**SPECIAL ISSUE**

*Mombasa County Gazette Supplement No. 15 (Bills No. 13)*



REPUBLIC OF KENYA

# MOMBASA COUNTY GAZETTE SUPPLEMENT

## BILLS, 2015

**NAIROBI, 21st December, 2015**

CONTENT

Bill for Introduction into the County Assembly of Mombasa—



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# THE MOMBASA COUNTY TAX WAIVER AND VARIATION BILL, 2015

## ARRANGEMENT OF CLAUSES

*Clause*

# THE MOMBASA COUNTY TAX WAIVER AND VARIATION BILL, 2015

**A Bill for**

**AN ACT of the County Assembly of Mombasa to regulate the waiver and variation of taxes pursuant to article 210 of the Constitution of Kenya, 2010 and section 159 of the Public Finance Management Act, 2012; and for connected purposes**

**ENACTED** by the County Assembly of Mombasa, as follows—

## PART I—PRELIMINARY

Short title and Commencement.

**1.** This Act may be cited as the Mombasa County Tax Waiver and Variation Act, 2015.

Commencement.

**2.** This Act shall come into operation upon publication in the *gazette.*

Interpretation.

**3.** In this Act, unless the context so otherwise requires—

"Assembly" means the County Assembly of Mombasa;

"Executive committee member" means the executive committee member responsible for finance;

"Tax" includes any revenue or licensing fee payable by any person to the County Government whether it has become due or not.

"Tax waiver" includes the forbearance of tax collection, partial or full remission, spreading out a payment in respect of tax already accrued and any variation of the amount due or interest or penalty due on any amount owing to the County Government.

Objects of the Act.

**4.** The object of this Act is to—

(a) give further effect to article 210 of the Constitution as regards tax waivers and administration thereof;

(b) to ensure transparency in the administration of taxes and other revenue in particular in the waivers thereof;

(c) to provide for the procedure applicable to and requirements for tax waivers.

## PART II—ADMINISTRATION OF TAX WAIVERS AND VARIATION

Tax Waiver and variation to be in accordance with the law.

**4.** No tax maybe waived or varied except in the manner provided for in this Act, any applicable national legislation or any other Act of the Assembly.

Authority of the Executive Committee Member to waive or vary.

**5.** (1) The executive committee member may, where he or she deems it appropriate, and with concurrence in writing, of the Governor, waive or vary the payment of any tax, fees or other payment due to the county government.

(2) The power of the executive committee member to waive or vary tax shall be exercisable, in respect of every transaction, with the written approval of the Governor, but in any case, in the following circumstances—

(a) where the waiver or variation is for purpose of encouraging defaulting tax payers to pay such amount as may enable the county government recover part of the amount owing from the defaulting payer;

(b) where, in the opinion of the county executive committee member, there exist such compelling circumstances that make it equitable, expedient and in the interest of the financial advantage to the county that the waiver or variation be made;

(c) for any other public interest reason, in consultation with the Governor.

Publication of Intention to waive or vary.

**6.** (1) Where the executive committee member intends to waive or vary any tax, he or she shall publish such intention in the *gazette* not less than fourteen days before the intended date of the waiver or variation.

(2) The notice referred to in subsection (1) shall indicate the reason for the intended waiver or variation and shall invite comments from the public on the intended waiver or variation.

Report of waivers and variations.

**7.** Every waiver and variation shall be reported to the Assembly and published in the *Gazette* not more than fourteen days after it is granted.

Records of tax waiver and variations.

**8.** Pursuant to article 210 of the Constitution, the executive committee member shall in respect of every waiver or variation of tax—

(a) maintain a public record of each waiver or variation together with the reason for it;

(b) report.

**9.** The executive committee member shall not waive or vary tax or fees or authorise the exclusion of a State Officer or public officer from payment of tax or fees by reason of the office held by the State Officer or public officer or the nature of the work of the State Officer or Public Officer. No waivers for public Officers.

**PART III—MISCELLANEOUS**

**10.** (1) The executive committee member may, with the approval of the Governor, make regulations for the better carrying out of the provisions of this Act. Regulations.

(2) Without prejudice to provide for the procedure in accordance with subsection (1), the regulations may provide for—

(a) the procedure of application for tax waivers and variations;

(b) where any payment of tax is due, the time within which waivers may be applied for:

(c) the requirement with respect to documentation that may be required with the application for tax waivers or variations.

## MEMORANDUM OF REASONS AND OBJECTS

The purpose of this Memorandum is to request the County Assembly's consideration and approval of the Mombasa Tax Waiver and Variation Bill, 2015 and its direction that the Bill be published for introduction in the County Assembly.

Article 210 of the Constitution and section 159 of the Pubic Finance Management Act, 2012 provides for the imposition and conditions for the waiver and variation of taxes. This bill therefore proposes to give further effect to the Constitution by providing for the conditions of the administration of tax waivers and variations by the County Executive committee member responsible for finance.

**PART I** of this Bill is preliminary. This Part names the proposed Act, defines words and expressions used in the Bill. It also provides for the commencement of this Bill if passed into law and its object as well as the objects of the Act.

**PART II** of this Bill provides among others that the executive committee member responsible for finance may, where he or she deems it appropriate, and with the concurrence of the Governor, in writing, waive the payment of any tax, fees or other payment due to the County Government.

**PART III** of this Bill provides for miscellaneous aspect which provides for regulations that may be drafted by the executive committee member for the better carrying out of the functions of the Act.

## RECOMMENDATIONS

The Assembly is requested to—

(a) note the contents of this Memorandum;

(b) approve the Mombasa Tax Waiver and Variation 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.

MOHAMED HATIMY,
*Chairperson, Committee on Finance and Budget Appropriation.*