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THE EMBU COUNTY REVENUE AUTHORITY BILL, 2016

A Bill for

AN ACT of County Assembly of Embu to provide for the establishment of the Embu County Revenue Authority as a body for the assessment and collection of revenue, for the administration and enforcement of laws relating to Revenue within the County and to provide for connected purposes

ENACTED by the County Assembly of Embu, as follows—

PART I — PRELIMINARY

Short title

1. This Act may be cited as the Embu County Revenue Authority Act, 2016.

Interpretation

2. In this act unless the context otherwise requires—

“Authority” means the Embu County Revenue Authority Act, 2016 established under section 4;

“Authorised officer” means a person appointed as such under section 34;

“Board” means the Board of Directors established under section 7;

“County” means Embu County;

“Executive Member” means the County Executive Committee Member for the time being responsible for finance;

“revenue” means rates, charges, levies, fees, rents, royalties and any monies payable to the County Government as revenue under any written law; and

“tax payer” means a person who is obligated under any County or national law to pay to the County any rates, fees, rents, royalties or levies or charges that are prescribed under any County law to be a tax.

Objects and purpose

3. The objects and purpose of this Act is to provide for the establishment of legal and institutional framework for revenue mobilization, collection and receipt in order to-

- (a) ensure effectiveness and efficiency in revenue mobilization, collection and receipt;
- (b) facilitate transparency in revenue mobilization, collection and

receipt; and

- (c) enhance county revenue;

PART II — ESTABLISHMENT, POWERS AND FUNCTIONS OF THE AUTHORITY

Establishment of Authority

4. (1) There is established an Authority to be known as the Embu County Revenue Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, subject to this Act, be capable in its corporate name of—

- (a) suing and being sued:

Provided that any legal proceedings against the Authority arising from the performance of the functions or the exercise of any of the powers of the Authority under section 27 shall be deemed to be legal proceedings against the government within the meaning of the Government Proceedings Act (Cap. 40);

- (b) owning, acquiring, purchasing or otherwise, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money;
- (d) doing or performing all other things or acts for the furtherance of the provisions of this Act, which may be lawfully done or performed by a body corporate

Seal of the Authority

5. (1) The seal of the Authority shall be authenticated by the signature of the Chief Executive Officer.

(2) In the absence of the Chief Executive Officer an Officer designated by him for the purpose may authenticate the seal in his place.

(3) Every document purporting to be an instrument issued by the Authority and to be sealed with the seal of the Authority authenticated in the manner provided by subsection (1) or (2) shall be deemed to be such an instrument and shall be received in evidence without further proof.

Functions of the Authority

6. (1) The Authority shall, under the general supervision of the Executive Member, be responsible for—

- (a) assessing, collecting and accounting for all revenue in accordance with the County and national laws related to

revenue;

- (b) administering and enforcing County laws related to revenue;
- (c) advising the Executive Member on all matters related to administration and collection of revenue under County laws; and
- (d) carry out such other roles necessary for the implementation of the objects and purpose of this Act.

PART III—ESTABLISHMENT AND FUNCTIONS OF THE BOARD OF DIRECTORS

Establishment of the Board

7. There is established a Board to be known as the Embu County Revenue Board.

Composition of the Board

8. (1) The Board shall consist of—

- (a) a non -executive Chairperson appointed by the Governor with the approval of the County Assembly.
- (b) the Chief Officer for the time being responsible for finance or his/ her representative;
- (c) the Chief Executive Officer who shall be an *ex officio* member and secretary to the Board;
- (d) the County Attorney or his/her representative;
- (d) four other persons with knowledge and practical experience referred to under (3) appointed by the Executive Member through a competitive process.

(2) While making the appointments referred to in paragraph (d) the Executive Member shall observe the principles of inclusiveness, equity, equality and protection of the marginalized as enshrined in the Constitution.

(3) A person shall be qualified for appointment as chairperson or member appointed under sub section (1) (d) if the person—

- (a) holds at least a degree in finance, economics, business administration, or other relevant degree from a recognized university;
- (b) has knowledge and experience of at least five years in matters relating to, business, finance and accounts;
- (c) meets the requirements of Chapter Six of the Constitution; and

- (d) has had a distinguished career in the field.

