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MOMBASA COUNTY BILLS, 2017

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**THE MOMBASA COUNTY LOCAL TOURISM BILL,
2017**

A Bill for

AN ACT of the County Assembly of Mombasa to promote local tourism as an engine of socio-economic growth and cultural affirmation; to provide for the development, management, marketing and regulation of sustainable tourism and tourism related activities and services within the County; and for connected purposes

ENACTED by the County Assembly of Mombasa, as follows—

PART I— PRELIMINARY

1. This Act may be cited as the Mombasa County Local Tourism Act, 2017 and shall come into operation upon publication in the *Gazette*. Short Title
Commencement

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

“County Assembly” means the County Assembly of Mombasa;

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for matters relating to tourism;

“Directorate” means the Directorate of Tourism established under section 8 of this Act;

“sustainable tourism” means tourism development that meets the needs of present visitors and hosts while protecting and enhancing opportunity for the future;

“tourist” means a person travelling to Mombasa and staying in a place outside his or her usual abode for more than twenty four hours, but not more than one consecutive year, for leisure, business or other purpose, not being a work- related activity remunerated from within the place visited;

3. (1) This Act shall be applied for the administration of local tourism related activities and services in Mombasa County. Objects of the Act

(2) Without prejudice to the generality of subsection 1 above, this Act shall be applied to —

- (a) maximize the economic and social benefits for Mombasa by fostering a sustainable tourism industry by maximizing the number of tourists in Mombasa, maximizing the expenditure of tourists in Mombasa and contributing to the creation of employment opportunities within the Mombasa local tourism industry;
- (b) give effect to the Constitution and national law as regards local tourism related activities and services;
- (c) establish and maintain a financially sustainable mechanism for development, management, marketing and promotion of local tourism;
- (d) scale-up and maintain investments for the growth and development of local tourism in Mombasa;
- (e) provide an equitable financing mechanism for development, management, promotion and marketing of local tourism;
- (f) secure public participation in decision making regarding local tourism related activities and services;
- (g) provide incentives for private sector contribution in service provision, and in investments for infrastructure development in relation to promoting the growth and development of tourism within Mombasa County.

(3) The rights and duties conferred by this Act are in addition to those conferred by any other relevant law.

5. The County Executive Committee member and any person applying this Act shall be guided by the principles and values set out in Articles 10 and 232 of the Constitution.

Guiding Principles
and Values

PART II—POLICY, COORDINATION AND OVERSIGHT of LOCAL TOURISM

6. (1) Subject to the provisions of this Act, the County Executive Committee member shall exercise control and provide guidance over local tourism services provision and development, and the implementation of this Act.

Powers and Duties
of County
Executive
Committee
member

(2) Without prejudice to the generality of the foregoing, the County Executive Committee member shall have responsibility to—

- (a)** formulate and periodically review County local tourism policies;
- (b)** develop strategies for implementation of this Act, and related National and County policies;
- (c)** co-ordinating with the National government on enhancement of investments in infrastructure, and service delivery in relation to the development, management and marketing of local tourism;
- (d)** co-ordinating with other County governments on enhancement of investments in infrastructure, and service delivery in relation to developing, managing and promoting local tourism, especially in a cross-county context.
- (e)** ensure alignment of the tourism sector with social economic development goals of the County.
- (f)** make regulations as provided for under, or as necessary for the better implementation of, this Act;
- (g)** prepare a report to be submitted to the County Assembly annually, and from time to time as may be necessary, on the state of tourism in the County.

(3) For purposes of securing broad support for tourism related activities and services, the County Executive Committee member, in performance of functions and duties under this Act—

- (a)** may consult with other executive departments, public agencies and departments or agencies of Mombasa County whose functions affect or touch on tourism;

- (b) may consult with relevant non-governmental entities, including private sector and research institutions; and
- (c) shall secure public participation, including setting up, through regulations, of specific mechanism for regular engagement of stakeholders on policy matters

(4) in the discharge of the duties and functions under this act, the county executive committee member shall be assisted by the tourism directorate established under this act.

