

SPECIAL ISSUE

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THE MOMBASA PORT HEALTH BILL, 2014**A Bill for**

An Act of the County Assembly of Mombasa to provide for the powers and functions of the Port Health Officer and connected purposes.

ENACTED by the County Assembly as follows—

PART I – PRELIMINARY

1. This Act may be cited the Mombasa County Port Health Act, 2014.

Short title.

2. This Act shall come into operation on such day or days as may be fixed thereof by any order or orders of the County Executive Member, either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions of this Act.

Commencement.

3. In this Act unless the context otherwise requires—

Interpretation.

"Executive Member" means the County Executive Committee Member in-charge of Health;

"Customs Officer" means an officer of revenue and customs;

"master" in relation to any vessel means the person (other than a pilot) having at the time command or charge of that vessel;

"oversea vessel" means a vessel other than one plying only between ports or places in Kenya;

"port health officer" means any medical practitioner appointed by or acting as such under the authority and instructions of the Director of Medical Services;

4. The object of this Act is —

Object of the Act.

- (a) to provide for inspection of vessels to ensure public health standards are met;
- (b) to control infectious diseases on board incoming vessels by undertaking health checks to vessels;
- (c) to provide for investigation of reported sickness and deaths on vessels.

5. (1) The provisions of this Act as regards vessels shall apply to vessels anchoring or arriving in any port within Mombasa; Provided that the Executive Member may, subject to such conditions, or limitations as may be prescribed by him, exempt from any such provisions any warship of Kenya or of any foreign country, or any vessel engaged solely in the coasting trade and plying only between ports of Kenya.

Application of the Act.

PART II – ADMINISTRATION AND MANAGEMENT OF PORT HEALTH

6. (1) Except in case of danger, no master of a vessel arriving at any port or place in Mombasa and no person on board thereof shall communicate or attempt to communicate with the shore or with any other vessel or any boat, and no person from the shore or from any other vessel or boat shall communicate with such vessel, otherwise than by signal, until pratique has been granted to such vessel in accordance with this Act:

No communication between vessels and shore before granting of pratique.

Provided that nothing in this subsection shall prevent any port health officer, pilot or other duly authorized officer from coming alongside or boarding any such vessel.

(2) No fee shall be payable in respect of the examination by the port health officer for granting of pratique to any vessel arriving at any port in Mombasa.

7. (1) The provisions of this Act in respect of the notification of the occurrence of an infectious disease in human beings, sickness or mortality in rodents or other animals susceptible to plague, shall apply to every vessel at any port within Mombasa and notification shall be made to the port health officer.

Notification of infectious disease or death on board of vessel.

(2) No fee shall be payable to any ship surgeon or other medical officer of a vessel or shipping company in respect of the notification of any case of infectious disease on board of any vessel.

(3) For purposes of this Act, every vessel shall be deemed to be a dwelling or premises, and the master thereof shall be deemed to be the head of the household or the owner or occupier of the premises.

(4) It shall be the duty of the master to report to the port health officer the death of any person who has died from any cause on the vessel during the voyage just completed, or while the vessel is in port, and also the cause of death.

8. (1) The port health officer may at any time board any vessel and inspect any part thereof or anything therein, and may medically examine any person on board and require any such person to answer any question for the purpose of ascertaining whether or not an infection exists or has recently existed on board.

Powers of port health officer.

(2) Any person who refuses to allow any such officer to board any vessel or to make any inspection or medical examination as aforesaid, or otherwise obstructs or hinders any such officer in the execution of his duty, or who fails or refuses to give any information which he may lawfully be required to give, or who gives false or misleading information to any such officer knowing it to be false or misleading, shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings.

9. Upon the occurrence on any vessel of any case of death from any notifiable infectious disease, or of such other disease as the Executive Member may prescribe, or of any sickness or mortality among rodents or other animals on any vessel or within the harbour area suspected to be due to any formidable epidemic disease, the port health officer shall forthwith inform the medical officer of health of the area in or adjoining which the port is situated of the occurrence and the measures taken or intended to be taken in connection therewith.

Notification to medical officers of health at ports.

