

SPECIAL ISSUE

Kenya Gazette Supplement No. 9 (Homa Bay County Bills No. 7)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

HOMA BAY COUNTY BILLS, 2018

NAIROBI, 20th December, 2018

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Dear Sirs,
I am writing to you to inform you that I have received your letter of the 14th day of May 2014 regarding the matter of the County Assemblies Forum (CAF) and the County Assemblies Forum (CAF) and the County Assemblies Forum (CAF).

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Yours faithfully,

Signature

Name

Position

County Assemblies Forum (CAF)

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**THE HOMA BAY COUNTY INSPECTORATE
SERVICE AND COMPLIANCE BILL, 2018****A Bill for**

AN ACT of the County Assembly of Homa Bay to provide for the establishment of Homa Bay County Inspectorate Service and compliance, Provide for its organization, powers and functions and for connected purposes

ENACTED by the County Assembly of Homa Bay County, as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Homa Bay County Inspectorate Service and Compliance Act, 2018 and shall come into force on such a date as the County Secretary may by notice in the *Gazette* appoint.

Short title and
commencement

2. In this Act, unless the context otherwise requires—

Interpretation

“Animal” includes domestic animals, wild animals and poultry

“Board” means the County Public Service Board of Homa Bay County established under section 57 of County Government Act, 2012

“Committee” means the disciplinary committee established under Section 8 of the Act.

“Compliance enforcement” includes action taken to establish compliance of any requirement by a county law or, enforcing compliance of county laws and pursuing punishment for committing an offence under a county law.

“County law” means any Act of the County Assembly of HOMA BAY or a subsidiary county law.

“County Secretary” means a person for the time being appointed as the County Secretary of Homa Bay County.

“Chief of Staff” means a person for the time being appointed as the County Chief of Staff of Homa Bay County.

“Court” means a court of competent jurisdiction over county laws

“Deployment” means the transfer of an officer from one service to another

“Governor” means the governor of the County Government of Homa Bay.

“Officer” means an officer appointed under section 12.

“Premise” means any building or structure where a regulated activity is undertaken or is about to be.

“Regulated activity” means any activity, trade or business whose undertaking, a county law requires obtaining of a license, permit, Approval or payment of service fee, by or to relevant county organ.

“Relevant county organ” means the organ or department responsible for licensing, issuing permits, collecting services fee or approving an activity.

“Service” means the Inspectorate service established under Section 4.

“Standing orders” means Administrative orders of the County Inspectorate Service for the general control, direction and information of the County Inspectorate Service.

“Vessel” includes motor vehicles, motorbikes, bicycles and any other motorized or non-motorized vessel.

“Supervisory Board” means the Inspectorate Coordination and Supervisory Board established under Section 16 (B)

3. The objects of this Act are to—

Objective of the Act

- (a) establish by law, in line with Article 185(2) of the Constitution mechanisms so as to ensure effective performance and exercise of county government powers pursuant to Part II of the 4th Schedule to the Constitution.
- (b) establish a legislative framework for the enforcement of all county laws
- (c) to provide for institutional framework for the enforcement of the County laws; and
- (d) to regulate the actions of County Inspectorate officers

PART II — ESTABLISHMENT AND ADMINISTRATION OF THE INSPECTORATE SERVICE

4. (1) There is hereby established a Service known as Homa Bay County Inspectorate Service;

Establishment of
Inspectorate Service
and Inspectorate
Stations

(2) The service shall at all times be a department within the County Public Service

(3) The service shall comprise of such maximum number of persons and personnel as shall be determined from time to time the Board.

(4) The Director shall publish in the Kenya and County Gazette, the establishment and location of every Inspectorate Service Station in the county

5. (1) The Inspectorate Service shall be responsible for—

Responsibility of the
Inspectorate Service

- (a) protecting and guarding the property of the county;
- (b) enforcement of compliance with the Homa Bay County Laws and Regulations;
- (c) inspection for compliance with trade licenses and permits;
- (d) protection of public entertainment sites;
- (e) enforcement of barrier cess and royalties;
- (f) service fee and land rates collection; and
- (g) prevention of crime in the county.

