22 The Funds of the Committees shall consist of—

(a) monies allocated by the County Assembly for the purposes of the Committees, and

(b) all monies from any other source provided, donated or advanced to the Committees

PART VI— MISCELLANEOUS

Annual report

23 (1) The County Executive Committee Member shall, at the end of each financial year prepare and submit an annual report to the County Assembly

(2) The Steering Committee shall submit the annual report to the County Executive Member not later than three months after the end of the year to which it relates

(3) The annual report shall contain, in respect of the year to which it relates—

- (a) a description of the activities and outcomes of public participation, and
- (b) any other information, that the Committee may consider relevant

Management of information

24 (1) The Committee shall publish and publicize all important information affecting the County within its mandate

(2) A person may request for information within the mandate of the Committee in public interest

(3) A request for information under subsection (2)-

- (a) shall be addressed to the Secretary or such other person as the Committee may designate for that purpose,
- (b) where the Committee incurs expense in providing the information, be subject to payment of a reasonable fee, and

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(3) Subject to the provisions of Article 35 of the Constitution and the Embu County Access to information Act, the Committee may decline to give information to an applicant where—

- (a) the request is unreasonable in the circumstances,
- (b) the applicant fails to satisfy any confidentiality requirements imposed by the committee,
- (c) the amount collected pursuant to subsection (3) (b) shall be credited to the County Revenue Fund Account

Notification

25 Any notice to the public required in terms of this Act or any other applicable legislation shall be done at least seven days prior to the commencement of the public participation activity by—

- (a) publication in at least one daily newspaper with national circulation where appropriate, and
- (b) publication in the official website of the County Government and the County Assembly,

(2) In addition to methods required in Sub-section (1), the County may use any other appropriate method to publicize including but not limited to—

- (a) radio broadcasts covering the area of the county,

- (b) Publication in any other media with wide reach to interested persons including but not limited to social media platforms,
- (c) publishing and distributing information packages,
- (d) conducting roads shows, workshops, and
- (e) any other activity aimed at informing and educating the public on the matter under consideration

(2) A copy of every notice issued by the County Executive or Assembly under this Act or any other legislation shall be placed in notice boards in all offices of the County and any other places where the public is known to converge, including but not limited to Churches, Mosques, Temples, public *barazas* and community social halls

(4) When the County Government invites the public to submit written comments or representations on any matter before it, it shall be stated in the invitation that any person who cannot write may visit, during office hours, an office of County Government named in the invitation and shall be assisted to transcribe that person's comments or representations

(5) When the County Government requires a form to be completed by a member of the public, reasonable assistance shall be given to persons with special needs including those who cannot read or write, to enable such persons to understand and complete the form

Offences and penalty

26 A person who—

- (a) without justification or lawful excuse, obstructs, hinders, threatens a member of the Committees under this Act,
- (b) submits false or misleading information,
- (c) without reasonable excuse, fails to appear before a meeting of the Committee when required to do so,
- (d) misrepresents to or knowingly misleads a member of the Committee or a member of staff of the Committee acting under this Act,
- (e) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Shillings or to imprisonment for a term not exceeding one year or to both

Regulations

27 (1) The County Executive Committee Member may make Regulations for the better carrying into effect of the provisions of this Act

(2) Without prejudice to subsection (1) the Regulations may prescribe for—

- (a) conduct of public participation including providing for additional guidelines,
- (b) mode of feedback to the public,
- (c) use of media to promote public participation,
- (d) coordination of all forms of citizen fora including County, Sub-County, Ward and Village fora,
- (e) representation of citizens in the consultative fora, and
- (f) conduct of the affairs of the Secretariat

(3) Pursuant to the nature and scope, the Regulations shall-

- (a) be for the purpose and objectives set out under section 3 of this Act,
- (b) be limited only to the matters set out in this Act, and
- (c) comply with the drafting standards set out under any law applicable to the County

Repeal

28 The Embu County Public Participation Act, 2015 is hereby repealed

FIRST SCHEDULE

PUBLIC PARTICIPATION GUIDELINES

1 The following guidelines shall guide the County Government and the Committee when conducting public participation activities

2 Build a realistic timeframe for the consultation, allowing reasonable period for each stage of the process

3 Be clear as to the type of the public, community or profession to be consulted, the issues or matter for consultation and for what specific purpose

4 Ensure that the consultation document is as simple and concise as possible, providing the summary of the issues or matter for consultation and clearly setting out the questions to be addressed

5 Publish and distribute the documents as widely as possible, including but not limited to providing hard copies, television advertisements, websites, community radio announcements and traditional media

6 Ensure that where necessary, Communication on public participation shall be tailored to meet the needs of persons with disabilities, aged members of the society and the less educated residents of the County and may include the following forms—

(a) communication forms for persons with hearing impairments,

(b) braille,

(c) local language publications,

(d) simplified and popular versions, and

(e) large print publications

7 Ensure that all responses are carefully and open-mindedly analyzed and the results made widely available to the public, including an account of the views expressed and the reasons for the decisions taken

8 Disclose all information relevant for the public to understand and evaluate the decision

9 Ensure that stakeholders have fair and equal access to the public participation process and their opportunity to influence decisions

10 Ensure that all commitments made to the public, including those by the decision-makers, are made in good faith

11 Undertake and encourage actions that build trust and credibility for the process among all the participants

12 Be personally responsible for the validity of all data collected, analyses performed, or plans developed by it or under its direction

13 Ensure that there is no misrepresentation of work performed or that was performed under the relevant body's direction

14 Ensure that there is no misrepresentation of work performed or that was performed under the relevant body's direction

15 Examine all of its relationships or actions, which could be legitimately interpreted as a conflict of interest by clients, officials, the public or peers

16 Should not accept fees wholly or partially contingent on the client's desired result where that desired result conflicts with its professional judgment

SECOND SCHEDULE

MEETINGS AND PROCEDURE FOR THE COMMITTEES

1 The County Executive Committee Member shall convene the first meeting of the Committee

2 The Committee shall decide when and where it meets and the meetings shall be convened by the Secretary in consultation with the chairperson

3 The Committee shall have at least six meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting

4 Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member

5 A meeting shall be presided over by the Chairperson or in his or her absence, by the Vice-Chairperson

6 The members of the Office shall elect a Chairperson and a vice-chairperson from among themselves-

(a) at the first sitting of the Office, and

(b) whenever it is necessary to fill the vacancy in the respective office

7 The Chairperson and Vice-Chairperson shall not be of the same gender

8 If any person has a personal or fiduciary interest in any matter before the Committee, and is present at a meeting of the Committee or any committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter

9 A disclosure of interest made under paragraph 8 shall be recorded in the minutes of the meeting at which it is made

10 A person who contravenes paragraph 8 commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both

11 The quorum of the meeting shall not be less than half of the appointed members

12 A question before the meeting shall be decided with a supporting vote of a simple majority of the members present and voting

13 Where there is a tie in the votes of the Committees, the respective Chairpersons shall have a casting vote

14 The Committee shall keep minutes of proceedings of its meetings and decisions taken

MEMORANDUM OF OBJECTS AND REASONS

Articles 1(4), 10, 2013 and 232(1)(e) of the Constitution of Kenya 2010 outlines the principles of Public Participation. The purpose of this bill is therefore to establish a legislative framework to give effect to paragraph 14 of part 2 Of the Fourth Schedule Of the Constitution and Part VIII of the County Governments Act,

The enactment of this Bill into law does not occasion additional expenditure of public funds

JOHN NGARI MBAKA,
Chairman Committee on Public Participation