7. (1) The County Executive Committee Member shall, in accordance with article 10 of the Constitution, section 5 of this Act, and through public participation formulate a County Tourism Development Strategy.

County Tourism
Development
Strategy

(2) The County Tourism Development Strategy must at least make provision for strategies, objectives, indicators, targets, plans, guidelines, procedures and institutional arrangements relating to the promotion, development and transformation of local tourism.

(3) The County Tourism Development Strategy may be published in the Gazette after approval by the County Executive Committee

(4) The County Tourism Development Strategy shall prescribe measures and mechanisms to—

- (a) design a program for the progressive expansion of the tourism sector in Mombasa County.
- (b) identify outputs, overall budget estimates and timeframe to realize expected results.
- (c) accelerate the development of local tourism related infrastructure.
- (d) guide the roles and actions of stakeholders in management and delivery of local tourism related services
- (e) facilitate the participation of all categories of stakeholders in decision making on matters affecting tourism within the county.
- (f) identify and facilitate the role of the private sector

in investments for development of infrastructure and delivery of local tourism related services.

(5) The County Executive Committee Member shall, in every five-year period, or sooner, review and update the County Tourism Development Strategy, and may by notice in the *Gazette*, publish a new strategy.

(6) The approved Tourism Development Strategy shall guide the County Government, County Executive Committee member, the Directorate, and all other agencies in performance of their functions on local tourism related activities and services.

8. The County Executive Committee member shall establish a County tourism information and monitoring system for—

County local
tourism
information system

- (a) collecting, recording, managing, analysing and disseminating information and data on local tourism; and
- (b) monitoring developments and trends in local tourism.

9. (1) The County Executive Committee Member may for purposes of planning, and with a view to the development and growth in the local tourism sector, establish and maintain a database of information on local tourism businesses.

Information on
local tourism
businesses

(2) The County Executive Committee Member may for the purposes of subsection (1), by notice in the *Gazette*, determine the categories of local tourism businesses that may provide information, and may in this regard determine—

- (a) the period within which information is to be provided;
- (b) the form and manner for providing information;
- (c) the information which must be provided, which must, in relation to each local tourism business, at least include—
 - (i) the name and form of the local tourism business;
 - (ii) the geographical area of operation;
 - (iii) the nature of services, facilities or products it

provides;

- (iv) particulars relating to the classification and grading of the tourism business;
- (v) statistics and information of the services, facilities or products it offers; and
- (vi) information as to the extent it provides facilities which are accessible to people with disabilities, children and the aged;
- (d) the place and manner for the submission of information, which may include submitting the information to the County Government;
- (e) any other information which may be required for the purpose of the database; and
- (f) the type of recognition and incentives that may accrue to local tourism businesses which may provide information in terms of this section.

(3) The County Executive Committee Member may make different determinations under subsection (2) in respect of different categories of local tourism services, facilities and products.

(4) For purposes of a comprehensive database of information, nothing in this section prevents the County Executive Committee Member from collecting information about local tourism businesses from any other source.

10. The County Executive Committee Member may, by notice in the Gazette, issue codes of good practice to—

Code of conduct
for local tourism

- (a) guide conduct relating to local tourism services, facilities and products;
- (b) guide conduct of stakeholders responsible for developing and managing Local tourism; and
- (c) promote the achievement of the objects of this Act.

PART II— SERVICE DELIVERY AND ESTABLISHMENT OF THE DIRECTORATE OF TOURISM

11. (1) There is established the Directorate of Tourism.

Directorate of
Tourism

(2) The Directorate shall be the primary planning, programming, coordinating, implementing and regulatory

County Government agency in the development and promotion of the local tourism industry.

(3) The Directorate shall be headed by a Director of Tourism, who shall be competitively recruited and vetted by the County Public Service Board, in accordance with its guidelines and regulations.