(2) In addition to the matters listed at sub-section 1, the Service shall be responsible for compliance and enforcement of any other matter that it may be required to do so by any other written law or as directed by any department in the county government.

6. (1) There shall be a Director appointed by the Governor through a competitive process undertaken by the Board.

Appointment and
Authority of Director

(2) The Governor shall cause to be forwarded to the County Assembly the name of the person appointed as the Director for approval in line with the provisions of the

Public Appointments (County Assemblies Approval) Act 2017.

7. (1) The Director shall be the Chief of the Inspectorate Service and shall be responsible for—

Functions and
Powers of the
Director

- (a) the property and business of the inspectorate
- (b) the day- to- day operations of the inspectorate
- (c) the administration, organization, co- ordination of officers of the inspectorate
- (d) issuing standing orders for the running of the inspectorate
- (e) performing any other functions that may be assigned by the Governor.

(2) The Director shall establish the inspectorate stations at all decentralized units as it deems fit and necessary.

8. A person qualifies for appointment as the Director of the County Inspectorate Service if the person—

Qualification of the
Directors

- (a) is a citizen of Kenya
- (b) holds a degree of a University recognized in Kenya
- (c) satisfies the provisions of Chapter Six of the Constitution
- (d) has at least five years relevant experience at Senior Management level

9. (1) All administrative and duties and powers of the inspectorate in accordance to this Act shall be performed by the Director

Administrative
duties and powers

(2) The remuneration of members of the inspectorate service and officers under this Act shall accordingly be determined by the board and in regard to the terms of the Salaries and Remuneration Commission.

10. An officer of the inspectorate shall, upon being enlisted, sign before an officer authorized by law to administer oaths, or before the Governor, in English or Swahili the oath of office and allegiance set out in the Second Schedule: Provided However that the oath of office

Oath of Office and
Allegiance

and allegiance for the Director shall be administered in a public event as may be set out by the Governor.

11. No officer shall engage in any trade, business or employment, or take part in any form whatsoever, of commercial undertaking or offer professional services, outside the scope of his or her duties as an officer of the County inspectorate service.

Prohibition from
other employment

PART III – APPOINTMENT, DEPLOYMENT, RANKING AND DISCIPLINE OF OFFICERS

12. (1) The County Public Service Board competitively recruit and appoint officers into the Service.

Appointment of
Inspectorate Officers

(2) The Board shall ensure that recruitment and appointment of officers into the service reflects ethnic and geographical diversity of the people of the county.

13. (1) The Director shall be responsible for deployment and administration of the scheme of service of the officers.

Deployment and
Scheme of service of
the officers

(2) The Board shall, in consultation with the Office of the Governor develop the various ranks of officers in the service and shall publish ranks in the Kenya and County Gazettes.

14. (1) There is established an internal disciplinary committee that shall be responsible for maintaining discipline in the Inspectorate services.

Establishment of the
Disciplinary
Committee

(2) The Committee shall comprise of—

- (a) the Chairperson who shall be the County Director of Human Resource;
- (b) three persons from the Inspectorate service chosen by the Director;
- (c) the County Legal officer or a representative from the County Legal department; and
- (d) a representative from the County Public Service Board.
- (e) a representative appointed by the Governor

(3) At any disciplinary proceedings, an officer shall be represented by a representative/advocate of their choice.

15. (1) The Disciplinary committee shall have power to— Powers of the
Disciplinary
Committee

- (a) receive and investigate a complaint regarding an inspectorate officer;
- (b) summon and interrogate witnesses
- (c) call for or require the production of documents for examination;
- (d) recommend the appropriate disciplinary action against an inspectorate/enforcement to the Public Service Board;

(2) The disciplinary actions the committee may recommend include—

- (a) interdiction of an officer;
- (b) suspension;
- (c) dismissal;
- (d) demotion;
- (e) deduction of salary
- (f) transfer to another inspectorate service within the county.

16. (1) Any officer aggrieved by the decision of the Disciplinary Committee may appeal to the High Court. Appeals

(2) No further appeal may lie from the decision of the High Court in exercise of its appellate jurisdiction as relates to any provision of this Act.

