

SPECIAL ISSUE

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**THE THARAKA NITHI LAWS INSPECTORATE, COMPLIANCE
AND ENFORCEMENT BILL, 2016**

A Bill for

AN ACT of the County Assembly of Tharaka Nithi to provide for the establishment of Tharaka Nithi County Laws Enforcement Inspectorate Unit and for matters connected thereto

ENACTED by the County Assembly of Tharaka Nithi as follows—

PART 1—PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Tharaka Nithi County Laws Enforcement Inspectorate Unit Act, 2016 and shall come in to force on a day to be Gazette by Governor.

Interpretation

2. In this Act, unless the context otherwise requires—

“Animals” include domestic animals, wild animals and poultry;

“Board” means the County Public Service Board of Tharaka Nithi County establishment under section 57 of county Government Act, 2015;

“committee” means the disciplinary committee established under Section 8 of the Act. “Compliance enforcement” includes action taken to establish compliance of any requirement by a county law or, enforcing compliance of county laws and pursuing punishment for committing an offence under a county law;

“Court” means a magistrate court designated to handle criminal matters arising from county laws;

“Governor” means the Governor of the County Government of Tharaka Nithi;

“Member of County Executive Committee” means the County Executive Member responsible for matters pertaining to enforcement of county laws;

“Officer” means an officer appointed under section 5;

“Premise” means any building or structure where a regulated activity is undertaken but does not include residential houses;

“Regulated activity “ means any activity, trade or business whose undertaking, a county law requires obtaining of a license, permit, approval or payment of service fee, by or to relevant county organ;

“Relevant county organ” means the organ or department responsible for licensing, issuing permit, collecting services fee or approving an activity.

“Unit” means the Inspectorate unit established under Section 4. “Vessel” includes motor vehicles, motorbikes, bicycles and any other motorized or non-motorized vessel.

Object of the Act

3. The objects of this Act are—

- (a) to provide for institution framework for the enforcement of the County laws; and
- (b) to regulate the actions of County Inspectorate officers

PART II—ESTABLISHMENT OF THE COUNTY LAWS ENFORCEMENT INSPECTORATE SERVICE

Establishment of inspectorate

4. (1) There is hereby established a unit known as Tharaka Nithi Laws enforcement Unit and inspectorate stations inspectorate unit

(2) The member of the county Executive Committee shall publish in the Kenya and County Gazette, the establishment and location of every Inspectorate Unit Station in the County

Functions of the Inspectorate unit

5. (1) The Inspectorate Unit shall be responsible for—

- (a) protecting and guarding the property of the county;
- (b) Enforcement of compliance with the Tharaka- Nithi County Laws and Regulations;
- (c) Inspection for compliance with trade licenses and permits;
- (d) Protection of public entertainment sites;
- (e) Enforcement of barrier cess and royalties;
- (f) Service fee and land rates collection; and
- (g) Prevention of crime in the County

(2) In addition to the matters listed at sub-section 1, the unit shall be responsible for compliance enforcement of any other matter that it may be required to do so by any other written law or as directed by any department in the county government.

PART III—APPOINTMENT, DEVELOPMENT, RANKING AND DISCIPLINE OF OFFICES

Appointment of inspectorate officer

6. (1) The County Service Board shall, in consultation with the member of the county executive committee, competitively recruit and appoint officers into the Unit

(2) The Board shall ensure that recruitment and appointment of officers into the unit reflects ethnic and geographical diversity of the people of the Unit

Deployment Ranking of officers

7. (1) The Board shall be responsible for deployment, demotion of the promotion, and officers

(2) The Board shall develop the various ranks of officers in the unit shall publish ranks in the Kenya and County Gazettes.

Establishment of the Disciplinary committee

8. (1) There is established an internal disciplinary committee that Shall be responsible for maintaining discipline in the inspectorate Units.

(2) The Committee shall comprise of—

- (a) the Chairperson who shall be the Chief Officer in charge of the Inspectorate;
- (b) three persons from the Inspectorate unit chosen by the County Executive Committee member;
- (c) a representative from the County Legal Office or department; and
- (d) a representative from the County Public Service Board

(3) At any disciplinary proceedings, an officer shall be represented by a presentative/advocate of their choice.

