

SPECIAL ISSUE

Kenya Gazette Supplement No. 8 (Kisumu County Bills No. 4)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

KISUMU COUNTY BILLS, 2019

NAIROBI, 16th October, 2019

CONTENT

Bill for Introduction into the County Assembly of Kisumu —

PAGE

The Kisumu County Law Enforcement Service Bill, 2019 1

**THE KISUMU COUNTY LAW ENFORCEMENT SERVICE BILL
2019**

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

Section

- 1— Short title and commencement
- 2— Interpretation
- 3— Objects and purpose of the Act

**PART II—ESTABLISHMENT OF THE LAW ENFORCEMENT
SERVICE**

- 4— Establishment of the County Law Enforcement Service
- 5— Functions of the Service
- 6— Appointment, deployment, promotion and demotion of Law Enforcement officers

PART III—POWERS OF OFFICERS

- 7— Powers of entry into a premise
- 8— Seizure of property
- 9— Preservation of property
- 10— Power to impound vessels
- 11— Power to impound animals
- 12— Unapproved building and structures
- 13— Service of notice
- 14— Fines
- 15— Power to arrest
- 16— Production

PART IV—OFFENCES

- 17— Impersonating an officer
- 18— Obstruction of an officer
- 19— Fine upon conviction

PART V—MISCELLANEOUS

- 20— Arrangement with other public bodies
- 21— Regulations

SCHEDULE 1—Code of conduct

SCHEDULE 2—Structure of the inspectorate enforcement department

**THE KISUMU COUNTY LAW ENFORCEMENT SERVICE BILL
2019**

A Bill for

AN ACT of the County Assembly of Kisumu to provide for the establishment of Kisumu County Law Enforcement Service and for connected purposes

ENACTED by the County Assembly of Kisumu, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kisumu County Law Enforcement Service Act, 2019.

Interpretation

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

“Service” means the Law Enforcement Service

“Service Officer” means an officer appointed under section 4 of this Act;

“Officer in charge” means the County Secretary or an officer designated by the County Secretary in writing;

“Compliance Enforcement” means 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 county law;

“Inspector” means a person appointed as such under this Act;

“Service Units” mean any of the county law compliance and enforcement units as may be established under section 4;

“Police officer” means an officer in the National Police Service by virtue of article 243 of the Constitution;

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

“County Secretary” means the Kisumu County Secretary appointed under the County Governments Act;

“Relevant County Organ” means the organ or department responsible for licensing, issuing permits, collecting service fee or approving an activity;

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

“Regulated activity” means any activity, trade or business, the undertaking of which, requires a license, permit, approval or payment of service fee, by or to the county government;

“Reasonable time” means any period of time between six o’clock in the forenoon and six o’clock in the afternoon any day of the week.

Object and purpose of the Act

3. The objects of this Act are to—

- (a) Provide a framework and standard for the establishment and operation of county law compliance and enforcement units;
- (b) Regulate the conduct of county law enforcement and compliance officers.
- (c) Deliver an independent and effective inspectorate service within the County that shall among others ensure compliance with County legislation and provisions of the Constitution by the county residents
- (d) Establish by law pursuant to article 185 (2) of the Constitution an inspection’s mechanism to ensure effective performance and exercise of the powers conferred on the County Government under part 2 of the Fourth schedule
- (e) Give effect to the provisions of article 187 requiring the county executive committee to implement county legislation and to implement within the county, national legislation to the extent that the legislation so requires
- (f) Give effect to the provisions of Article 189 (1) (b) requiring the county government to assist, support and as appropriate implement legislation of the national government

PART II—ESTABLISHMENT OF THE COUNTY INSPECTORATE AND LAW ENFORCEMENT SERVICE

Establishment of the Law Enforcement Service

4. (1) There is established the Kisumu County Law Enforcement Service.

(2) There shall be such units of the Service as may be provided by any National or County law or as the County Executive Committee may in a gazette Notice determine.

