

SPECIAL ISSUE

Mombasa County Gazette Supplement No. 9 (Acts No. 7)

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REPUBLIC OF KENYA

**MOMBASA COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2016

NAIROBI, 27th May, 2016

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THE MOMBASA COUNTY CHILD CARE ACT, 2016

No. 7 of 2016

Date of Assent: 3rd May, 2016

Date of Commencement: See Section II

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2016

Mombasa County Child Care

THE MOMBASA COUNTY CHILD CARE ACT, 2016

AN ACT of the County Assembly of Mombasa to provide for a legal framework within which child care facilities should operate; to provide for a multi-sectoral approach in the standards for provision of safety to children; and for connected purposes

ENACTED by the County Assembly of Mombasa, as follows—

PART I—PRELIMINARY

Short Title

1. This Act may be cited as the Mombasa County Child Care Act, 2016.

Commencement

2. This Act shall come into operation upon publication in the *Gazette*.

Interpretation

3. In this Act—

“Abuse” means any form of verbal, psychological, physical, sexual, emotional abuse, cruelty, torture, inhuman treatment or neglect directed towards a child;

“Applicant” means any person or entity that has applied for a child care facility certificate;

“Assessor” means a Quality Assurance and Standards officer;

“Board” means the Board established under section 5 of this Act;

“Care” means the provision of what is necessary for the education, health, welfare, maintenance, and protection of the children;

“Certificate” means a registration certificate issued under this Act;

“Certificate holder” means any person or entity issued with a certificate under this Act;

“Child” means an individual who has not attained the age of eighteen years;

“Child care facility” means any facility that provides all forms of residence, pre-primary education, health, welfare, maintenance protection and recreation for children;

“Director” means the Director Safer Cities Operations;

“Executive Committee Member” means the Executive Committee Member for the time being in charge of education and children;

“Safer City” means a zone established by the Department of Education and Children to ensure dignified care and safety of children;

“Safer Cities Operations” means the office within the Department of Education and Children.

Object of the Act

4. The object of this Act is to ensure that the service delivery system for children is comprehensive, acceptable, effective and dignified through maintenance, management and regulation of child care services.

PART II—ADMINISTRATION OF CHILD CARE

Establishment of the Board

5. There is established a Safer Cities Board.

Composition of the Board

6. (1) The Board shall consist of—

- (a) a chairperson who is the Chief Officer for the time being in charge of education and children;
- (b) a secretary who is the Director, Safer Cities Operations;
- (c) four members; and
- (d) a representative of persons with disabilities.

(2) The members referred to in section 6(1)(b)(c) and (d) shall be appointed by the Governor in consultation with the Executive Committee Member.

(3) The members appointed by the Executive Committee Member shall serve for a term of three years.

(4) A person is qualified for appointment as a member of the Board under section 6 (1) (c) and (d) if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a University recognised in Kenya;
- (c) has knowledge and experience of not less than three years in any of the following fields—
 - (i) education;
 - (ii) health;
 - (iii) planning;
 - (iv) water and environment;

- (v) early childhood development;
 - (vi) child welfare;
 - (vii) Social work; and
- (d) meets the requirements of chapter six of the constitution.

(5) A person is disqualified for appointment as a member of the Board if that person—

- (a) is a member of Parliament or the County Assembly;
- (b) is declared to be of unsound mind;
- (c) is an un-discharged bankrupt; or
- (d) is convicted of an offence.

Functions of the Board

7. The Board shall—

- (a) issue registration certificates to qualified persons in both public and private child care facilities;
- (b) advise the Executive Committee Member on standards for child care facilities and minimum qualifications for certification;
- (c) monitor the operation of facilities and ensure adherence to prescribed standards;
- (d) to advise the Executive Committee Member on regulatory issues in the field of child care, special needs development and dignified care;
- (e) ensure the provision of safe, quality and appropriate child care facilities;
- (f) ensure the maintenance and security of County owned child care facilities;
- (g) ensure assessment, early intervention, evaluation and monitoring of child care;
- (h) provide for training and capacity building of child care facility operators and assessors
- (i) do such other thing necessary for the discharge of its functions under this Act or as may be provided for by any written law.

Board arrangements and agreements

8. The Board in consultation with the Executive Committee Member may enter into arrangements and agreements with any other person or entity dealing with child care.

**PART III— REGISTRATION AND ASSESSMENT OF CHILD
CARE FACILITIES****Registration**

9. (1) A person or entity shall not establish or maintain a child care facility unless it is registered under this Act.

(2) A person shall not use any facility to provide early childhood development and care services unless the facility has undergone a quality review and approved in accordance with this Act.

(3) A person who operates a child care facility which is not registered under this Act commits an offence and is liable on conviction, to a fine not exceeding five hundred thousand Shilling or imprisonment to a term not exceeding two years, or to both.

Application for registration

10. (1) An application for registration of a child care facility under this Act shall be in a manner prescribed by the Executive Committee Member.

(2) An application for registration of a child care facility shall be submitted to the Director.

(3) The Director shall forward the application under subsection (1) to the Board within ten days of receipt.

(4) The Board, within twenty one days of receipt of the application shall ensure—

- (a) an assessment of the proposed facilities is conducted; and
- (b) an interview is conducted to assess the applicant and the suitability of the persons proposed to be employed in the facility.