(4) A person shall not qualify for appointment as Director, under this Act, unless such a person—

- (a) is a citizen of Kenya
- (b) holds a degree from a university recognized in Kenya in the field of tourism or any tourism related discipline
- (c) has at least ten (10) years experience at senior management level in a relevant field
- (d) meets the requirements of Chapter 6 of the constitution

(5) The Director, appointed under subsection (2), shall be responsible for performance of the specific duties and functions of the Directorate set out in subsection (7) below

(6) The Directorate shall operate under the direction of the County Executive Committee member, and provide advice on matters of legislation, policy, coordination, and the performance of the tourism sector

(7) Without prejudice to the generality of the foregoing subsection, the Directorate shall perform the following duties and functions—

- (a) co-ordination, linkages and oversight over the tourism sector between public and private entities and agencies.
- (b) market Mombasa at national, regional and international levels as a premier tourism destination;
- (c) identify market needs and advise tourism stakeholders on the tourism market trends;
- (d) organize and host meetings and provide incentives for conferences and exhibitions at Tourism Conventions and Exhibition Centres;
- (e) develop and implement, incentives for conferences

and exhibitions strategy, upon consultation with the relevant stakeholders;

- (f) develop and implement County Integrated Beach Management Plans;
- (g) promote water sports and big game fishing activities
- (h) development of tourism services master plan, investment and strategic plans for resource mobilization and financing.
- (i) collection and dissemination to the public, from time to time, of information on tourism related activities and services, including challenges and opportunities for improvement.
- (j) monitoring, evaluation and assessment of the tourism sector performance.
- (k) perform any other functions that are ancillary to the object and purpose for which the Tourism Directorate is established.

(8) The County Executive Committee member shall, in consultation with the County Public Service Board, determine the staff establishment required for the Directorate to effectively perform its functions under this Act.

12. (1) All funds of the Directorate, and all revenues arising from provision of tourism related services by the Directorate, shall be used solely for the purposes of development, marketing and management of tourism.

Financial
sustainability of
the Directorate

(2) In order to ensure commercial viability and financial sustainability of the Directorate, the County Executive Committee member and the Director shall annually agree on performance indicators for fulfillment by the Directorate in execution of its mandate, including but not limited to—

- (a) investment planning on infrastructure and asset development
- (b) options for Public-Private Partnerships where necessary
- (c) strategies for full Operations and Maintenance Cost Coverage

necessary;

- (c) strategies for full Operations and Maintenance Cost Coverage;
- (d) human resource management plan, including grievance mechanisms.

13. (1) The Directorate shall annually make proposals to the County Executive Committee Member on areas of tourism development required.

County funds for
tourism
development

(2) The County Executive Committee member shall consider the proposals, in line with County development needs, priorities, and planning, and may recommend utilization of County funds for agreed tourism development activities and services to the County Assembly.

14. The Directorate may pursue public private partnership options for development, management and marketing of tourism, subject to the provisions of national law

Public Private
Partnerships
(No. 15 of 2013)

15. The County Executive Committee Member shall undertake Monitoring and Evaluation of the Directorate in the performance of its mandate

Monitoring and
Evaluation

16. The County Executive Committee Member shall promote sustainable and responsible local tourism development and the Directorate shall, in that respect, do the following—

Sustainable
tourism

- (a) encourage quality local tourism experiences that include meaningful interactions between tourists and host communities with a greater understanding and appreciation of cultural tourism;
- (b) develop plans for local tourism management and promotion that address environmental sustainability and nature tourism and ensure that all sector strategies include tangible concern for the environment, nature tourism and eco-tourism ethics;
- (c) ensure that local tourism does not deprive local communities and wildlife of access to land resources;
- (d) promote local tourism development and

- management where it can offer a competitive form of land use for local communities and be integrated into land use plans;
- (e) facilitate the increased use of sustainable waste disposal and bio-degradable packaging;
 - (f) facilitate incentives to local tourism projects that utilise green designs or technologies which contribute to creating sustainable livelihoods and poverty reduction;
 - (g) engage local communities in planning and decision making, empower women, children and youth, and embrace the wisdom, knowledge and values of local communities in the development of local tourism;
 - (h) design and implement broad public awareness campaigns, focusing on the linkages of local tourism, environment, sustainable development and broader society issues;
 - (i) approve projects that adhere to globally recognised sustainable tourism certification standards; and
 - (j) research and monitoring of emerging trends related to tourism.