Functions of the inspectorate

5. (1) The Service shall—

- (a) Ensure compliance with and enforcement of all county laws;
- (b) Inspect premises for compliance with trade licenses and permits issued by the county government;

- (c) Ensure compliance with all county revenue collection requirements.
- (d) Regulate and control traffic in collaboration with the Police.
- (e) Maintain order and prevent obstructions in public places within the county
- (f) Protect and guard the property of the county, including public utilities;
- (g) Respond to complaints, relating to regulated activities, from residents of the county or persons affected by the regulated activity;
- (h) Assist the police or any other authority in the investigation of violations of county laws for purposes of court proceedings;
- (i) Ensure a clean and safe environment in areas such as food standards, product safety, animal health and welfare based on standards developed by the relevant County Government organs;
- (j) Undertake educational and sensitization initiatives with consumers and businesses within the county;
- (j) Coordinate disaster management
- (k) Perform any other functions assigned under this Act or any other law or incidental thereto.

Record Keeping

(2) The Service shall, in the performance of its functions under subsection (1)—

- (a) Keep proper records relating to any enforcement action taken under this act or any other law;
- (b) Use specialized equipment approved by the relevant national government entities to determine compliance with county laws on matters such as weights and measures and noise level;
- (c) Prepare reports, statements and attend court to give evidence or testimony related to the prosecution of county law offenders; and
- (d) Collaborate with the relevant national and county agencies for the conduct of investigations and effective performance of its functions.

Appointment of Officers

6. A person qualifies for appointment as a Service officer if such person holds at minimum of KCSE certificate.

(2) The County Public Service Board shall competitively recruit and appoint Service officers into the Service.

(3) The board shall in consultation with Salaries and Remuneration Commission set the remuneration for the Service and shall be responsible for promotion and demotion of service officers.

PART III—POWERS OF OFFICERS

Powers of officers

7. (1) A Law enforcement officer may, in the performance of a duty under this Act or any other law, during the opening hours of premises and without a warrant—

- (a) Enter a premise in which a regulated activity is undertaken and carry out examinations or enquiries to determine whether the provisions of this Act or any other relevant county law are being complied with;
- (b) require the production of, inspect, and examine a license, register, record or other document relating to a regulated activity within the county;
- (c) carry out periodic inspections of all premises undertaking regulated activities within the county, to ensure that the provisions of this Act or any relevant county law are complied with;
- (d) with the written approval of the officer in charge—
 - (i) order the immediate closure of any premises which is likely to cause harm contrary to the provisions of this Act or any other county law; and
 - (ii) and by written notice, require the owner or operator of the premises to implement any remedial measures; and
 - (iii) issue an improvement notice requiring the owner or operator of premises to cease any unlawful activities and to take appropriate remedial measures, including the installation of new plant and machinery if necessary, within such reasonable time as the officer in-charge may determine.

(2) A premises that is closed down under this section may resume its operations only with the written approval of the officer in charge.

Seizure of property

8. (1) Where a service officer has reasonable grounds to suspect that any property has been, or is being used for the purpose of carrying out a regulated activity contrary to this Act or any other law, the service officer may make an *ex-parte* application to the relevant court, for an order to seize that property and for any other relevant order.

(2) Despite subsection (1), where it is not reasonably practicable, having regard to the urgency of the situation, the service officer may seize the property without a warrant.

(3) Where a service officer seizes property under subsection (2), the service officer shall, within forty-eight hours of the seizure, report the seizure to the relevant court and apply for an order for the detention of the property.

(4) If the forty-eight hours under subsection (3) end outside ordinary court hours, or on a day that is not an ordinary court day, the enforcement officer shall report the seizure on the next court day.

(5) An order for the detention of property made under subsection (3) shall be valid for a period of sixty days and may, on application by the service officer, be extended by the relevant court for a further period as may be necessary to enable, the production of the property in court in proceedings relating to an offence under this Act.

(6) The relevant Court may make an order for release of any property seized under this section if—

- (a) the service officer is not able to prove that there are reasonable grounds to suspect that the property has been or is being used for the commission of an offence under this Act; or
- (b) no proceedings are instituted in the court for an offence under this Act in respect of that property within six months of the date of the detention order.

Preservation of property

9. (1) Where property has been seized or detained under section 8, subject to any directions given by a court, the unit shall be responsible for proper preservation of the property.

(2) The Service shall keep a full inventory of the seized property and any other records of the property, for submission to the court.

(3) Upon seizure of property, the service shall only deal with the whole or a part of the property in accordance with the directions of the court.

(4) In the case of perishable or rapidly depreciating property, the court may authorize the unit to sell or dispose of that property.

(5) A court shall not make an order for destruction of non-perishable property unless—

- (a) A notice has been issued in such manner as the court may direct, to any person who, in the opinion of the court, appears to have an interest in the property; and
- (b) That person has been given a reasonable opportunity to be heard.

