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***MACHAKOS COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2015

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**THE MACHAKOS COUNTY ADMINISTRATIVE STRUCTURES
BILL, 2015**

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THE MACHAKOS ADMINISTRATIVE STRUCTURES BILL, 2015

A Bill for

AN ACT of the Machakos County Assembly to give effect to section 48 of the County Governments Act to provide for the delineation and establishment of the village units in the county co-ordinate service delivery by the county government and to provide for powers, functions, and responsibilities of administrative officers and for connected purposes.

ENACTED by the County Assembly of Machakos as follows—

PART I—PRELIMINARY

Short Title

1. This Act may be cited as the Machakos County Government Administrative Structures Act, 2015.

Interpretation

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

“administrative unit” means one of the administrative units into which the County is divided;

“administrative officer” means a person appointed as such under section 7;

“County Executive officer” means the County Executive officer responsible for matters relating to administration;

“location” means an administrative unit designated as such under the this Act;

“sub-county” means an administrative unit designated as such under the this

“village” means an administrative unit designated as such under this Act;

“county administrative structure” means the administrative units collectively as may be designated from time to time.

Object of the Act

3. The object of this Act is to—

- (a) give effect to Part VI of the County Governments Act;
- (b) provide for the establishment of county administrative structure to co-ordinate service delivery by the County government and to provide for powers, functions, and responsibilities of administrative officers;
- (c) coordinate the provision of County government services in all parts of the County; and
- (d) provide mechanism for cooperation between the county governments.

Guiding Principles

4. In fulfilling its mandate, the administrative structure shall act in accordance with the national values and principles of governance set out in Article 10 of the Constitution, and shall observe, promote and respect

- (a) patriotism, national unity, sharing and devolution of power, rule of law, democracy and participation of the people;
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;
- (c) good governance, integrity, transparency and accountability; and

sustainable development.

PART II— ESTABLISHMENT OF ADMINISTRATIVE UNITS AND COORDINATION OF COUNTY GOVERNMENT SERVICE DELIVERY

Boundaries of Administrative Units

5. (1) There shall be such number of administrative units as the County Executive Committee may from time to time determine

(2) The County Executive Committee may review the number, names and boundaries of administrative units as circumstances may require.

(3) The boundaries of every administrative unit shall be such that the number of inhabitants is, as nearly as possible, equal to the other administrative units but the number may vary to take into account—

- (a) geographical features and urban centres;
- (b) population density and demographic trends;
- (c) cost of administration;
- (d) physical and human infrastructure;
- (e) the views of the affected communities;
- (f) community of interest, historical, economic and cultural ties; and means of communication.

(4) In reviewing the boundaries of administrative units, the County Executive Member shall ensure that all interested persons are consulted.

(5) Any review of boundaries shall accord with and respect the system of devolved government established under the Constitution.

Structure of Administrative Units

6. (1) For purposes of co-ordinating the delivery of services at the county level, the County shall be divided into the following administrative units—

- (a) the Machakos city and other urban areas to be managed and administered in accordance with the Urban Areas and Cities Act (No. 13 of 2011);
- (b) the sub county, which shall represent the constituency to be administered by a sub county administrator;
- (c) the ward to be administered by the ward administrator;
- (d) the location to be administered by the chief;
- (e) the village to be administered by the village administrator; and
- (f) such other administrative units as the County Executive Committee approve.

(2) An administrative officer may be assisted by such number of officers as the County Executive Member may, in consultation with the County Public Service Board or the County Public Service Board, determine.

(3) The County Public Service Board shall prescribe a scheme of Service for the administrative officers and other staff.

(4) The administrative structures of the county shall be as set out in the First Schedule.

Qualifications for Appointment as an Administrative Officer

7. (1) A person shall be qualified for appointment as a sub county administrator if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has knowledge and experience of at least ten years in matters relating to—
 - (i) public administration;
 - (ii) gender and social development;
 - (iii) economics;
 - (iv) human rights;
 - (v) management; or
 - (vi) social sciences;; and
 - (vii) meets the requirements of Chapter six of the Constitution.

(2) A person shall be qualified for appointment as a ward or village administrator if that person—

- (a) is a citizen of Kenya residing in the respective area of appointment;
- (b) holds at least a certificate of secondary education or its equivalent; and
- (c) has no criminal record.

Procedure of Appointment of Administrative Officers

8. (1) The Governor shall, in consultation with the County Public Service Board appoint the county administrators.

(2) For purposes of appointing a chief or other administrative officer of a lower rank, the ward administrator shall, in writing, convene a panel of seven eminent persons residing in the location and require them to advertise the position.

(3) The panel shall interview the applicants, in public, and shortlist at least three persons comprising of at least one person of either gender and submit the names in priority order to the sub county administrator who shall recommend to the County Public Service Board a single name for appointment.

(4) In recommending the names under subsection (4), the sub county administrator shall ensure that no more than two thirds of the administrative units within the sub county are administered by persons of the same gender.