PART IV—LOCAL TOURISM FUND

17. (1) There is hereby established a fund, to be known as the Mombasa County Local Tourism Fund.

Establishment of
the Mombasa
County Local
Tourism Fund

(2) Subject to this Act, the object of the Fund shall be the development of the local tourism industry in Mombasa County

18. The Fund shall consist of—

Sources of funds
for the Fund.

- (a) levies, fees and other monies paid under this Act; and
- (b) any monies that may be payable to the Fund from monies appropriated for the purpose by the County Assembly; and
- (c) any monies that the Fund may obtain, with the approval of the County Executive Committee Member and the County Executive Committee

Member responsible for finance, by way of donations, loans or other financial assistance; and

- (d) any other monies that may vest in or accrue to the Fund, whether in terms of this Act or otherwise.

19. (1) The County Executive Committee Member for finance and economic planning shall designate the Chief Officer for the time being in charge of tourism as the person responsible for administering the fund and who shall—

Administration of
the Fund.

- (a) supervise and control the administration of the Fund;
- (b) be the accounting officer of the fund;
- (c) prepare a budget and such plans for the administration of the fund to be approved by the County Executive Committee;
- (d) impose conditions and restrictions on the use of any expenditure arising from the fund;
- (e) ensure that the earnings of, or accruals to the fund are retained in the fund, unless the County Executive Committee member for finance directs otherwise;
- (f) ensure that money held in the fund, including any earnings or accruals referred to in paragraph (e) is spent only for the purposes for which the fund is established;
- (g) prepare accounts for the fund for each financial year;
- (h) ensure that the accounts for the fund and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time;
- (i) not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General;
- (j) furnish such additional information as may be required for examination and audit by the Auditor General or under any applicable law;

- (k) present the financial statements to the County Assembly.

(2) All monies of the fund shall be maintained in a separate bank account in the name of the fund opened and administered in accordance with the provisions of the Public Finance Management Act, 2012.

(3) The balance of the fund at the close of each financial year shall be retained in the fund for the purpose for which the fund is established.

20. Monies in the Fund shall be applied to the following purposes—

Application of the Fund

- (a) meeting the expenses of the Directorate provided that no monies shall be applied towards any expense that is not provided for in a budget approved by the County Assembly; and
- (b) any other purpose which the County Executive Committee Member, after consultation with the Directorate, considers will promote the orderly development of the local tourism industry.

21. The financial year of the Fund shall be the period of twelve months ending on the 30th June each year.

Financial year of the Fund

22. (1) The County Executive Committee Member shall ensure that—

Books of account

- (a) proper accounts and other records relating thereto are kept in relation to all the financial transactions of the Fund and Directorate; and
- (b) in respect of each financial year—
 - (i) a balance-sheet; and
 - (ii) a statement of the transactions referred to in paragraph (a); are prepared without undue delay.

23. (1) The County Executive Committee Member shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Fund and Directorate.

Accounts and audit

(2) The annual accounts of the must be prepared, audited and reported upon in accordance with the provisions of

Articles 226 and 229 of the Constitution and the law relating to public audit.

PART V—MANAGEMENT OF PUBLIC BEACHES

24. (1) The County Government shall prepare a beach management program in accordance with this Part.

Beach
management
program

(2) A beach management program shall be made in relation to all the public beaches in the County.

25. The purpose of a beach management program is to set the long-term strategy for the co-ordinated management of public beaches within the County with a focus on protecting and preserving all public beaches.