(4) The term of office for the chairperson or a member appointed under sub section (1) (d) shall be three years which may be renewed for one further term.

Termination of appointment of chairperson and members

9. The appointment of a member, other than an *ex officio* member, may be terminated, in the case of the Chairman by the Governor, and in the case of any other member by the Executive Member on any of the following grounds—

- (a) for his inability to perform the functions of his office by reason of mental or physical infirmity;
- (b) if he is declared or becomes bankrupt or insolvent;
- (c) if he is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) if, without reasonable cause to the satisfaction of the Executive Member, he is absent from six meetings of the Board in any financial year;
- (e) if in any particular case, he fails to comply with the provisions of the schedule;
- (f) for such other sufficient cause as the Executive Member may, by notice in the *Gazette*, specify .

Functions of the Board

10. (1) The Board shall, under the general supervision of the Executive Member be responsible for—

- (a) the approval and review of the policy of the Authority;
- (b) the monitoring of the performance of the Authority in carrying out its functions; and
- (c) the discipline and control of all members of staff of the Authority appointed under this Act.

Conduct of business

11. (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

Remuneration of the Board

12. The remuneration of the members of the Board shall be as determined by the County Treasury in consultation with the Salaries and Remuneration Commission.

Chief executive officer

13. (1) There shall be a Chief Executive Officer of the Board.

(2) The chief executive officer shall be appointed by the Executive Member on recommendation of the County Public service Board and recruited through a competitive process.

(3) To qualify for appointment as a Chief Executive Officer, a person shall—

- (a) have a degree in finance, accounting, economics, business, law or related field from a recognized university;
- (b) have had experience in management for a period of not less than five years.
- (c) satisfies the conditions of chapter six of the Constitution.
- (d) has a distinguished career in the field

(4) The chief executive officer shall hold office for a period of four years, on such terms and conditions of employment as the County public service Board may determine, and shall be eligible for re-appointment for a further and final term of four years.

(5) The Chief Executive Officer shall be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board.

(6) The Chief Executive Officer shall—

- (a) subject to the direction of the Board, be responsible for day to day management of the affairs of the Authority;
- (b) for the administration, organization and control of the staff of the Authority.
- (c) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Authority, the exercise, discharge and performance of its objectives, functions, duties and the general administration of the Authority; and
- (d) carry out any other function as may from time to time be assigned by the Board.

(7) The Chief Executive Officer may—

- (a) at any time resign from office by issuing notice of at least 30

days in writing to the chairperson of the Board;

- (b) be removed from office by the County Public Service Board on recommendation of the Board, to the Executive Member;
- (c) the reasons for the removal referred to in paragraph (b) shall be;
 - (i) serious violation of the Constitution or any other written law;
 - (ii) gross misconduct;
 - (iii) abuse of office;
 - (iv) physical or mental incapacity to perform the functions of office;
 - (v) incompetence;
 - (vi) bankruptcy; and
 - (vii) conviction and imprisonment for a term exceeding six months.

Staff of the Authority

14. (1) The County Public service Board shall appoint such staff as the Authority may recommend to be necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as may be determined.

(2) The County public service Board shall—

- (a) recruit staff through a competitive process;
- (b) ensure that there sufficient number of staff qualified in matters related to accounting, finance, business, law, information technology or any relevant field necessary for the better carrying out the objects and functions of the Authority|.

(3) In determining the terms and conditions of service, the County Public Service Board shall be guided by the recommendations of the Salaries and Remuneration Commission.

Protection from personal liability

15. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Board shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution

brought against him or her in any court, in respect of any, act which is done or purported to be done by him or her under the direction of the Authority, shall, if the court holds that such act was done bona fide be paid out of the funds of the Authority, unless such expenses are recovered by him or her in such suit or prosecution

Liability for damages

16. The provisions of section 15 shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Corporate governance

17. The Authority shall establish and implement corporate governance principles and practices applicable to similar entities.

Quarterly Reports

18. (1) The Board shall prepare a report for each quarter of the financial year.

