

SPECIAL ISSUE

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REPUBLIC OF KENYA

***MOMBASA COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2014

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THE MOMBASA PUBLIC WORKS BILL 2014**A Bill for**

An Act of the County Assembly of Mombasa to provide for the Establishment, Powers and functions of the Directorate of Public Works and connected purposes

ENACTED by the County Assembly as follows—

PART I — PRELIMINARY

1. This Act may be cited as the ‘Public Works Act 2014.’ Short title.

2. This Act shall apply to all buildings and related works in Mombasa County Jurisdiction.

3. In this Act unless the context requires otherwise; Interpretation.
“Directorate” means the directorate of Public works established under this Act.

“Authorized person” means any person authorized with responsible for carrying out any duty or function or delegated to carry out any duty or function in terms of this Act.

“Certificate” means operating authority issued under this Act.

“Director” means the director of The Directorate Public Works under this Act.

“Building Works” includes any kind of building construction, site formation works, ground investigation, foundation works, repairs, demolition, alteration, addition and every kind of building operations and include installation of building services both electrical and mechanical.

“Other works” includes foot bridges, jetties, seawalls, retaining walls and other civil engineering works.

“Built environment” refers to the human-made surroundings that provide the setting for human activity, ranging from individual dwelling and public buildings to neighborhoods that can often include their supporting infrastructure, such as water supply ,sewerage and refuse disposal systems

“Maintenance” means work undertaken in order to keep, restore or improve every facility i.e. every part of the building, its services and surroundings to a currently acceptable standard and to sustain the utility and value of the facility.

“Developer” means any person who has obtained the approval of the Directorate of Public Works to develop any land pursuant to this Act and includes his executors, administrators and successors in title;

“Development” means any land on which any building or infrastructure is constructed or is in the course of construction;

4. (1) The provision of consultancy services in Design, construction and maintenance of all public buildings and other works within the County.

Objectives and Purpose.

(2) The approvals of private building plans and associated works within the County.

(3) The setting and implementation of the lawful standards in the built environment within the County.

PART II — THE DIRECTORATE OF PUBLIC WORKS

5. There shall be established a Directorate of Public works

Establishment of the Directorate.

6. (1) The directorate shall be headed by a Director.

Organization of Directorate; officers and employees.

(2) The Director shall be deputized by Deputy Directors who will respectively be in charge of the following Sections:

- (a) Architectural
- (b) Quantities and Contracts
- (c) Electrical and Mechanical
- (d) Structural and Civil engineering
- (e) Maintenance of buildings and other works.

(3) The functions of the Directorate of Public Works shall be to—

Functions and Duties of the Directorate.

- (a) Enforce the provisions of this Act;

- (b) Undertake the design, documentation and supervision of construction and maintenance of all public buildings and other works in the county;
- (c) provide consultancy services to county government departments and/ or public bodies;
- (d) supervise construction projects; issue maintenance certificates; and maintain a register of public buildings;
- (e) approve all private building designs and plans;
- (f) serve on the owner or occupier of a building which in the opinion of the Directorate of Public Works is of special architectural value or historic importance, an order prohibiting the demolition, alteration or extension of such building, subject to the provisions of the Antiquities and Monuments Act, after consultations with the Board of National Museum;
- (g) preserve and conserve historical buildings and promote cultural building practices and heritage in liaison with other Government bodies;
- (h) advise the Executive Member on all aspects of physical development and building operations in the built environment sector within the county;
- (i) keep and maintain a register of qualified persons, authorized persons and accredited checkers;
- (j) revise and update the Built Environment Regulations at least once in every two years;
- (k) facilitate research, training and development in Built environment; and to disseminate information to the public on Built environment requirements;
- (l) promote and co-ordinate Public Private Partnership programmes in Built environment;
- (m) enforce the maintenance of buildings and associated infrastructure;

- (n) recognize, develop and promote emerging and indigenous technologies and research in built environment components.

(4) (1) The Directorate shall have powers necessary for the performance of its functions under this Act and in particular the Directorate shall set and implement standards in the Built environment and shall have the power to—

Powers of the
Directorate.

- (a) exercise oversight in relation to the application and enforcement of this Act.
- (b) inspect any building and order maintenance, or sealing off, or evacuation, or demolition, or and stop construction of buildings not conforming to this Act and or dilapidated or dangerous buildings.
- (c) take such other action as may be necessary in the furtherance of the objectives of this Act and the Regulations made there under.
- (d) develop ordinance for urban design of the zones for the purpose of setting character of the developments, and the Directorate shall have the powers to delegate in writing any of its functions under this Act, to any County Directorate or agent and may at any time revoke or vary such delegation:

Provided that no such delegation shall be deemed to divest the Directorate of all or any of its functions, and it may, if it thinks fit, perform such function notwithstanding that it had delegated those functions.

