

SPECIAL ISSUE

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REPUBLIC OF KENYA

***MOMBASA COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2015

NAIROBI, 24th, February, 2015

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**THE MOMBASA OUTDOOR ADVERTISING BILL,
2015**

A Bill for

**AN ACT of the County Assembly of Mombasa to
provide for regulation and management of outdoor
advertisings 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
Outdoor Advertising Act, 2015. Short Title

2. In this Act—

Interpretation

“Advertising device” includes any board, framework
screen, signboard, flag, banner or lamp or need signs or any
other fixture or device used or constructed for the purpose
of advertisements;

“County” means the Mombasa County;

“County Secretary” means the person for the time
being holding the office of the County Secretary of
Mombasa, his Deputy and any other officer of the County
authorized by the County Secretary in writing for the
purpose of this Act.

“County Executive Committee Member” means the
county executive committee member responsible for
matters relating to Environment, Water and Natural
Resources.

“Department” means the Department, of the County
responsible for matters relating to Environment, Water and
Natural Resources;

“Fees and charges” shall be the most recent gazetted at
any point of time by the County;

“owner” means the person in control of a building,
premises or site;

“Permit” means a permit issued under section 10(3) of
this Act;

“protected area” means an area declared to be a
protected area under section 9 of this Act.

3. The objective of this Act is to empower Mombasa
county to take all lawful, necessary and reasonably
practicable measures— Object of the Act

(a) to eliminate the danger posed to the public through erection of unregulated outdoor advertisements;

(b) to maintain the County ambience in a safe, clean and pleasant condition at all times;

(c) to remedy or cause to be remedied, any damage caused through unauthorized outdoor advertising; and

(d) to collect revenue from outdoor advertising.

4. This Act shall apply within the geographical boundaries of the County and in particular all areas adjacent to any road, railway, aerodrome canal or waterway.

Application

PART II—ADMINISTRATIVE PROVISIONS

5. This Act shall be administered by the County Department responsible for matters relating to Water, Environment and Natural Resources. (in this Act referred to as the Department).

Administration of
this Act

6. There shall be paid to the County in respect of every permit issued under this Act appropriate fees as may be determined by the County from time to time.

7. It is the responsibility of the Department to implement the objectives of this Act and to this end the Department shall-

Functions and
Powers of the
Department

(a) formulate County policy and legislation on outdoor advertising;

(b) subject to relevant legislation, receive any grant or donation;

(c) issue, renew, suspend or revoke licenses and permits;

(d) impose fines for breach of any conditions imposed in any license or permit issued under this Act;

(e) charge fees for any services the county may render under this Act;

(f) declare any area to be a protected area;

(g) perform any other function as may be directed by the County Executive Committee Member, for the effective implementation of this Act.

8. (1) The Department may, on behalf of the County government, enter into agreements with any company for the mutual benefit of the county on outdoor advertising.

Department may
enter Agreements

(2) The Department may provide selected infrastructure including street light poles, street or park benches and litter bins to a company in exchange for investment opportunities.

(3) At the expiry of an agreement, under paragraph (2), a company shall surrender the infrastructure provided under subsection (2) to the County government.

(4) Any agreement made under this section shall not exceed three years.

9. (1) The Department may declare an area to be a protected for purposes of this Act.

Protected Areas

(2) Without prejudice to subsection (1) the following are deemed to be protected areas-

- (a) natural recreational spaces and urban conservation areas;
- (b) cultural and national heritage areas and sites;
- (c) gazetted buildings and historical monuments;

PART III—LICENCES AND PERMITS

10. (1) Any person desiring to display an outdoor advertisement shall make an application to the department which shall be accompanied by a plan or sketch showing, to the satisfaction of the department-

Application for
Outdoor
Advertising
Licence

- (a) the dimensions of the intended advertisement
- (b) the material of which it is to be composed or constructed;
- (c) the position of the proposal advertising device or notice where the advert is intended to be displayed;
- (d) the method of execution;
- (e) its colour;
- (f) a planning brief submitted by a registered physical planner;
- (g) the period for which the advertisement is intended to be displayed.

(2) The Department may on receipt of the application under subsection (1) request the applicant for any other relevant information.

(3) If the department is satisfied that the advertisement application meets the requirements under this Act and

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poses no danger or obstruction, within thirty days, it shall issue a permit subject to any conditions it may impose.