(5) The Board shall within seven days after the inspection and interview approve or dismiss the application with reasons thereof.

(6) (a) Any applicant dissatisfied with the decision of the Board may appeal to the Executive Committee Member who will form a Committee of three members to hear the appeal within fourteen days.

- (b) Any applicant not satisfied with the decision of the Committee may seek legal redress in a court of law.

Fees

11. Any person making an application for registration shall pay the prescribed fees.

Qualifications of an applicant

- 12.** The Board shall register a child care facility based upon the written report of the Director, if satisfied that—
- (a) the applicant is an adult and deemed fit to manage the facility;
 - (b) the applicant has not been convicted of any offence;
 - (c) where the applicant is a company, firm or other organization, none of its directors or members, has been convicted of an offence;
 - (d) none of the persons to be employed by the applicant in the facility has been convicted of an offence;

Certificate of registration

- 13.** (1) The Board shall upon approval of an application for a child care facility issue a certificate to the applicant.
- (2) A certificate shall be valid for a period of one year from the date of issue and may be renewed on application.

Display of certificate

- 14.** The certificate shall be displayed in a conspicuous place within the child care facility.

Register

- 15.** The Board shall keep a register of all child care facilities.

Expiry, revocation and change of certificate

- 16.** A certificate to operate a facility ceases to have effect when—
- (a) the certificate expires;
 - (b) the Board revokes the certificate for a justifiable reason; or
 - (c) the ownership of the facility changes.

Notice of change

- 17.** (1) A certificate holder shall notify the Board in writing of any changes to the facility.
- (2) The Board may require a certificate holder to re-register a facility as a result of the changes referred to in subsection (1) above.

Renewal of certificate

18. A certificate holder seeking to renew a certificate to operate a facility shall apply to the Board in the prescribed manner.

Discretion of the Board

19. (1) The Board may—

- (a) decline to issue or renew;
- (b) revoke;
- (c) suspend; or
- (d) impose conditions on a certificate where it has reasonable grounds to believe that a facility would not operate or is not operating in accordance with the prescribed standards or the terms of the certificate.

(2) The certificate holder shall be given an opportunity to be heard before the Board takes any action referred to in subsection (1)

(3) The Board shall notify the Executive Committee Member of its decision upon revocation or suspension of a certificate under subsection (1)

(4) The Executive Committee Member may issue an order to the administrator of the facility directing him or her to cease to operate the facility until it complies with the recommendations of the Board.

(5) the Executive Committee Member may inform the public of an order issued under subsection (4) in such manner as he considers necessary.

Assessment

20. (1) The board may co-opt assessors as it considers necessary to carry out the purpose of this Act.

(2) An assessor shall—

- (a) inspect a facility in respect of which an application for a certificate is made; and
- (b) make periodic inspections of a facility.

(3) An assessor may enter and carry out an investigation in respect of any facility where the Board has reasonable grounds to suspect that the facility is operated in contravention of this Act.

PART IV—MISCELLANEOUS PROVISIONS

Complaints to the Board

21. (1) A person may make a complaint to the Board if that person has reason to believe that—

- (a) a child care facility is operating illegally or contravening any provision of this Act; or
- (b) a child in a facility, premise or service vehicle has been abused, has suffered injury or is in harm's way.

(2) Upon receiving a complaint under subsection (1), the Board shall refer the complaint to the relevant authority.

Conduct of business and affairs of the Board

22. (1) The Board shall have at least four meetings 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) Meetings shall be convened by the secretary in consultation with the chairperson.

(3) The chairperson shall preside over all meetings and in the absence of the chairperson, the meeting shall be chaired by a person elected by the Board at the meeting for that purpose.

(4) The chairperson may at any time convene a special meeting of the Board, and shall do so within two weeks of the receipt of a written request signed by at least three other members.

(5) At least seven days notice of a meeting shall be given to every member.

Quorum

23. The quorum of a meeting of the Board is four members.

Voting

24. A decision of the Board shall be by a majority of the members present by voting and, in the case of an equality of votes the person presiding the meeting shall have a casting vote.

Minutes

25. Minutes of all meetings must be kept and entered in records kept for that purpose.

Disclosure of interest

26. (1) If a person is present at a meeting of the Board where he or she is directly or indirectly interested in a private capacity, that person must declare such interest.

(2) The person making the disclosure of interest under subsection (1) must not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question touching on the matter.

(3) A disclosure of interest made under subsection (1) must be recorded in the minutes of the meeting at which it is made.

(4) A member of the Board must not transact any business or trade with the Board.

Offences

27. Any person who—

(a) fails to comply with any provision of this Act;

(b) fails to observe any terms and conditions imposed on the issue of a certificate;

commits an offence and is liable to imprisonment for a term not exceeding one year or a fine not exceeding five hundred thousand Kenyan shillings or to both.

Regulations

28. The County Executive Committee Member may make regulations not inconsistent with this Act or the Constitution of Kenya, 2010 respecting any matter that is necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act.

Transition

29. Any child care facility permit or license issued at the commencement of this Act, shall be operational for the remaining duration of the permit or license and thereafter any subsequent application shall be in accordance with the provisions of this Act.