(3) The right to appeal does not bar any person from applying for judicial review against the decision of the Disciplinary Committee

PART IV – POWERS OF OFFICERS

17. The jurisdiction of the inspectorate shall cover the enforcement of county laws and other applicable laws and regulations. Jurisdiction of the
inspectorate

18. (1) An officer may, at all reasonable times, enter upon any premises or place in which there is a reasonable ground to believe that a regulated activity is being undertaken, for the purpose compliance enforcement. Powers of entry into
a premise

(2) If an officer acting under subsection (1), is satisfied that a regulated activity is taking place or is about to take place contrary to a lawful requirement, the officer may order immediate stoppage of the activity.

(3) An officer may apply to a magistrate for a warrant to enter, inspect and impound goods in any premises where he reasonably suspects that an activity is about to or being undertaken contrary to any county laws and where entry has been refused.

19. (1) Where an officer has a reasonable grounds to believe that an offence has been committed or is about to be committed under any county law, the officer may arrest—

Power of arrest

(a) The person committing or who is about to commit the offence.

(b) Where the offence relates to a regulated activity—

(i) the proprietor of the activity; or

(ii) an employee of the proprietor; or

(c) any other person whom the officer reasonably believes that is involved in the execution of the activity.

(2) An officer may use reasonable force to execute arrest, where a person whom is believed to have committed a crime or is about to commit a crime under any county law resists an arrest.

20. Where an officer arrests any person under section 19 above, he or she shall immediately forward the person arrested to the nearest police within 24 hours.

Production in court
or police station

21. (1) Where an officer has reasonable grounds to believe that a person is trading in goods contrarily to any county law, the officer may impound on the goods and cause them to be stored at the Inspectorate Station until the person involved complies with the law or the case against him is determined by the court.

Power to impound
goods

(2) Any goods impounded that are subject to rapid decay shall be disposed of with the authority of the magistrate after a full inventory has been taken and any

other records of the same including photographs submitted to court.

(3) Sub-section 1 shall not preclude the relevant county organ from dealing with the impounded goods in any other manner permitted by order of the court or by any other law.

22. Where an officer reasonably believes that a vessel is parked or controlled in any manner contrarily to any county law or without payment of prescribed parking fee, the officer may impound the vessel by clamping or towing it to the nearest Inspectorate Service Station.

Power to impound
vessels

23. An officer may impound any animal that is kept contrary to any county law.

Power to impound
animals

24. An officer shall sufficiently identify himself or herself while exercising any of the powers under this part.

Identification of
officers

25. (1) It shall be unlawful for any person to erect, build establish or keep any structure, building, shed, kiosk or any other structure whatsoever or for whatever purpose on any area or public or private without approval of the County Government.

Unapproved
buildings and
structures

(2) Where it has come to the attention of the County Government that there is or are such structures mentioned in subsection (1) above which have been put, constructed or erected without County Government Approval, the County Government shall give the owner or occupier of such structure Seven (7) days notice to demolish the structure or obtain County Government approval.

(3) If the owner and or occupier does not demolish or obtain approvals within seven (7) days, the County Government may demolish such structures and surcharge the owner of the plot or person who has constructed the costs of demolition.

26. (1) The surcharge mentioned in section 25(3) herein above may —

Cost of Demolition

- (a) Be added to rates payable by rent and or
- (b) Be recovered by the County Government as a civil debt

(2) An invoice raised by the County Government shall be prima facie evidence of expenses incurred by County Government for the Demolition.

27. Any notice required to be given shall be deemed and have been served if— Service of Notice

- (a) It is placed on a conspicuous place of the structure or buildings;
- (b) Served upon the owner, or
- (c) Served upon the occupant.

PART V – OFFENCES

28. (1) It shall be unlawful for an inspectorate/enforcement to subject any person to torture or other cruel, inhuman or degrading treatment. Prohibition against torture

(2) An inspectorate/enforcement who subjects a person to torture commits an offence and shall be liable upon conviction to imprisonment for life.