(2) In preparing a quarterly report, the accounting officer shall ensure that the report—

- (a) contains information on the financial and nonfinancial performance of the entity; and
- (b) is in a form determined by the Accounting Standards Board.

(3) Not later, than fifteen days after the end .of each quarter, the Board shall submit the quarterly report to the County Treasury.

Annual report

19. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Executive member a report of the operations of the Authority for the immediately preceding year.

(2) The annual report shall provide information regarding the activities and plans of the Authority during the year to which it relates sufficient to impart an accurate understanding of the nature and scope of its activities and its plans and priorities and, without limitation, shall include—

- (a) details of the performance of the Authority against its key performance indicators;
- (b) report on the overall status of the County revenue collection including the Authority's projections for the following year;

- (c) such information and other material as the Authority may be required by this Act or regulations made thereunder to include in the annual report;
- (d) measures taken to implement corporate governance principles and practices;
- (e) the financial statements prepared under section 25;
- (g) such additional information or other material as the Executive Member may request in writing.

PART IV—FINANCIAL PROVISIONS

Revenue Fund

20. All revenues collected by or payable to the Authority under this Act shall be paid into the County Revenue Fund.

Funds of the Authority

21. (1) The funds and assets of the Authority shall consist of—

- (a) such monies not exceeding two per centum of the revenue estimated in the financial estimates for each financial year to be collected by the Authority under this Act as may be determined by the Executive Member in each financial year;
- (b) three percent of the revenue actually collected in each successive three-month period in the financial year in excess of the amount estimated to be collected in respect of that period;
- (c) such gifts, grants, loans or monies received from any lawful source by the Authority with the approval of the Executive Member;
- (d) such moneys as may be appropriated by County Assembly for the purposes of the Authority.

(3) The Authority shall apply the money provided under this section for the furtherance of the objects and performance of the functions of the Authority and as may be prescribed under this Act.

Financial Year

22. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year

Annual Budget

23. (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared budget of the Authority for that year.

(2) The annual budget shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for the—

- (a) expenditure related to revenue mobilization, receiving and collection;
- (b) payment of the salaries, allowances and other charges in respect of the members of the Board and staff of the Authority;
- (c) payment of pensions, gratuities and other charges in respect of members of the Board and staff;
- (d) proper maintenance of the buildings and grounds of the Authority;
- (e) maintenance, repair and replacement of the equipment and other property of the Authority; and
- (f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Executive Member for final approval.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorisation of the Board given with prior written approval of the Executive Member.

Accounts

24. The Board shall cause to be kept proper books and records of accounts and assets of the Authority.

Financial reports and audit

25. (1) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Authority together with—

- (a) a statement of financial position as at the thirtieth day of June;
- (b) a statement of comprehensive revenue and expenditure;
- (c) a statement of cash flow for the year ended;
- (d) a summary of significant accounting policies and other explanatory information; and
- (e) other financial statements applicable to similar institutions.

(2) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

PART V—REVENUE ADMINISTRATION

Values

26. The Authority shall carry out its functions in a manner that upholds the following values—

- (a) human dignity; (b) rule of law;
- (c) non- discrimination; (d) transparency;
- (e) fairness;
- (f) justice; and
- (g) equality and equity.

Powers of the Authority

27. The Authority shall have powers to—

- (a) assess any tax payable to the County Government by any person in accordance with the County laws or any written law;
- (b) collect on behalf of the County Government all taxes payable by any tax payer;
- (c) institute civil proceedings for the recovery of tax payable or owing to the County Government;
- (d) to inspect any premises or information for the purposes of implementing this Act;
- (e) such other powers as may be necessary for the Authority to carry out its functions under this Act.

Revenue

28. The Executive Member shall identify and prescribe the County laws applicable for the purposes of determining the revenues collectable under this Act.

Registration of taxpayers

29. (1) The Authority shall register all County tax payers in the prescribed manner.

(2) A taxpayer registered under this section shall be assigned a tax identification number.

Compliance

30. The Authority shall—

- (a) institute measures to ensure compliance with this Act;
- (b) promote and encourage voluntary compliance by tax payers.