PART III—FUNCTIONS AND POWERS OF ADMINISTRATIVE OFFICERS

Coordinative and General functions of the County Administrative Structure

9. (1) The county administrative structure shall—

- (a) coordinate with national security and facilitate maintenance of law and order;
- (b) coordinate county government functions and delivery of services;
- (c) co-ordinate county government functions at the administrative unit level;
- (d) co-ordinate disaster management and emergency response;
- (e) facilitate public consultation in policy formulation and other initiatives;
- (f) disseminate and implement county and national government policies

- (g) mobilize county government agencies for national events, and programmes;
- (h) undertake conflict management and peace-building;
- (i) undertake national cohesion and integration initiatives including promotion of statehood and nationhood;
- (j) prepare responses to county assembly business; and
- (k) perform any other lawful function which is not inconsistent with the Constitution or any other law.

(2) Pursuant to the Constitution, the national and county governments shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

Functions of the Sub-County Administrator

10. (1) The sub-county administrator shall be responsible for the coordination, management and supervision of the general administrative functions in the sub county unit, including—

- (a) the development of policies and plans;
- (b) service delivery;
- (c) developmental activities to empower the community;
- (d) the provision and maintenance of infrastructure and facilities of public services;
- (e) the county public service;
- (f) exercise any functions and powers delegated by the County Public Service Board under section 86; and
- (g) facilitation and coordination of citizen participation in the

development of policies and plans and delivery of service.

(2) In carrying out the functions and obligations in subsection (3), the sub-county administrator shall be responsible to the relevant county chief officer.

Functions of a Ward Administrator

11. (1) The Ward administrator shall coordinate, manage and supervise the general administrative functions in the Ward unit, including—

- (a) the development of policies and plans;
- (b) service delivery;
- (c) developmental activities to empower the community;
- (d) the provision and maintenance of infrastructure and facilities of public services;
- (e) the county public service;
- (f) exercise any functions and powers delegated by the County Public Service Board under section 86; and
- (g) coordination and facilitation of citizen participation in the development of policies and plans and delivery of services.

(2) In carrying out the functions and obligations in subsection (1), the Ward administrator shall be responsible to the sub-county administrator.

Functions of the Village Administrator

12. (1) A village administrator shall—

- (a) be the chairperson of the village council;
- (b) coordinate, manage and supervise the general administrative functions in the village including—
 - (i) ensuring and coordinating the participation of the village unit in governance and assisting the village unit to develop the administrative capacity for the effective exercise of the functions; and
 - (ii) powers and participation in governance at the local level
- (c) the exercise of any functions and powers delegated by the County Public Service Board under section 86 of the County Governments Act, No. 17 of 2012.

(2) A village council shall be responsible for—

- (a) ensuring and coordinating the participation of the village unit in governance;
- (b) assisting the village unit to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level;
- (c) monitoring the implementation of policies at the village unit;
- (d) advising the ward administrator and sub-county administrator on matters pertaining to the village; and
- (e) any other function necessary for the better administration of the village unit.

(3) A person shall be eligible for appointment as a village elder if the person—

- (a) is a citizen of Kenya;
- (b) has been a resident of or has been the owner of property in the respective village unit for a continuous period of not less than five years prior to the appointment date;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) is not disqualified for appointment to office by this Act or any other law.

(4) A village elder shall be paid such allowance as shall be determined by the respective county assembly.

Powers of Administrative Officers

13. (1) An administrative officer shall have necessary all powers for the execution of the functions under this Act and any other written law.

(2) Without prejudice to the generality of subsection (1), an administrative officer shall have the power to—

- (a) undertake any specific measures on behalf of any government agency;
- (b) initiate measures aimed at assisting government agencies to achieve their goals at the lowest levels;
- (c) educate the public and create awareness on government policies;
- (d) promote peace and co-existence among the residents; and
- (e) conduct mediation, conciliation and negotiations whenever necessary.

(3) In the performance of their duties and exercise of their powers under this Act, an administrative officer may issue orders to be obeyed by the persons residing or being within the local limits of the location for any of the following purposes—

- (a) maintenance of the rule of law and order in the area in respect of which the officer is appointed;
- (b) mobilization any county government agency in the performance of its functions within the area.
- (c) environmental protection including regulating the cutting of timber and prohibiting the wasteful destruction of trees;
- (d) prevention of drug abuse;
- (e) pollution control including pollution of water in any stream, watercourse or water-hole, and preventing the obstruction of any stream or watercourse;
- (f) disease control including preventing the spread of disease, whether of human beings or animals;
- (g) prohibiting any act or thing which may cause damage to any public road or to any work constructed or maintained for the benefit of the community;
- (h) requiring the proper burial of deceased persons in cemeteries or otherwise;
- (h) any other lawful purpose.

(4) Any person who, without lawful excuse, disobeys or fails to comply with any lawful order issued or given by an administrative officer under this Act shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings and in default of payment, to extra mural penal employment for a period not exceeding fourteen days.

Cooperation with National Government

14. The county administrative structure shall—

- (a) perform its functions and exercise its powers, in a manner that respects the functional and institutional integrity of the devolved government;
- (b) respect the constitutional status and institutions of the national government;
- (c) assist, support, consult and where applicable, implement the legislation of the national government;
- (d) liaise with national government for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.