9. The Directorate shall have the following functions to the County Government:

- (a) Provide Architectural, structural, quantities and contracts, electrical and mechanical building services to the County Government and other public institutions/agencies;
- (b) Facilitate adequate provision of cost effective environmentally friendly Government buildings and other public works;

- (c) Develop and maintain building facilities for government operations;
- (d) Develop, coordinate and implement all policies related to mechanical and electrical building services;
- (e) Ensure good practice in the entire building industry within the County.

PART III — ESTABLISHMENT OF RESEARCH, TRAINING AND CONTROL OF PRIVATE BUILDING WORKS

9. There shall be established a research centre for the purposes of—

Establishment of
Research centre.

- (a) carrying out research in built environment components;
- (b) Developing and promoting emerging and indigenous appropriate building technologies;
- (c) Training and Dissemination of building Information.

10. Except as otherwise provided in this Act, no person shall commence or carry out, or permit or authorize the commencement or carrying out of, any building works and associated civil works unless all the architectural and structural plans and other required documents have been approved under these laws.

Control of Private
building works.

11. Any person who contravenes or fails to comply with section 9. shall be guilty of an offence and shall be liable on conviction to a fine of not less than five hundred thousand shillings or to imprisonment for a term of not less than six months or both.

12. Subject to section 9, neither the approval of any plans nor the consent to the commencement of any building works or street works shall be deemed—

- (a) to confer any title to land;
- (b) to act as a waiver of any term in any lease or license; or
- (c) to grant any exemption from or to permit any contravention of any of the provisions of this Act, or any other written law.

13. Subject to the provisions of this Act, the person for whom any proposed building works are to be commenced or carried out may apply to The Directorate of Public Works in the prescribed form for approval of the plans of the building works and such application shall be accompanied by—

- (a) the prescribed fee;
- (b) the plans of the building works prepared in accordance with the Regulations;
- (c) unless otherwise prescribed a certificate by an Accredited Checker where applicable in respect of the plans relating to the structural elements of the building works stating that, to the best of his knowledge and belief, the plans so checked do not show any inadequacy in the key structural elements of the building works carried out in accordance with those plans; and
- (d) such other documents as may be prescribed in the Regulations;
- (e) a brief description of the nature and purpose of the development and a report in line with Environmental Management and Co-ordination Act.

14. The Directorate of Public Works shall cause a list of all plans which meet the requirements of section 12 to be displayed in a conspicuous county place within the Directorate of Public Works' designated locations for a continuous period of fourteen days indicating the following—

- (a) reference number of the applicant;
- (b) the street name;
- (c) name of the area;
- (d) the land reference number;
- (e) gross area and height of the building;
- (f) the nature of the development.

15. (1) Every Authorized Person shall submit to the Directorate of Public Works a soft and hard copies of all documents relating to the building works to which he has been assigned.

9. Such documents shall be permanent records of the Directorate of Public Works.

PART IV—REGISTRATION OF BUILDINGS

16. The Directorate of County Works shall keep and maintain a Register hereinafter referred to as the "Register of Buildings" in which the prescribed particulars of all buildings which comply with the requirements of this Act and which have been issued with an occupation certificate shall be entered. The absence of the particulars of any building from the Register shall be *prima facie* evidence that the building is not so registered and, or does not comply with the requirements of this Act.

17. The Register of buildings shall be a county document and any person may, upon payment of a fee to be prescribed by The Directorate of Public Works, apply for a certificate of search of any registered building.

18. The Register of Buildings shall contain the following particulars:

- (a) Registration number allocated by the Directorate of Public Works;
- (b) The Land Registration Number;
- (c) The physical location of the building;
- (d) The size of the land on which the building is situated;
- (e) The limitation of use;
- (f) The last Inspection date;
- (g) The next inspection date;
- (h) The building's plan approval number;
- (i) The name of the owner;
- (j) The area of the building in square meters;
- (k) Height of the building in storey's or floors;

PART V — STORM WATER MANAGEMENT

19. (1) The county may:

- (a) Construct, expand, alter, maintain or lay any drains, pipes or other structures related to storm water system on or under immovable property.

Provision of
Infrastructures.