Powers of the disciplinary committee officer

9. (1) The Disciplinary committee shall have power to:

- (a) receive and investigate a complaint regarding an inspectorate
- (b) summon and interrogate witnesses
- (c) call for or require the product of documents for examination;
- (d) recommend the appropriate disciplinary action against an inspectorate officer to the Public Service Board;

- (2) The disciplinary actions the committee may recommend include;
- (a) interdiction of an officer;
 - (b) suspension;
 - (c) dismissal;
 - (d) demotion;
 - (e) deduction of salary; or
 - (f) transfer to another inspectorate unit within the county.

Appeals

10. (1) Any officer aggrieved by the decision of the disciplinary Committee may appeal to the high court.

(2) No further appeal may lie from the decision of the High Court in exercise of its appellate jurisdiction as relates to any provision of this Act.

(3) The right to appeal does not bar any person from applying for judicial review against the decision of the Disciplinary Committee.

PART IV— POWERS OF OFFICERS

Powers of entry

11. (1) An officer may, at all reasonable times, enter upon any premises authorised officer or place in which there is a reasonable ground to believe that a regulated activity is been under taken, for the purpose compliance enforcement.

(2) If an officer acting under subsection (1) is satisfied that a regulated activity is taking place or is about to take place contrary to a lawful requirement, the officer may order immediate stoppage of the activity.

(3) An officer may apply to a magistrate for a warranty to enter, inspect and impound goods in any premises where he reasonably suspects that an activity is about to or being undertaken contrary to any county laws and where entry has been refused.

Power to arrest

12. (1) Where an officer has a reasonable ground to believe that an offence has been committed or is about to be committed under any county law,

The officer may arrest—

- (a) the person committing or who is about to commit the offence
- (b) where the offence relates to a regulated activity—

- (i) the proprietor of the activity; or
- (ii) An employee of the proprietor; or
- (iii) Any other person whom the officer reasonably believes that is involved in the execution of the activity.

(2) An officer may use reasonable force to execute, where a person is believed to have committed a crime or is about to commit a crime under county law resists an arrest.

Production in court or Police station

13. Where an officer arrest any person under section 12 above he or she shall immediately forward the person arrested to the nearest police station or produce such person in Court within 24 hours.

Power to impound goods

14. (1) where an officer has reasonable ground to believe that a person is trading in goods centrally to any county law the officer may Impound on the goods and cause them to be stored at the Inspectorate station until the person involved complies With the law or the case against him is determined in court.

(2) Any goods impounded that are subject to rapid decay shall be disposed of with the authority of the magistrate after a full inventory has been taken and any other records of the same including photographs submitted to court.

(3) Subsection 1 shall not preclude the relevant county organ manner permitted by order of the court or by any other law.

Impounding of vessels

15. Where an officer reasonably believes that a vessel is parked or controlled in any manner contrary to any county law or without payment of prescribed parking fee, the officer may impound the vessel by clamping or towing it to the nearest Inspectorate Unit Station.

Power to impound

16. An officer may impound any animal that is kept contrary to any animal County law.

Identification of an Officer

17. An officer shall sufficiently identify himself while exercising any of the powers under this part.

Un approved building and structures

18. (1) It shall be unlawful for any person to erect, build establish or keep any structure, building, shed, kiosk or any other structure whatsoever or for whatever purpose on any area or public or private without approval of the County Government.

(2) Where it has come to the attention of the County Government that there is or are such structures mentioned in section (1) above which have been put constructed or erected without County Government Approval, the County Government shall give the owner or occupier of such structure seven (7) days notice to demolish the structure or obtain County Government approval.

(3) If the owner and the occupier does not demolish or obtain approvals within seven (7) days, the County Government may demolish such structures and surcharge the owner of the plot or person who has constructed the costs of demolition

Cost of demolition

19. (1) The surcharge mentioned in section 15 (3) herein above may

- (a) Be added to rates payable by rent and or
- (b) Be recovered by the County Government as a civil dent

(2) An invoice raised by the County Government shall be premier facie evidence of expenses incurred by the County Government for the demolition.

Service of notice

20. Any notice required to be given shall be deemed and have been served if:

- (a) it is placed on a conspicuous place of the structure or building;
- (b) served upon the owner, or
- (c) served upon the occupant.

PART V— OFFENCES**Impersonating an officer**

21. Any person who impersonates an officer under this Act, commits an offence and shall be liable, upon conviction, to pay a fine of not more than five hundred thousand or imprisonment for a period not exceeding three years, or both.