10. In the case of any vessel having, or suspected on reasonable grounds of having, on board in any person, animal or thing the infection of any infectious disease, the port health officer may grant or continue pratique to such vessel subject to such conditions or restrictions as may be deemed necessary, or may withhold or withdraw pratique and place the vessel in quarantine:

Granting of restricted or conditional pratique to and quarantining of vessels.

Provided that, when pratique restrictions are imposed or any vessel is placed in quarantine or when any person on board of or landed from any vessel is compulsorily detained, isolated or removed, the port health officer shall

immediately report, by any expeditious means, the action taken by him and the reasons therefore to the Director of Medical Services and the nearest medical officer of health.

11. (1) The Executive Member may, by order—

- a) declare that any place beyond or within Mombasa is infected with a formidable epidemic disease or that a formidable epidemic disease is liable to be brought or carried from or through that place, and thereupon, and for so long as such order remains in force, that place shall be a proclaimed place within the meaning of this Act;
- b) declare any port in Mombasa to be a first port of entry for all or for any particular class or description of overseas vessels coming from a proclaimed place, and require masters of such vessels bound for Mombasa to enter a port so declared before entering any other port of Mombasa, except in case of danger or for other sufficient reason;
- c) prohibit, restrict or regulate the immigration or importation into Mombasa of any person, animal or article likely, in his opinion, to introduce any infectious disease, or impose restrictions or conditions as regards the examination, detention, disinfection or otherwise of any such animal or article.

Declaration of infected places, ports of entry.

(2) Any person who contravenes or fails to comply with an order made under subsection (1) shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings.

12. (1) The master of any vessel bound for any port in Mombasa which comes from or calls or touches at any proclaimed place shall, while his vessel is at that place and during the voyage to Mombasa, take in respect of the vessel and her crew, passengers and cargo all such precautionary measures as may be prescribed.

Master of vessel from proclaimed place to take precautionary measures

(2) Any master of a vessel failing to comply with subsection (1) and enters any port in Mombasa shall, unless he satisfies the court that he was unaware of the measures required to be taken by him and that he took all reasonable

Officer for:

- (a) gross misconduct;
- (b) incompetence;
- (c) abuse of office;
- (d) gross violation of the constitution or any other law;
- (e) physical or mental incapacity rendering him or her incapable of performing the duties of the office.

11. (1) The board shall appoint a secretary to the board through a competitive and transparent process.

Secretary to the board.

(2) The secretary shall be responsible for arranging the business of the board's meetings, keeping a record of the proceedings of the board and for such other duties as the board may direct.

12. (1) The board shall appoint officers at the level of principal revenue officers or higher, on such terms and conditions as the board may determine.

Other officers and staff.

(2) The board shall approve the terms and conditions of all officers and staff as may be required for the performance of the functions of the authority.

(3) The board shall be responsible for the discipline and control of the officers and staff.

PART III – IMPLEMENTATION OF THE ADVANCED SHIPMENT INFORMATION (ASHI)

13. The Authority will define an electronic 'ASHI' format and its corresponding 'ASHI' fees enabling shippers to disclose all relevant shipment details for cargoes to be shipped to/from this county.

14. The 'ASHI' fee is not applicable to any exemptions in accordance with the relevant legislation and directives.

15. The Board shall review periodically the required shipment particulars and the specified fees.

16. (1) The Authority will appoint an external service provider experienced in the electronic 'ASHI' application

against the master or agent of the vessel, and may be recovered from either or both of them by the County Government.

16. (1) Where any person on board of any vessel is believed to have been recently exposed to an infection, and may be in the incubation stage of any notifiable infectious disease, the port health officer may require such person to remain on board such vessel, or alternatively to land and proceed direct to his place of destination and report to the medical officer of health for medical surveillance by such medical officer of health until considered to be free from infection.

Surveillance or isolation of persons who have been exposed to infection

(2) Where in the opinion of the port health officer any such person cannot otherwise be properly kept under medical surveillance or the public health cannot be otherwise adequately safeguarded, such person may be moved to a place of isolation on shore and there detained until considered free from infection.