Deployment of Public Officers by the County Government

15. (1) The County Public Service Board may in consultation with the respective County Executive Officer, deploy public officers in an administrative unit.

(2) A public officer deployed in an administrative unit shall, subject to internal specific directions by the relevant County Executive Member, be answerable to the relevant administrative officer.

Administrative Offices

16. (1) There shall be an administrative office in every administrative unit and the County Executive Member may establish other offices in any place in the County.

(2) The location of administrative unit offices in a county shall be determined by the County Executive Member.

PART III—COUNTY GOVERNMENT SERVICES COMMITTEE

Establishment of the County Government Services Committee

17. There is established a Committee to be known as the County Government Services Committee comprised of—

- (a) all sub county administrators;
- (b) all heads of County Departments;
- (c) any other officer of the County government to be co-opted by the Committee.

Functions of the County Government Services Committee

18. (1) The Committee shall be responsible for—

- (a) implementing County government policies within the administrative units;
- (b) coordinating government services to ensure efficiency and effectiveness;
- (c) recommending priority development to the County government;
- (d) advising the County government on promoting cooperation with the county governments.

(2) Business and affairs of the Committee shall be in accordance with the Second Schedule.

Joint Committees and Joint Authorities

19. (1) Pursuant to Article 189 of the Constitution, the County Executive Member in consultation with the relevant Cabinet Secretary may set up joint committees and joint authorities comprising of representatives from the

national and county governments.

(2) A joint committee or authority set up under subsection (1) may be chaired by a representative of either level of government and the vice chairperson shall be from the other level of government.

Participation by the People

20. The committees shall, in carrying out their functions under this Act, conduct public hearings, receive written or oral submissions and consult with experts and other relevant persons as it may consider appropriate.

Records of Proceedings of Committees

21. A committee set up under this part shall appoint a secretary who shall cause to be kept a record of all minutes of its meetings

PART IV—GENERAL PROVISIONS

Conduct of Administrative Officers

22. (1) An administrative officer shall not—

- (a) engage in the activities of any political party or act as an agent of any such party;
- (b) publicly show support or opposition to any candidate in an election; or
- (c) in the performance functions or exercise powers of the office under this Act—
 - (i) subject any person to torture or to any other cruel, inhuman or degrading treatment;
 - (ii) enter or search any private premises without a warrant duly issued by a court; or

- (iii) demand or solicit any donations or collections in a manner likely to suggest that such donations or collections are a pre-condition for any service; or

- (d) maintain a cell or other place of confinement of persons

(2) Without prejudice to the provisions of subsection (1), the County Executive Member may, by regulations, prescribe a code of conduct to govern the conduct of administrative officers in the exercise of their powers and the performance of their functions under this Act.

(3) An administrative officer who contravenes any of the provisions of this section or the provisions of any code of conduct prescribed under subsection (2) shall, without prejudice to any other penalty prescribed by law, be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding one month, or to both.

Support by Administration Police Service

23. The County Executive Member may request the Inspector-General of the National Police Service to assign such number of administrative police officers to all the administrative offices as the Inspector-General may in consultation with the County Executive Member determine

Protection from Liability

24. An administrative officer shall not be liable in a civil court for an act done or omitted to be done or ordered to be done by them in discharge of their duties, if they acted in good faith

Regulations

25. The County Executive Member may make regulations for the better carrying into effect of the purposes of this Act, and in particular for the following—

- (a) for regulating the co-ordination of services for the various County Departments at the County, sub county, ward location and village levels;
- (b) for prescribing further duties to be performed by administrative officers;
- (c) for prescribing procedures for providing co-coordinating County government programmes;
- (d) cooperation and coordination of the functions of the national and county governments;
- (e) code of conduct for the administrative officers;
- (f) the description and issue uniform, accoutrements and necessities to be supplied to the administrative officers; and
- (g) generally, for the good order and management of the national administrative structure.

MEMORANDUM OF OBJECTS AND REASONS

The object and purpose of his Bill is to give effect to Part VI of the County Governments Act to decentralize government services to the lowest administrative units.

The structure of the bill is as follows:

Part I (Sections 1-4) provide for preliminary matters including the short title, interpretation objects and guiding principles of Bill.

Part II (Sections 5-8) provides for the establishment of administrative units and appointment of administrative officers. This part also provides for the qualifications of the administrative officers and the procedure of their appointment.

Part III (Sections 9-16) provides for the functions of the various cadres of administrative officers. The Part also makes provisions for cooperation between the county and national government, deployment of officers, and headquarters of

the administrative units.

Part IV (Sections 17- 21) provides for the establishment of the county government services committee, its functions and related matters. This part also provides for role of the administrative officers in the involvement of the people in policy formulation.

Part V (Sections 22-25) makes provisions for of general nature including the conduct of administrative officers, support by the national police Service, protection from liability and the power to make Regulations.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through the estimates.

Dated the 23rd February, 2015.

MUTUKU MICHAEL MUTUA,
Member of the County Assembly.

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

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COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA