

SPECIAL ISSUE

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MOMBASA COUNTY ASSEMBLY
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MOMBASA



REPUBLIC OF KENYA

**MOMBASA COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2014

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THE MOMBASA COUNTY PUBLIC NUISANCE BILL, 2014

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**THE MOMBASA COUNTY PUBLIC NUISANCE
BILL, 2014**

A Bill for

AN ACT of the Mombasa County Assembly to give effect to the Fourth Schedule part two paragraph three of the Constitution of Kenya, 2010; to regulate noise pollution and other public nuisances; to provide for the prevention and control of litter pollution and for connected purposes

ENACTED by the Mombasa County Assembly as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Mombasa County Public Nuisance Act, 2014 and shall come into operation upon assent by the Governor.

Short title and commencement.

2. In this Act—

Interpretation.

“County” means the county of Mombasa;

“County Secretary” means the person for the time being holding the office of the County Secretary, his or her deputy and any other officer of the County authorized by him or her in writing for the purposes of these Act;

“medical officer of health” means the person for the time being holding the office of the Medical Officer of Health of the County, and includes his or her deputy and the Chief Public Health Officer;

“mobile outlet” means any mobile facility used for retail sale of foods, drinks and related products on land from a food truck, van, cart or other similar vehicle;

“public street” means street maintainable by the County;

“structure” includes a machine, pump, post billboard or other object capable of causing an obstruction to a passenger or a vehicle in a street;

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

Object of this Act.

- (a) the maintenance of the county, at all time, in a clean and sanitary condition;
- (b) the abatement and prevention of public nuisance;
- (c) the remedying or causing to be remedied, any nuisance or condition liable to be injurious or dangerous to health, or which has been declared to be a public nuisance under this Act.

PART II – GENERAL NUISANCES

4. Any person who in any street:

- (a) hawks, sell, distributes or advertises any article or event shouts or uses any bell, gong, loudspeaker or other noisy instrument or drives any vehicle for the purpose of exhibiting advertisements without statutory authority;
- (b) plays any game in such a manner as to damage to property or cause injury to any person;
- (c) rides a motorcycle or drives a vehicle on a footpath;
- (d) spits on any footpath or blows his or her nose otherwise than into a suitable cloth or tissue;
- (e) knowingly lives wholly or partly on the earnings of prostitution;
- (f) while being in charge of any dog, allows such dog to foul such street;
- (g) washes, repairs or dismantles any vehicle except in the case of an emergency;
- (h) without the consent of the County Secretary, lights any fire;
- (i) in the Central Business District of the County, allows any animal in such street;
- (j) defecates or urinates on the street or any open space;
- (k) smokes cigarettes in public places; ✕
- (l) touts for passengers; or is guilty of an offence.

Executive Member in charge

5. Any person who –

Noisy musical
instruments.

- (a) In any street or in connection with any shop, business premises or other place which adjoins any street and to which the public are admitted, or upon any other premises, by playing, operating or causing to be played or operated any musical instrument, wireless, loudspeaker, gramophone, amplifier or similar instrument, makes any noise which is so loud and so continuous or repeated as to cause an annoyance to occupants of any premises in the neighbourhood or to passers-by on a street or

- (b) By making loud noises, speeches or wailing causes annoyance to the occupants or persons passing by a street or an open space;

provided that no prosecution shall be instituted against any person or any offence under this section unless the annoyance remains unabated after the expiry of seven days from the date of the service on such person of a notice signed by the County Secretary alleging such annoyance and calling for stop to it is guilty of an offence.

6. Any person who shall, in connection with any building, demolition or road construction work, cause any unnecessary noise so loud or so continuous or repeated as to cause an annoyance to occupants of any premises in the neighborhood, is guilty of an offence.

Noisy buildings.

7. (1) Any person who erects or authorizes the erection of any barbed wire alongside a street without the prior written consent of the County Secretary is guilty of an offence.

Barbed wire.