Public education

31. The Authority shall provide public education and awareness to all tax payers as well as members of the public.

Information technology

32. The Authority shall ensure that its services are automated as much as practicable to facilitate effective and efficient tax administration.

Complaints

33. The Executive Member shall prescribe the mechanism for addressing complaints from tax payers or members of the public in relation to the implementation of this Act.

Authorized officers

34. (1) The County Executive Committee Member upon the recommendation of the Board shall appoint authorized officers in the prescribed manner for the purposes of implementing and enforcing this Act.

(2) The Executive Member shall issue a certificate of appointment to an authorized officer appointed under this Act.

Powers of authorized officers

35. An authorised officer appointed under this Act may—

- (a) inspect any premises or information;
- (b) discharge any duties as may be assigned by the Board.

PART VI—MISCELLANEOUS

Regulations

36. (1) The Executive Member may, on recommendation of the Board make Regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) prescribe the funds of the Authority;
- (b) prescribe the manner of registration of county tax payers;
- (c) prescribe for appointment of authorized officers;
- (d) Prescribe the mechanism for addressing complaints; and
- (e) prescribe the County laws applicable for the purposes of determining the revenues collectable under this Act.

SCHEDULE (s. 11)
PROVISIONS AS TO THE CONDUCT OF BUSINESS AND
AFFAIRS OF THE BOARD

Tenure of office

1. Any member of the Board, other than chief officer and County Attorney shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for a further and final term of three years.

Vacation of office

2. A member of the Board may—

- (a) at any time resign from office by notice in writing to the Executive Member;
- (b) be removed from office by the Executive Member if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
 - (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Board; or
 - (vi) fails to comply with the provisions of this Act relating to disclosure.

Meetings

3. (1) The Board shall meet not more than 12 times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least four members and with the approval of the Executive Member, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board

shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be five members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their members to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

Conflict of interest

4. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A member of the Board shall be considered to have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Board.

(3) Where the Board becomes aware that a member has a conflict of interest in relation to any matter before the Board, the Board shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter.

(4) If the chairperson has a conflict of interest he shall, in addition to complying with the other provisions of this section, disclose the conflict that exists to the Executive Member in writing.

(5) Upon the Board becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Board and the member with the conflict of interest shall not vote on this determination.

(6) Where the Board determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided for in subparagraph (1), the member shall resign unless the

member has eliminated the conflict to the satisfaction of the Board within thirty days.

(7) The Board shall report to the Executive Member any determination by the Board that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Board.

(8) The annual report of the Board shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.

(9) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(10) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

Code of conduct

5. (1) Within twelve months of the commencement of this Act, the Board shall adopt a code of conduct prescribing standards of behaviour to be observed by the members and staff of the Board in the performance of their duties.

(2) Subject to sub-paragraph (1), before adopting any code of conduct or making any substantial amendments to an existing code of conduct, the Board shall publish the proposed code or amendments in the *Gazette* and in a newspaper circulating nationally, inviting public comments.

(3) The Board shall include in its annual report a report on compliance with the code during the period covered by the annual report.

(4) The code of conduct adopted or prescribed under this paragraph shall be binding on the Board and its staff.

Execution of Interest

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally.

Minutes

7. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The Bill establishes the Embu County Revenue Authority as a body for the assessment and collection of revenue, for the administration and enforcement of laws relating to Revenue within the county.

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

Part I—provides for preliminaries, specifically; the short title, commencement and interpretation as well as the objects and purpose of the Bill.

Part II—provides for the establishment of the Authority

Part III—provides for the substantive provisions connected to the establishment of the Board of Directors. These include its functions, composition and other matters connected to the operations of the Board.

Part IV—provides the financial provisions of the Authority

Part V—provides for general requirements connected to revenue administration such as registration of taxpayers, public education, complaints among others.

Part VI—sets out the miscellaneous provisions including power to make regulations.

The Schedule makes provision for the conduct of business and affairs of the Board.

Dated 5th September, 2016.

KANJOGU NJIRU MUGO,
Chairperson, Finance and Economic Planning Committee.