Purpose of beach
management
program

26. (1) The beach management program shall—

Matters to be dealt
with in the beach
management
program.

- (a) identify any issues affecting the beaches within the County;
- (b) identify the actions required to address those issues in an integrated and strategic manner; and
- (c) identify how and when those actions are to be implemented, including those to be implemented by the County Government, those to be implemented under environmental planning instruments and development control plans under other applicable laws such as the Environmental Management and Coordination Act, and those to be implemented by other parties, and
- (d) identify the costs of those actions and proposed cost-sharing arrangements and other viable funding mechanisms for those actions to ensure the delivery of those actions is consistent with the timing for their implementation under the beach management program, and

(2) A beach management program may also include other matters as may be related to protection of beaches.

27. Before adopting a beach management program, the County Government shall conduct public participation on the draft program.

Public
participation

28. (1) The County Executive Committee Member may approve a draft beach management program and submit it to the County Executive Committee for adoption.

Approval and
publication of
beach management
plan

(2) The County Executive Committee Member, after the beach management program has been adopted, shall publish it in the *Gazette*.

(3) The beach management program shall take effect on the date on which it is published in the *Gazette* or, if a later date is specified in the program for its commencement, on the later date so specified.

29. (1) The County Government shall ensure that the beach management program is reviewed at least once every five years.

Review,
amendment and
repeal of beach
management plan

(2) A beach management program may, at any time, be amended in whole or in part by another beach management program.

(3) A beach management program may, at any time, be replaced by another beach management program.

(4) Following a review, the County Government may, by notice published in the *Gazette*, repeal a beach management program.

30. (1) A copy of the beach management program shall be available for inspection by the public without charge at the office of the County Executive Committee Member during ordinary office hours.

Availability of
beach management
program

(2) A copy of a beach management program shall be available for public inspection on the website of the County Government within fourteen days of its publication in the *Gazette*.

PART VI—TAXES, FEES AND CHARGES

31. (1) Subject to the provisions of national law, the County Executive Committee Member responsible for finance may, on the recommendation of the County Executive Committee Member, provide fees to promote the development of sustainable tourism including—

Taxes, fees and
charges

- (a) local tourism licence and permits fees;
- (b) incentives to deter bad tourism activities and services;
- (c) user fees for the local tourism products and services rendered.

PART VII – GENERAL PROVISIONS

32. (1) Employees of the Directorate shall have immunity from liability and prosecution for any losses to the Directorate, arising from actions taken in good faith, in execution of lawful duties.

Conduct of
Employees of the
Directorate

(2) Notwithstanding (1) above, any actions of employees of the Directorate involving solicitation and receiving of bribes and corrupt practices shall be punishable, as appropriate, under Public Officer Ethics Act, Penal Code, or the Anti-Corruption and Economic Crimes Act.

Cap 63
Cap 65
Cap 183

(3) It is an offence for an employee of the Directorate to willfully fail to perform their duties, when lawfully assigned to them.

(4) A person shall, upon conviction for the offences specified in (3), above, be liable to a sentence not less than three months, or a fine not exceeding fifty thousands shillings, or both.

(5) For purposes of this section, an Employee of the Directorate includes those persons engaged on casual terms of service, as well as contractors, when such contractors are performing duties falling within scope of offences defined in section 25 (2) and (3).

33. Any person impersonating an employee of the Directorate for purposes of misrepresenting themselves as being able to perform a function on behalf of the Directorate, shall be guilty of an offence, and upon conviction, liable to a sentence of not more than one year, or a fine not exceeding fifty thousand shillings, or both

Impersonation of
Directorate Staff

34. (1) Any operator of a tourism enterprise, shall take measures to ensure—

Safety of tourists

- (a) the safety and security of tourists and other patrons within the tourism enterprise;
- (b) the safety and welfare of its employees; and
- (c) public liability insurance cover for its clients.