(2) The County may give a notice upon the owner or occupier of any land or building upon which any barbed wire has been erected in contravention of subsection (1) of this Act.

(3) Any person who fails to comply with the requirements of a notice served in pursuant of subsection (2) of this Act is guilty of an offence.

8. Any person who without lawful authority,

Deposit of debris.

deposits or permits to be deposited any soil, vegetation, refuse or debris on any land in the County is guilty of an offence.

9. No person shall deposit or cause to be deposited, any disused vehicles, old metals, or any kind of materials which, in the opinion of the medical officer of health, are likely to be injurious or dangerous to health without the written permission of the County Secretary.

Disused vehicles, old metals and other materials.

10. Any person who drives, or permits to be driven any vehicle so loaded that its contents spill on a street is guilty of an offence.

Overloaded vehicles.

11. Any person who keeps within the County any animal or poultry which cause nuisance to any of the residents in the neighbourhood is guilty of an offence.

Nuisance by animals or poultry.

12. Any person who—

Deposit of litter generally.

- (a) deposits any litter on any land or waters;
- (b) if in charge of a vehicle being used to transport goods or material fails to take measures to prevent the creation of litter from the vehicle on a public road or in a public place; is guilty of an offence and upon conviction shall be liable to a fine not exceeding thirty thousand shillings in respect of a first offence and not exceeding sixty thousand shillings in respect of a subsequent offence or imprisonment for a period not exceeding six months in respect of a first offence and not exceeding nine months in respect of a subsequent offence or to both such fine and imprisonment.

13. (1) Any owner, occupier or person in charge of a mobile outlet that is used wholly or partly for the sale of produce, food or drinks shall at all time when outlet is open to customers—

Mobile outlets.

provide and maintain adequate litter bin in order to prevent the creation of litter at or in the vicinity of the outlet while it is in operation,

- (a) ensure that any litter caused by the operation of the outlet is removed from the vicinity, and comply with the conditions set out in any notice

under *subsection (2)* served on the owner, occupier or person in charge, as the case may be.

(2) The County may, in relation to *subsection (1)* issue a notice to the owner, occupier or person in charge of the outlet to comply with such conditions in relation to the operation of the outlet as the County deems necessary for the prevention or removal of litter in the vicinity of the outlet.

(3) Any person who contravenes *Subsection (1)* or fails to comply with a notice directed to the person under *Subsection (2)* shall be guilty of an offence.

PART III – ROADS AND STREETS

14. (1) Where any hedge, tree or other growth is so placed or in such conditions as; Encroachment.

- (a) to be a danger to a person or vehicle using a street; or
- (b) to interfere with;
 - (i) the view along any street or from one street into another; or
 - (ii) the use of the street by pedestrian or vehicular traffic; the county secretary may serve a notice on the owner or occupier of the land on which such hedge, tree or other growth is situated requiring him, within such period of time, not being less than fourteen days as shall be specified in such notice, to cause the hedge, tree or other growth to be chopped, trimmed or removed.

(2) Any person who fails to comply with the requirements of a notice served in accordance with subsection (1) above is be guilty of an offence.

(3) The County may on expiry of the period of time specified in a notice served execute any of the work specified in the said notice and any expenses incurred by the County in so doing shall be recoverable from the said person as a civil debt.

15. Any person who shall without statutory authority or the consent of the County.

Secretary given in writing erects or permits the erection of any structure in such a position that it is sited in or protrudes over a street is guilty of an offence.

16. (1) No person shall attach, erect or permit the erection of any object from or alongside any street in such a manner so as to protrude over or into a street without a permit from the County.

(2) The County Secretary may serve a notice to the owner or occupier of any premises from or alongside which an object has been attached, hung or erected in contravention of subsection (1).

(3) Any person who contravenes or fails to comply with the provisions of this Act or any conditions attached to a permit issued there under or a notice served under provisions of section 9(1) of this Act is guilty of an offence.