Obstruction of an Officer

22. Any person who wilfully arrest, obstruct or interferes with the duties of an inspectorate officer commits an offence and shall be liable upon conviction to a fine not exceeding Kenya shillings 50,000 or to imprisonment for a term not exceeding one year or to both.

Destruction of county Property

23. (1) Any person who defaces or destroys any property being the property of the County Government commits an offence and shall be liable upon conviction to a fine not exceeding Kenya shillings 50, 000 or to imprisonment for a term not exceeding one year or to both.

(2) In addition to the penalties prescribed in sub- section 1 above, the person so convicted under this provision shall be liable to pay damages or costs of repair to the County Government for the property destroyed.

General Penalty

24. Any person who is convicted of an offence under this Act for which no penalty is prescribed shall upon conviction of that offence be liable to a fine not exceeding Kenya shillings 50,000 or to imprisonment for a term not exceeding one year or to both.

PART VI—MISCELLANEOUS PROVISIONS

Fines and other public

25. All fines imposed and recovered by a competent court on an offender shall be paid to and collected by the County as Revenue.

Arrangement with other public offices

26. The Governor and the member of the County Executive Committee shall put in place arrangement with—

- (a) the Director of Public Prosecution for the purpose of facilitating prosecution of those who contravene county laws;
- (b) the judicial Service Commission of Kenya for the purpose of allocation and designation of magistrates to adjudicate on criminal matters arising from county laws and county offences into the County Revenue Fund;
- (c) the relevant public authorities dealing with matters of incarceration of criminal suspects and convicts.

Regulations

27. The County Executive Committee Member may consultation with the relevant departments and committees in the county Governments make regulation to—

- (a) Further prescribe and regulate the conduct of Inspectorate Enforcement officer;
- (b) Facilitate the implementation of this Act;

SCHEDULE 1
STRUCTURE OF THE INSPECTORATE ENFORCEMENT
DEPARTMENT

The Structure of the Inspectorate enforcement department shall be as follows in order of their rank—

- (a) chief Officer in charge of Inspectorate.
- (b) director of enforcement.
- (c) principle enforcement officer.
- (d) county enforcement officer.
- (e) sub-county enforcement commander.
- (f) senior superintendent.
- (g) superintendent.
- (h) chief inspector.
- (i) inspector.
- (j) senior sergeant.
- (k) sergeant.
- (l) officers.

MEMORANDUM OF OBJECTS AND REASONS

The County Government of Tharaka Nithi is indeed a government, properly constituted under the Constitution of Kenya. The government has two arms, namely, the executive and the county assembly. The County Assembly has the mandate on matter of county legislation. This legislation includes regulation of various matters within the purview of the powers and functions of the county government.

County legislation like any other law requires implementation and enforcement. To achieve enforcement of the laws, the County government must through legislation, establish a proper institution framework with specific powers geared at enforcing the county laws.

Enforcement includes inspection of compliance with county laws, arrests of those who offend the county law, their prosecution, and judicial determination of accusations and punishment of those who offend the county law.

The arresting or impounding officer must have a legal backing from which such power should be given.

It is upon the above consideration that this Bill seeks to provide county laws enforcement institutions and their powers.

The structure of the Bill is as follows:

PART I of the Bill contain the preliminary provisions.

Clause 1—states the title of the Bill and clause 2 deals with interpretation of terms as used in the Bill. Clause 3 states the objects of the bill'

PART II

Clause 4 and 5 — provides for the establishment of Inspectorate unite and Inspectorate Unit Stations and the responsibilities and functions of the Inspectorate Unit.

PART III

Clause 6-8 — provides for the appointment of Inspectorate officers, their deployment, promotion discipline and ranking. It also makes provision for the establishment of the Disciplinary Committee which is tasked with the maintenance of discipline within the inspectorate unit and the power of the Disciplinary Committee.

This part also provides for a mechanism of appeal from the decision of the disciplinary committee.

PART IV

Clause 11-16—provides for the various powers which have been bestowed upon the inspectorate officers. Clause 17 requires them to identify themselves in every situation.

Clause 18 and 19—make provisions that deal with unapproved building and the consequences of such buildings.

Clause 20 provides for the mode of service of notices.

PART V

Clause 21-24—provides for the offences created under this Act and their punishment. There is also a provision for general penalty in cases where no penalty is provided for an offence.

PART VI

Clause 25- 27—are miscellaneous provisions which deal with the issue of fines, co-operation with other organs and the power to make regulations.

ZACHARY MPANDA,
Chairman Justice and Legal Affairs committee.