(6) Where, upon the conclusion of proceedings, the court finds the owner of the property guilty of committing an offence, the Court may order the owner to pay for costs incurred in preserving the property.

Impounding of vessels

10. Where a service officer reasonably believes that a vessel is parked or controlled in any manner that is contrary to county law or without payment of prescribed parking fee, the officer may impound the vessel by clamping or towing it to the County yard.

Power to impound animals

11. An officer may impound any animal that is kept in a manner that is contrary to county law.

Unapproved building and structures

12. (1) It is illegal for any person to erect, build establish or keep any structure on any area, public or private, without approval of the county government.

(2) Where the existence of a structure under subsection (1) comes to the attention of the Service, the Service shall give the owner or occupier of the structure a 14 days' notice to demolish the structure or obtain county government approval.

(3) If the owner and or occupier fails to comply with a notice issued under subsection (2), within the specified period, the service shall demolish such structures and surcharge the owner of the land or person who has constructed the costs of demolition.

(4) The surcharge under subsection (3) may be—

- (a) added to rates payable by rent; or
- (b) recovered by the county government as a civil debt.

Service of Notice

13. (1) A notice required to be given shall be deemed to have been served if it is served upon the owner or the occupant of the premises.

(2) Where the owner or occupant of a property cannot be traced, the notice shall be placed in a conspicuous place of the structure or buildings.

(3) The service shall, in issuing a notice—

- (a) specify reasons for the decision taken by the unit;
- (b) give a person adequate time to take remedial action;
- (c) specify the manner and period within which the person is to respond to the notice or appeal the decision; and
- (d) comply with the principles set out in the Fair Administrative Action Act. 2015.

Fines

14. The county executive committee member shall publish the fines to be imposed, by the service, on persons whose vessels or goods have been impounded under this Act.

Power to Arrest

15. (1) Where a Service Officer has a reasonable ground to believe that an offence has been committed under this Act or any county law, the Officer may arrest the person committing the offence.

(2) Where the offence under subsection (1) relates to a regulated activity, the officer may arrest—

- (a) the proprietor of the activity;
- (b) an employee of the proprietor; or
- (c) any other person whom the officer reasonably believes is involved in the carrying out of the activity.

(3) Where a person who is believed to have committed a crime under any county law resists an arrest, a Service Officer may use reasonable force to execute the arrest.

Production in police station

16. (1) Where a Service Officer arrests a person, the officer shall as soon as possible present the arrested person to the nearest police station.

(2) A Service Officer, who arrests a person and fails to present the person to a police station commits an offence.

(1) An enforcement officer shall produce a service identity document when exercising a power under this Act or any other law.

(2) A uniform worn by Service Officers shall be embedded with distinctive identification features to ensure that the Service Officers are—

- (a) distinguishable; and
- (b) easily recognized by the public as Service Officers.

PART IV—OFFENCES

Impersonating an officer

17. A person who impersonates a Service Officer appointed under this Act, commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand shillings or imprisonment for a period not exceeding two years, or to both.

Obstruction of an officer

18. A person who willfully resists arrest, obstructs or interferes with the duties of a Service Officer 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.

Fine upon conviction

19. A person who is convicted of an offence under this Act for which no penalty is prescribed is upon conviction of that offence, liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

PART V—MISCELLANEOUS

Arrangement with other public bodies

20. The County Attorney shall put in place arrangements in consultation with the—

- (a) Office of the Director of Public Prosecution to facilitate prosecution of persons who contravene county legislation;
- (b) Judicial Service Commission 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; and
- (c) relevant public authorities dealing with matters of incarceration of criminal suspects and convicts.

Regulations

21. The County Secretary may in consultation with the relevant departments of the County Government and with approval of the County Executive Committee make regulations to—

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

SCHEDULE 1—CODE OF CONDUCT

1. A Service officer shall, in the implementation of this Act or any other law—

- (a) not unlawfully discriminate against any person;
- (b) exercise fairness, self-control, tolerance;
- (c) respect all persons and their traditions, beliefs and lifestyles if they are compatible with the rule of law; and
- (d) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of the authority.