(4) The County may decline to issue a permit in any case where, in its opinion, the display of an advertisement or the use of an advertisement device would be likely to inflict injuries to the amenities of, or to disfigure, any neighbourhood or for any other reason it may think proper, or may grant a permit subject to such terms and conditions relating to the construction, nature and erection of advertising device as it may think fit.

(5) If the department does not approve the application, it shall notify the applicant of its reasons, in writing, within thirty days from the date of receipt of the application.

(6)(i) Notwithstanding subsection (2) no advertisement shall be displayed—

- (ii) without the consent of the owner of the land or building on which it is proposed to be displayed;
- (iii) in a manner that it would endanger anyone using any road, railway, or aerodrome, canal or waterway; or
- (iv) in a place or in a manner that would obscure or hinder the ready interpretation of any traffic sign, railway signal, or air navigation aid or other navigation aid; or
- (v) in a manner that would hinder the operation of any device used for the purpose of security or surveillance;

(2) The applicant shall, on the expiry of the licensed period remove the advertisement and return the site as reasonably close to the condition it was before the advertisement was displayed.

11. (1) Every permit issued under this Act shall expire on the 31st day of December of the year for which it is issued unless cancelled prior to such expiration.

Period and
Renewal of
Licences

(2) A licence may be renewed from time to time if the department approves an application for renewal and on payment of the prescribed fee.

12. (1) The advertisements specified in subsection (2) are exempted from the application of this Act.

Exempted
Advertisements



(2) An advertisement placed—

- (a) (i) in the interior of a shopping mall or arcade;
- (ii) in an enclosed bus or railway station;
- (b) a non-illuminated advertisement or sign not exceeding 0.3m relating to the premises such as notices or signs to be displayed on buildings or land as means of identification, direction or warning (e.g. shut the gate, beware of dogs);
- (c) non-illuminated notices or signs not exceeding 0.3m, affixed and indicating the name, address and telephone number of
 - (i) a security company contracted to protect the property;
 - (ii) a landscape company or sponsor contracted to landscape a public open space

provided that only one sign per premises shall be permitted and such sign shall be firmly affixed to the boundary wall fence or gates on the street frontage.

(a) a non-illuminated advertisement or notice relating to religious activity as follows—

- (i) one advertisement or notice per premise on the road frontage;
- (ii) the height at which the advertisement or notice does not exceed 2.0m above ground level;
- (b) a non-illuminated advertisement or notice relating to foreign diplomatic and political activity including—
 - (i) the National Flag of any Country, or a United Nations organization provided nothing is added to the design of the flag or, if the flag is flown from a flagstaff and no advertising material is added to the flagstaff.
 - (ii) posters pending civic, parliamentary or presidential election campaigns;
 - (iii) functional advertisements of government ministries, departments and their agencies, county governments and statutory utility services undertakers.

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13. Any person who in any street or public place, erects, fixes, places, maintains, displays or uses or permits to be erected, fixed, placed, maintained, displayed or used; any advertisement device without first obtaining a permit, otherwise than in accordance with this Act is guilty of an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or both.

14. No person shall erect or cause or permit to be erected or maintained—

Prohibited Signs

- (a) any advertisement or sign, other than an exempted sign, for which neither a permit nor approval has been obtained or which does not comply with the requirements of, or which is not permitted by this Act, or any other written law;
- (b) any sign suspended across a street unless otherwise approved by county government;
- (c) any sign which may either obscure a road traffic sign, be mistaken for with or interfere with the functioning of a road traffic sign;
- (d) any sign which may obscure traffic by restricting motorists' vision and lines of sight thus endangering motorists' safety ;
- (e) any sign which is indecent or suggestive of indecency, prejudicial to public morals or is reasonably objectionable;
- (f) any sign which will obstruct any window or opening provided for the ventilation of a building or which obstructs any stairway or doorway or other means of exit from a building or which will prevent the movement of persons from one part of a roof to another part thereof;
- (g) any animated or flashing sign the frequency of the animations or flashes or other intermittent alternations of which disturbs the residents or occupants of any building or is a source of nuisance to the public or impairs road traffic safety;
- (h) any illuminated sign, the level of illumination of which unreasonably disturbs the residents or occupants of any building or is a source of nuisance to the public;