(2) A proprietor, hotel keeper or hotel administration shall have adaptable emergency evacuation plans on the premises for emergencies caused by, inter alia, fire, floods,

attacks by wild animals, thunderstorms and every other conceivable thing, act or activity that may require emergency action to be taken.

(3) Any person who contravenes the provisions of this section commits an offence and upon conviction is liable to imprisonment for a term not exceeding one year, or a fine not exceeding one hundred thousand shillings, or both.

35. (1) A person shall not knowingly obstruct or make a false or misleading statement to any authorised officer who is carrying out duties under this Act.

Obstruction/
misrepresentation

(2) Any person who contravenes the provisions of this section commits an offence and upon conviction is liable to imprisonment for a term not exceeding one year, or a fine not exceeding fifty thousand shillings, or both.

36. (1) Upon the coming into effect of this Act, the County Executive Committee member shall enter into discussions with the National Government on the transfer of assets and liabilities relating to tourism services in, and to Mombasa County, to the Directorate.

Agreement with
National
government on
assets

(2) The relevant provisions of the Transition to Devolved Governments Act, 2012, and any other applicable national law shall be applicable as necessary

37. (1). The County Executive Committee member may make regulations for the better carrying out of the provisions of this Act.

Regulations

(2) Regulations made under this Act shall be subjected to public consultations, and be approved by the County Assembly.

MEMORANDUM OF OBJECTS AND REASONS

1. PURPOSE

The purpose of this Memorandum is to request the County Assembly's consideration and approval of the Mombasa Local Tourism Bill, 2017 and its direction that the Bill be introduced in the County Assembly.

2. BACKGROUND

With the promulgation of the new constitution and advent of devolution, the constitution of Kenya, 2010 distributed functions between the national government and county governments. Part 2, paragraph 7(d) of the Fourth Schedule includes local tourism among the county functions.

Tourism in Kenya is currently regulated by the Tourism Act, 2011. However, even with the implementation of the Act, the tourism industry in Kenya has continued to face a myriad of challenges which are now threatening to derail the sector. A number of challenges have been cited such as poor marketing, rising insecurity and the ministry of tourism failure to implement the Act.

Mombasa's rich history especially being a regional tourist, cultural and economic hub should not be shaken at whatever cost. It is in view of the above that the County Government of Mombasa finds it prudent to deal firmly with this issue by complimenting the national government through County legislation.

This Bill is therefore necessitated by the need to have a legislative framework to compliment the Tourism Act, 2011 by regulating the local tourism sector in Mombasa County.

3. OUTLINE OF THE BILL

Part I

This Part is preliminary. It contains provisions on the name of the proposed Act, interpretation of words used in the Bill, objects of the Bill and the guiding principles and values of local tourism.

Part II

This part contains provisions on policy, coordination and oversight of the local tourism industry.

It among others elaborates on the powers and duties of the county executive committee member responsible for tourism, and provides for the establishment of a local tourism information system and code of conduct for local tourism.

Part III

This Part dwells on service delivery. It establishes the Tourism Directorate to provide local tourism services in the County through avenues such as public private partnerships, monitoring, evaluation and sustainable tourism.

Part IV

This part establishes the Local Tourism Fund. It inter alia, expounds on how the monies for the fund will be appropriated as well as how the funds will be utilized.

Part V

This part is on taxes, fees and charges that may be imposed in relation to delivery of local tourism related services.

Part VI

This part contains general provisions relating to conduct of employees of the directorate, offences, safety of tourists and the county executive committee member power to draft regulations.

4. RECOMMENDATIONS

The Assembly is requested to—

- (a) note the contents of this Memorandum;
- (b) publish the Bill and table it for First Reading;
- (c) that in line with the legislative and constitutional platforms, the relevant house committee commences consultations with the relevant stakeholders and subject the Bill to thorough public participation.
- (d) approve the Mombasa County Local Tourism Bill, 2017 annexed to this Memorandum;

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

MURFAD AMUR,
Chairperson, Committee on Tourism.