- (b) Drain storm water or discharge water from any county public works into any natural water course, and
- (c) Do any other thing necessary to give effect to this Act

(2) Ownership of any drains, pipes or structures related to storm water shall vest in the county.

20. A person shall not, unless with the written consent of the Director and subject to any conditions it may impose;

Protection of storm
water system

- (a) Discharge, permit to enter or place anything other than storm water into the storm water system.
- (b) Damage, endanger, or destroy the storm water system or its operation.
- (c) Construct or erect any structure or thing or over or in such a manner to interfere with or endanger the storm water system or its operation.
- (d) Discharge, permit to enter or place anything likely to cause storm water pollution.
- (e) Make an opening into a storm water pipe, canal or culvert.
- (f) Drain, abstract or divert any water directly from the storm water system.
- (g) Fill, excavate, shape, landscape, open up or remove the ground above, within, under or immediately next to any part of the storm water system.

21. A person shall not, except with the written consent of the Director and subject to any conditions it may impose, undertake in any activity which alone or in combination with other existing or future activities, may cause an increase in the food levels or create a potential flood risk.

Prevention of flood
risk.

22. (1) The conditions which the Directorate may impose under section 20 may include:

Studies and assessment.

- (a) The establishment of flood lines;
- (b) The undertaking of impact assessments, and
- (c) Environmental impact studies or investigations which may be required by any applicable environmental laws.

(2) Any study done under subsection will be at the expense of the application.

23. (1) Where there is a storm water pollution incident as contemplated in this Act, the owner of the property on which the incident took place or is still in the process of taking place or the person responsible for the incident shall immediately report the incident to the county.

Water incidents. pollution

(2) The county may in its opinion require that such persons take all reasonable measures to minimize the effects of the pollution at their own cost.

24. Every owner of property on which private storm water systems are located shall—

Storm water systems on private land.

- (a) Not carry out any activity which could reasonably be expected to impair the effective functioning of the storm water system; and
- (b) At his own cost, keep and maintain such storm water systems functioning effectively, including undertaking its refurbishment or reconstruction.

(2) The provision of subsection (ii) does not apply to the extent that the county has accepted responsibility for any of the duties in a formal agreement or in terms of a condition of servitude.

(3) The county executive member for the time being responsible for matters related to public works may make regulations relating to the manner of disposing water falling or coming to rest within private property.

Regulations.

MEMORANDUM ON THE PROPOSED MOMBASA PUBLIC WORKS BILL, 2014

1. PURPOSE

The principal object of this Bill is to establish a legal framework for the establishment of a Directorate of Public Works, which shall be tasked to oversee all public works within the county. This is intended to enhance efficiency and accountability in the organization and carriage of public works such as maintenance of buildings, structural and civil engineering, electrical and mechanical works, quantities and contracts.

The Bill proposes to establish the Directorate of Public Works and prescribes the values to be adhered to by members of the Service.

The Bill further seeks to establish a research, training and development centre.

2. OUTLINE OF THE BILL

Part I (clauses 1–3) of the Bill contains preliminary provisions. It names the proposed Act, defines the words and expressions used in the Bill and lists the objects of the proposed Act. It also defines the jurisdiction of the Act.

Part II (clauses 4–7) of the Bill sets out the institutional framework that will facilitate the administration of the Act. The institutional framework includes the Directorate of Public Works comprised of the Director and senior officers in the relevant county government departments.

It makes further provisions for the organization of the Directorate, its officers and employees, functions and duties of the Directorate as well as powers of the Directorate.

Part III (clauses 8) of the Bill establishes a Research, Training and Development Centre for the purpose of carrying out research, developing and promoting emerging and indigenous building technologies and dissemination of building information.

Part IV (clauses 9–14) sets out the administrative framework of the Bill regarding control of private building works, including the approval of architectural and structural plans for any building works within the county government.

Part V (clauses 15–17) of the Bill provides for the registration of buildings.

Part VI (clauses 18–23) of the Bill contains provisions for management of storm water and under it we have provisions for storm

water management infrastructure, protection of storm water system, prevention of floods, flood impact assessment inter alia.

3. RECOMMENDATIONS

The Assembly is urged to:

- (a) Note the contents of this Memorandum;
- (b) Approve the Mombasa County Public Works Bill, 2014 annexed to this Memorandum; and
- (c) Authorise the Speaker to publish the Bill and present it to the County Assembly for debate and enactment.

HON. MURFAD AMUR,
Chairperson, Committee on Public Works and Transport.

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