- (i) any sign referring to a price or change in price of merchandise except in a shop window, or on the article itself;
- (j) any poster otherwise than on a hoarding legally erected for the purpose of accommodating such poster;
- (k) any sign or signs the total area of which exceeds 30m², painted or fixed on a wall of a building not being a front wall of such building, unless approved in terms of the policy for the promotion of outdoor advertising;
- (l) any sign painted on any fence or boundary wall, not being an approved sign;
- (m) any sign which may obstruct pedestrian or vehicular traffic;
- (n) any transit advertising sign that is parked irrespective of whether it is attached to a vehicle or not;
- (o) any poster or sign attached to a tree;
- (p) any temporary sign for commercial or third-party advertising erected on land owned by the county, unless by prior signed agreement or contract with the county;
- (q) any sign or poster attached to a road traffic sign.

15. The County may at any time by notice to holder thereof, cancel a permit for contravention of any of the terms and conditions thereof or any of the provision of this Act or where it is of the opinion that continued display of any advertisement or use of any advertisement device would likely damage the amenities or to deface any neighbourhood or for any reason it may think fit

Cancellation of
Permit.

PART IV - MISCELLANEOUS PROVISIONS

16. (1) Any person who—

Offences

- (a) commits a breach of any condition imposed by any licence or permit issued under this Act;
- (b) aids or abets another person to commit a breach of any condition imposed on any licence or permit issued under this Act;

- (c) forges or through fraud obtains any document with intent to have a licence or permit issued or renewed;
- (d) erects or attempts to erect an outdoor advertisement contrary to the provisions of this Act;
- (e) being the holder of a permit fails to maintain in good repair and in a proper and safe condition any advertising device authorized in this Act,

is guilty of an offence and on conviction shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding two years or to both.

(2) The county may, by law, further prescribe that, in addition to any penalty, any expenses incurred by the county

- (a) in consequence of the breach of any law by any person, or
- (b) in the execution of any work directed by any such law to be executed by any person and not executed by him,

shall be paid by the person committing such breach or fails to execute such work.

17. The County Executive Committee Member may without notice cause to be removed or put down and disposed of any advertising device erected, fixed, placed, maintained, display or used in contravention of this Act.

18. The County Executive Committee Member may make regulations – Regulations

- (a) to prohibit or regulate the display of advertisements and advertising devices in or in view of any street or other public place or in such places or in such manner or by such means as would, in the opinion of the department, be likely to damage the amenities or to deface any neighbourhood;
- (b) to regulate the use and passage of advertising vans, sandwich boards, lanterns, flags, screens or other moveable advertising devices,
- (c) to regulate the distribution of handbills in or along any street or other public place;
- (d) to regulate street decorations;

- (f) to prohibit or regulate the erection and removal of temporary platforms, seats and other structures for the use of the public at any meeting or entertainment or for the accommodation of spectators at any procession,
- (g) to regulate the shape, form and size of the billboards and the number that may be erected within a specific area; (including tri-vision panels, sky signs, billboards, wall wraps, light emitting diodes(LED) screens
- (h) To provide for such fees and charges payable to the County Government prior to erection of any advertising device.

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 County Outdoor Advertising Bill, 2015.

2. BACKGROUND

The fourth schedule to the Constitution basically distributes functions between the national government and the County Governments.

The Fourth schedule Part 2 Paragraph 3 of the constitution provides for the following county powers and functions;

- Control of air pollution, noise pollution, other public nuisances and outdoor advertising.

This Bill is therefore necessitated by the fact that the Mombasa County Government is desirous of executing one of its constitutional mandate as to the extent of outdoor advertising.

3. OUTLINE OF THE BILL

PART I

This Part is preliminary. It names the proposed Act, defines words and expressions used in the Bill, defines the scope of application of this Act as well as outlines the purpose of the Bill.

PART II

This Part contains administrative provisions. It among others, provides for the functions and powers of the department and defines protected areas.

PART III

This Part makes provisions for issuance of licences.

PART IV

This part is miscellaneous. It provides for offences, regulations and savings provisions.

4. RECOMMENDATIONS

The County Assembly is requested to;

- (a) note the contents of this Memorandum;
- (b) approve the Mombasa County Outdoor Advertising Bill, 2015 annexed to this Memorandum; and
- (c) authorise the Speaker to publish the Bill and present it to the County Assembly for debate and enactment.

ZAINAB MUMBA

Chairperson,

Committee on Water, Environment and Natural Resources.