(4) The provisions of this Act shall not apply to an advertisement permitted under any Act of the County for the time being in force or to any structure approved by the County under any such Act;

17. Any person who:

- (a) in any way willfully obstructs the free passage of a street;
- (b) willfully or negligently damages or destroys the surface of any public street;
- (c) destroys, displaces or removes any property of the County on or near a street;
- (d) damages or destroys any tree, shrub, flower, plant or grass on land forming part of a public street;
- (e) damages or destroys any barrier, fence, lamp, stone or other material place on a street or by fitting attached thereto;
- (f) willfully or negligently pulls down, damages or destroys any lamp post or bollard in a street or

Damage
obstruction.

and

damages or removes any bulb fitting attached thereto; is guilty of an offence

18. Any person who, without statutory authority, breaks up surface or authorizes the breaking up of the surface of a public street without the permission of the County Secretary, is guilty of an offence.

Breaking surface.

19. (1) Any person who places, leaves, allows, causes to be placed or leaves any vehicle, article or material in a street in such a manner that it causes or is likely to cause an obstruction to persons or vehicles using the street is guilty of an offence.

Obstruction.

(2) The County may remove any vehicle, article or material which has been placed or left in a street in contravention of this Act and impound the same.

20. (1) The owner of a vehicle, article or material removed from a street pursuant to section 15 of this Act shall not be entitled to recover the same until he has paid to the County in the case of a motor vehicle; and

Impounding fee.

(2) In the case of any article or material as described in the schedule, in respect of each 24 hours or part thereof that the vehicle, article or material has been impounded together with, in the case of motor vehicle, the towing charges as specified in the schedule of this Act, in respect of the expenses incurred by the County in removing and impounding the same.

PART IV- MISCELLANEOUS

21. Except where otherwise specifically provided for in this Act, any person who is guilty of an offence under this Act is liable to a fine not exceeding fifty thousand shillings in respect of a first offence and eighty thousand shillings in respect of a subsequent offence, or imprisonment for a period not exceeding six months in respect of a first offence and not exceeding nine months in respect of a subsequent offence, or to both such fine and imprisonment.

Penalties.

22. (1) The executive committee member in charge of environment may make regulations for better carrying out of the purposes and provisions of this Act.

Regulations.

(2) Regulations made under this section shall be

tabled before the County Assembly for approval, and shall not take effect until such approval is obtained.

SCHEDULE

A – IMPOUNDING CHARGES

<i>Vehicles</i>	<i>Charges (KSh.)</i>
Less than 3 tonnes	1000/-
Between 3 to 7 tonnes	2500/-
Trailers/Tankers	4000/-
Lorries/Buses	3000/-
Articulate Motor Vehicles	4000/-

B – TOWING CHARGES

<i>Vehicles</i>	<i>Charges</i>
Less than 3 tonnes	2000/-
Between 3 to 7 tonnes	4000/-
Trailers/Tankers	15,000/-
Lorries/Buses	15,000/-
Articulate Motor Vehicles	18,000/-

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MEMORANDUM OF OBJECTS AND REASONS

The Principal object of this Bill is to establish a legal framework for the elimination of nuisance in Mombasa. This is intended to enhance the right to a clean and healthy environment by inter alia, regulating noise pollution and other public nuisance, making provisions for the prevention and control of litter pollution.

Part I (clause 1-3) of the Bill contains preliminary provisions. It names the proposed Act, defines the words and expressions used in the Bill and states the objective of the proposed Act.

Part II (clause 4-13) of the Bill deals with general nuisances.

Part III (clause 14-20) deals with nuisance in roads and streets.

Part IV (clause 21-22) of the Bill is miscellaneous. It provides for a general penalty and gives the executive committee member in charge of environment the discretion to make regulations for the better implementation of this Act.

The enactment of this Bill shall inter alia occasion a reduction in environmental pollution, enhance a clean environment, decongest the streets and bring sanity in the county by eliminating touting.

HON. MOHAMED HATIMY,
Chairperson, Committee on Finance and Economic Planning.

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