29. Any person, who impersonates an officer appointed under this Act, commits an offence and shall be liable, upon conviction, to pay a fine of not more than five hundred thousand or imprisonment for a period not exceeding three years, or to both. Impersonating an officer

30. Any person who willfully resists arrest, obstructs or interferes with the duties of an inspectorate/enforcement commits an offence and shall be liable upon conviction to a fine not exceeding Kenya shillings 50,000 or to imprisonment for a term not exceeding one year or to both. Obstruction of an Officer

31. (1) Any person who defaces or destroys any property being the property of the County Government commits an offence and shall be liable upon conviction to a fine not exceeding Kenya shillings 50,000 or to imprisonment for a term not exceeding one year or to both. Destruction of Country Property

(2) In addition to the penalties prescribed in subsection 1 above, the person so convicted under this provision shall be liable to pay damages or costs of repair to the County Government for the property destroyed.

32. Any person who is convicted of an offence under this Act for which no penalty is prescribed shall upon General Penalty

conviction of that offence be liable to a fine not exceeding Kenya shillings 100,000 or to imprisonment for a term not exceeding one year or to both

PART VI – MISCELLANEOUS PROVISIONS

33. All fines imposed and recovered by a competent court on an offender shall be paid to and collected by the County as revenue.

Fines

34. The Governor and the Director of County Inspectorate Service shall put in place arrangements with—

Arrangements with
other public bodies

- (a) The Director of Public Prosecution for the purpose of facilitating prosecution of those who contravene county laws ;
- (b) The Judicial Service Commission of Kenya for the purpose of allocation and designation of magistrates to adjudicate on criminal matters arising from county laws and the transmission of fines paid by those convicted of county offences into the County Revenue Fund.
- (c) The relevant public authorities dealing with matters of incarceration of criminal suspects and convicts

35. The Director may in consultation with the relevant departments and committees in the county government make regulations, with the approval of the County Assembly to—

Regulation

- (a) Further prescribe and regulate the conduct of Inspectorate enforcement officers;
- (b) Facilitate the implementation of this Act

SCHEDULE 1**OATH OF OFFICE AND ALLEGIANCE- (S10)**

I do swear/ solemnly and sincerely affirm that I will be faithful and bear true allegiance to the Constitution and the Governor of Homabay County during mywithout fear, favour, malice or ill- will; that I will at all times do my best to do my duties; that I shall continue to hold the said office to the best of my skill and knowledge, discharge all the duties thereof faithfully according to the law and will always discharge my duties and the duties of the Inspectorate according to law without fear, favour, affection, ill- will. (SO HELP ME GOD.)

SCHEDULE 2**STRUCTURE OF THE INSPECTORATE AND ENFORCEMENT
DEPARTMENT**

The Structure of the Inspectorate enforcement department shall be as follows in order of their rank:

- i. The Governor as Commander in Chief
- ii. The Deputy Governor as Deputy Commander in Chief
- iii. Director of Inspectorate and Enforcement

ENFORCEMENT UNIT

- i. Head of Enforcement
- ii. Sub County Enforcement Inspector
- iii. Sergeants
- iv. Corporal
- v. Enforcement Officers

INSPECTION AND COMPLIANCE UNIT

- iv. Head of Inspection and Compliance
- v. Sub county Inspection and Compliance Officer
- vi. Inspector

MEMORANDUM OF OBJECTS AND REASONS

County legislation like any other law requires implementation and enforcement. To achieve enforcement of the laws, the County government must through legislation, establish a proper institutional framework with specific powers geared at enforcing the county laws.

Enforcement includes inspection of compliance with county laws, arrests of those who offend the county law, their prosecution, and judicial determination of accusations and punishment of those who offend the county law.

Enforcement further extends to impoundment of property and animals which is traded and kept contrary to county law.

The arresting or impounding officer must have a legal backing from which such power should be given.

It is upon the above consideration that this bill seeks to provide for county laws enforcement institutions and their powers.

Statement of how the Bill concerns county government.

The Bill concerns the concerns county government of Homa Bay County in line with the provisions of Section 32(2)(k) of the County Government Act, 2012 which obliges the Governor of the County Government of Homa Bay to deliver annual state of the county address.

Statement as to whether the Bill is within the meaning of Article 114 of the constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Statement of financial implication

The Bill has a financial implication since it creates a directorate with personnel therein.

Dated the 19th December, 2018.

ELLYPHALLET OMORO OSURI,
Chairperson, Administration and Security.