2. A Service officer shall, in the exercise of duty—

- (a) treat all persons with respect;
- (b) uphold the human rights and fundamental freedoms of all persons as set out in the Constitution;
- (c) consider any special needs, vulnerabilities and concerns of a person;
- (d) not conduct themselves in a manner which may be regarded as bringing the officer or the unit into disrepute;
- (e) not bully, abuse, harass, or victimise any person;
- (f) not intimidate or attempt to intimidate any person who is or is likely to be the subject of any enforcement action, a complainant or any other person that the enforcement officer interacts within the exercise of a duty under this Act.

3. An enforcement officer shall—

- (a) not disclose information obtained in the exercise of the officer's duties without lawful authority;
- (b) exercise powers of search or entry only when it is lawful, necessary and proportionate to do so;
- (c) not gather, retain, use or disclose information or data relating to any person for personal benefit.

4. An enforcement officer shall no—

- (a) use their position or office to improperly secure for themselves or any other person, an advantage or disadvantage; and
- (b) not use the resources of the unit or the county government for personal gain.

5. An enforcement officer shall in undertaking enforcement action, give the affected persons the reasons for the enforcement action.

6. An enforcement officer shall report any conduct by another enforcement officer, which the enforcement officer reasonably believes involves a failure to comply with this code of conduct, in accordance with the reporting mechanisms established within the unit.

7. (a) An enforcement officer shall declare and register any personal interest in a matter in accordance with the Leadership and Integrity Act.
- (b) An enforcement officer with a personal interest in any matter shall—
- (i) not exercise enforcement functions in relation to that matter but shall bring the matter to the attention of the head of the unit; and
- (ii) not seek to improperly influence a decision about that matter.

8. An enforcement officer shall, upon receiving any gift or hospitality exceeding a value to be determined by the County Public Service Board in accordance with the Leadership and Integrity Act, provide written notification to the head of the unit of the existence and nature of that gift or hospitality and register the gift or hospitality in accordance with the Leadership and Integrity Act.

9. An enforcement officer shall—

- (a) keep accurate records of enforcement action undertaken by the officer as required within the unit;
- (b) not make any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for enforcement purposes;
- (c) intentionally omit to make any oral or written statement or entry in any record or document; and
- (d) alter, deface, erase, conceal or destroy any record or document, kept or made in connection with any enforcement activity.

10. (a) Enforcement action or investigations shall be based on reasonable suspicion of an actual or possible offence or crime.

(b) An enforcement officer shall follow the principle that everyone who is the subject of an enforcement action or investigation is presumed innocent until found guilty by a court of law.

11. (a) An enforcement officer, in exercising powers of arrest, shall as far as possible apply non-violent methods before resorting to any use of force.

(b) Any use of force shall be the minimum appropriate force in the circumstances and only if other means remain ineffective.

- (c) Whenever it is necessary for an enforcement officer to resort to the lawful use of force, the officer shall—
- (i) exercise restraint in and act in proportion to the seriousness of the offence and the legitimate object to be achieved;
 - (ii) minimize damage and injury, and respect and preserve human life;
 - (iii) ensure that assistance and medical aid are secured to any injured person at the earliest possible opportunity; and
 - (iv) report the incident promptly to the officer's supervisors.

12. An enforcement officer shall take every reasonable step to protect the health and safety of arrested persons and shall take immediate action to secure medical assistance for such persons where required.

13. (a) An officer who breaches this code shall be subject to the disciplinary procedures of the unit.
- (b) Where a breach of this code constitutes an offence under this Act or any other law, the officer shall be liable to prosecution and punishment under the relevant laws.

SCHEDULE 2—STRUCTURE OF THE SERVICE

The structure of the Service shall be as follows:

- I. Governor
- II. County Secretary.
- III. County Service Inspector.
- IV. Sub-County Service Inspector.
- V. Heads of Service Units.
- VI. Service Officers.

MEMORANDUM AND OBJECTS OF REASON

The principle object of this bill is to provide a legal framework and standard for the establishment and operation of county law compliance and enforcement units.

The bill aims at delivering an independent and effective inspectorate service within the county that shall among others ensure compliance with county legislation and provisions of the constitution by the county residents.

The bill gives effect to the provisions of Article 187 of the Kenyan 2010 constitution requiring the county executive committee to implement county legislation and to implement within the county, national legislation to the extent that the legislation so requires.

Dated the 15th October, 2019.

ELISHA JACK ORARO,
*Chairperson, Administration of Law, Justice and Constitutional Affairs,
Good Governance and Security Committee.*