(3) The port health officer shall notify the medical officer of health the fact that such person is believed to have been recently exposed to infection and has been allowed to land and proceed to his destination.

(4) Any person who refuses or fails to comply with, or wilfully obstructs the execution of, any requirement lawfully made under this section shall be guilty of an offence and liable to a fine not exceeding Fifty thousand shillings or to imprisonment for a term not exceeding three months or to both.

17. Where there is any dead body on board any vessel at any port in Mombasa, it shall be the duty of the master of such vessel to cause such body to be properly buried.

Burial of the bodies of persons dying on board of vessel.

18. Whenever the port health officer has reasonable grounds to believe that the master of any vessel has committed an offence under this Act or fails or refuses to pay any charges lawfully made thereunder, any authorized officer on the request of the port health officer, withhold clearance papers from such vessel pending the institution of proceedings in any competent court:

Clearance papers may be withheld from vessels pending inquiry into offence

Provided that clearance papers shall not be withheld for more than thirty-six hours (Sundays and public holidays excepted), unless such proceedings have been commenced before the expiry of that period.

19. (1) When it is considered necessary for the purpose of preventing the introduction of infectious disease into Mombasa, the Executive Member may —

Powers to enforce precautions at frontiers.

- a) regulate, restrict or prohibit the entry into Mombasa at its inland borders or any part thereof or any persons, or of persons of any specified class or description or from any specified locality or area;
- b) regulate, restrict or prohibit the introduction into Mombasa at its inland borders, or any specified part thereof, of any animal or article;
- c) impose requirements or conditions as regards the medical examination, detention, quarantine, disinfection, vaccination, isolation or medical surveillance or otherwise of persons entering, or the examination, detention or disinfection or otherwise of such persons as aforesaid or of articles introduced into Mombasa at its inland border or any part thereof;

(2) Any person who contravenes or fails to comply with an order made under subsection (1) shall be guilty of an offence and liable to a fine not exceeding Fifty thousand shillings or to imprisonment for a period not exceeding three months or to both.

20. (1) The Executive Member may enter into agreements with other governments, providing for the reciprocal notification of outbreaks of any formidable epidemic or other disease of any other matter affecting the public health relations of Mombasa with other counties and countries.

Agreements with other governments regarding reciprocal notification of outbreaks.

(2) Agreements under subsection (1) shall be notified in the *Gazette*.

21. The Executive Member may make rules —

Rules concerning port health matters

- (a) prescribing the powers and duties of port health officers and the procedure to be followed in the

examination of, and the granting of pratique to, vessels, and requiring every master of a vessel on arrival at any port in Mombasa to furnish a declaration of health in respect of the existence or suspected existence on board, in any person or animal of any infectious disease, or any other disease which the Executive Member may notify in the *Gazette*, prescribing the form of declaration, and empowering any port health officer or other duly authorized officer to require the master of any vessel to verify upon oath the statements in the declaration and to administer the necessary oaths; Such rules may prescribe modified requirements or procedure in respect of vessels arriving at a second or subsequent port of call in Mombasa on the same voyage;

- (b) any infectious disease, or which has recently touched at any port or place which is a proclaimed place or is infected with any formidable epidemic disease or is situated near any place which is so infected, to furnish lists of passengers, crew or cargo, and prescribing the information to be given in any such list;
- (c) prescribing the measures which shall be taken by masters of vessels to prevent the migration of rodents to or from vessels;
- (d) prescribing the measures which shall be taken for the disinfection of, or the destruction of rats, mice or insects in, vessels, the disposal of bilge or other water on board, the cleansing of vessels, the provision of a supply of pure water on board, and for preventing the pollution of the water of the port with excreta and manure or any infective or offensive matter;
- (e) as to the grant, refusal or withdrawal of pratique to vessels and the detention in quarantine of vessels having or suspected of having on board in any person or animal the infection of any infectious disease, or of persons suffering from, or who have recently been exposed to the infection of, any such disease;

- (f) as to the prohibition or restriction of inter-communication of persons on or from the land with vessels, where deemed necessary in order to prevent the spread of infectious disease;
- (g) requiring the disinfection of any article contaminated, or believed to be contaminated, with the infection of any infectious disease, on board of or landed from any vessel, or, if such article is of such a nature that it cannot be so disinfected, prohibiting the landing or providing for the destruction thereof;
- (h) requiring the vaccination, before landing from any vessel, of any person who may have recently been exposed to the infection of any infectious disease and who does not produce evidence to the satisfaction of the port health officer of successful vaccination during the five years immediately preceding;

Provided that until other provisions are made the sanitary station at Mombasa shall be a sanitary station for the purposes of any rules made or deemed to be made under this Act;

- i. providing for the recovery from masters or owners or agents of vessels of all reasonable and necessary expenses incurred by the County Government, or of charges in accordance with a prescribed tariff of charges, or for the furnishing by them of guarantees in respect of the payment of such expenses or charges—
 - I. in dealing with any person who is on board or has recently been landed and who is suffering, or suspected to be suffering, from any infectious disease or from any other disease which the Executive Member may notify in the *Gazette*;
 - II. in connection with the detention in quarantine of any vessel infected with, or the isolation, accommodation, care and treatment of any person suffering from, or who has been exposed to the infection of any infectious disease, and the detention and

repatriation of any such person if he is prohibited from entering Mombasa and the Republic of Kenya under any law relating to immigration;

- III. in eradicating the infection of any infectious disease in any vessel, or in any article on board of any vessel, or in any article which though landed, was infected before it landed;

and the Executive Member may, by notice in the *Gazette*, prescribe tariffs of charges which shall be payable by masters or owners or agents of vessels in respect of any of the services aforesaid, but every such tariff, shall be fixed as nearly as may be on the basis of average cost;

- (j) as to the departure from Mombasa, whether by land or sea, of all persons or of persons of any specified class or description, or of persons from any specified locality or place, and as to the restrictions to be imposed on persons leaving Mombasa, in relation to medical examination, disinfection or otherwise;
- (k) as to the exportation or removal from Mombasa, whether by land or sea, of any article considered likely to convey the infection of any infectious disease, and the examination, detention, disinfection or otherwise of any such article;
- (l) for securing and maintaining cleanliness and efficient sanitation and preventing or remedying any nuisance or danger to health from overcrowding or otherwise on board of any vessel or within any port or harbour;
- (m) as to the inspection of food on board vessels or at any port of Mombasa and the destruction or safe disposal of any meat or food which is infected, **intended** for human consumption, or of any **article** of food or drink likely to convey any **infectious** disease, if such article is on board any vessel or within any port or harbour, and providing for the recovery of any expense incurred by the County Government in so doing;

- (n) as to the disinfection of any second-hand clothing, bedding, rags or any similar article imported by sea, and the recovery from the owner thereof or his agent of all expenses incurred by the County Government in connection therewith, and generally for better carrying out the provisions and attaining the objects and purposes of this Act.

22. (1) Any order or rule made under this Part may provide exemptions therefrom, may define the disease to which any particular provision shall apply and may impose duties in connection therewith on masters or owners or agents of vessels or on persons in charge of railway trains or of vehicles, or on employers of labour, labour recruiting agents or others.

Orders, rules and penalties.

(2) Any person contravening any provision of this Part, or of any order or rule therein, shall be guilty of an offence and liable, save as hereinbefore and in subsection (3) provided, to a fine not exceeding Fifty thousand shillings or to imprisonment without the option of a fine for a term not exceeding three months or to both.

(3) If the master of a vessel contravenes any provision of this Act or any rule therein relating to pratique or quarantine, or makes any false statement or false answer to any question in any declaration of health, knowing the same to be false, he shall be guilty of an offence and liable to a fine not exceeding twenty five thousand shillings or to imprisonment without the option of a fine for a term not exceeding twelve months or to both.

23. Wherever under this Part powers are exercised by the Executive Member or other officer in accordance therewith and with the rules, and by reason of the exercise of such powers—

Protection of the County Government.

- a) any vessel, person or article is delayed or removed or detained; or
- b) any article is damaged or destroyed; or
- c) any person is deprived of the use of any article, the County Government shall not be liable to pay compensation, provided due care and attention was observed in the exercise of the powers.