REPUBLIC OF KENYA

MOMBASA COUNTY GAZETTE SUPPLEMENT

BILLS, 2014

NAIROBI, 10th June, 2014

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administration costs and other expenses shall be provided by the County Assembly and payable from the county Revenue Fund.

6. (1) The Office shall comprise—

(a) a chairperson who shall be appointed by the Governor with approval of the County Assembly;

(b) four members nominated by the bodies and organizations specified under subsection (2), who shall be appointed by the Governor with approval of the County Assembly;

(c) two ex-officio members representing the county departments; and

(d) the secretary who shall be an ex-officio member.

(2) The members referred to under subsection (1) (b), shall be nominated by—

(a) an association representing the private sector in the county;

(b) a cluster representing the registered associations of the informal sector in the county; and

(c) a cluster representing the civil society and non governmental organizations.

7. (1) The appointment and nomination of the chairperson and members of the Office shall be—

(a) carried out in a competitive and transparent manner;

(b) based on merit; and

(c) in line with the constitutional requirements for public service.

(2) A person is qualified for appointment as chairperson or member of the Office if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a recognized university;

(c) has knowledge and relevant experience in community service or social work; and

(d) meets the requirements of leadership and integrity set out in chapter six of the Constitution.
(3) A person shall not be qualified for appointment as the Chairperson or as a member under section (1) if such person—

(a) is declared to be of unsound mind;

(b) is an un-discharged bankrupt; or

(c) has been removed from office for contravening the provisions of the Constitution or any other written law.

8. (1) The Office of Public Participation shall facilitate and co-ordinate public participation in the governance of the county including the participation of communities, organizations and citizens forming the public in the decentralized units within the county.

(2) In the performance of its function and obligations under subsection (1), the Office will facilitate and oversee the effective co-ordination of the operations of the Office and shall—

(a) establish structures for public participation as is required under section 91 of the County Governments Act;

(b) ensure that public participation activities are inclusive of the broad spectrum of the public and not limited to the traditional sector stakeholders;

(c) formulate policy relating to public participation;

(d) advise county government on the operations of the Office;

(e) collaborate with relevant institutions in the county to promote access to information and civic education programmes;

(f) provide the public with a clear context for which public participation is to be undertaken and how decisions will be made.

(g) inform the public of existing or potential linkages with other policy initiatives, issues or public participation activities;

(h) inform the public on whether financial resources correspond to the nature and scope of the public participation planned;
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(i) ensure that clear and reasonable timelines are established for public input and comment and that these timelines are communicated to the participants;

(j) ensure that the public participation device used is appropriate to the nature of the policy initiatives, issues involved, the target groups affected and the staff and resources available;

(k) establish a feedback process to the public including opportunities for the public to forward additional comments or input to the decision taken;

(l) develop an evaluation framework to the public participation plan;

(m) ensure that the public, affected groups, and stakeholders are informed of the results of the public participation process and how their input was used in the decision taken;

(n) ensure that public participation processes adhere to the relevant legislation, regulations, policies or guidelines affecting the rights and responsibilities of the public, officers and the different participants involved;

(o) establish whether there is support for the development of new public participation techniques and technologies;

(p) provide logistical support and strategies to the County Assembly, including the development of consultation plans and information facilitating public participation in any matter before the Assembly;

(q) maintain an up to date database or inventory of all its activities;

(r) carry on research on matters relating to public participation generally;

(s) prepare and submit reports to the County Assembly on the status of the implementation of its functions and obligations under this Act;

(t) prepare and submit an annual report to the Governor for submission to the county assembly
on the status of public participation in the affairs of county governance;

(u) perform any other function as may be assigned by legislation.

(3) In the performance of its functions and obligations under this section and Part III, the Office shall be guided by the guidelines provided in the First Schedule.

(4) Despite subsection (1), the County government organ or entity desiring to be facilitated to convene a public participation activity as required by any relevant law, to show to the Office that it can mobilize the relevant public for that public participation activity.

(5) Two months before the end of the financial year, every County government organ or entity required to undertake public participation must submit a timetable of public participation activities envisioned for the next financial year to the Office.

9. (1) The Office shall do or perform all such other acts as may be necessary for the proper discharge of its functions under this Act or as may lawfully be done by a public office.

(2) Without prejudice to the generality of subsection (1) the Office shall have power to—

(a) advise the county executive committee on matters of policy relating to public participation;

(b) enter into agreements or arrangements with any institution, association or professional organizations as the Office may consider appropriate in furtherance of the purpose for which the Office is established;

(c) enforce set standards regarding public participation;

(d) manage, supervise, secure and administer the assets of the Office in such manner as best promotes the purpose for which the Office is established;

(e) delegate any of its powers to any officer, employee, agent, section or committee of the Office;
(f) undertake any activity necessary for the fulfillment of any of its functions under this Act.

10. (1) The Office may establish functional based committees for the better carrying out of its functions.

(2) A committee established under subsection (1) may comprise members of the Office and such other co-opted persons who may not be more than two as the Office may determine.

(3) No decision of any committee shall be effective unless it has been confirmed by the Office.

11. (1) The chairperson shall be appointed for a term of three years and is eligible for re-appointment for one term upon exemplary performance.

(2) The chairperson and members of the Office may serve on a part time basis.

12. (1) The chairperson and members of the Office, other than the ex-officio members, shall be paid such salary, allowances and benefits as the County Executive Committee shall, with the approval of the County Assembly and on the advice of the Salaries and Remuneration Commission determine.

(2) The ex-officio members of the Office shall be paid such allowances and benefits as the County Executive Committee shall, with the approval of the County Assembly and on the advice of the Salaries and Remuneration Commission determine.

13. (1) The chairperson or a member may be removed from office for—

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct;

(c) incompetence or negligence of duty;

(d) bankruptcy;

(e) is found guilty of professional misconduct by the relevant professional body;

(f) in any particular case, failure to declare his or her interest in any matter being considered or to be considered by the board or committee; or
(g) absence from three consecutive meetings of the Office without a reasonable explanation.

(2) A member may be removed from office of chairperson or member of the Office on any of the grounds in subsection (1) by—

(a) the Governor;

(b) the Office, supported by the vote of at least two-thirds of the members of Office; or

(3) Before a member is removed from office under subsection (2), the member shall be given an opportunity to provide a defence against any of the allegations against him or her.

14. A person shall cease to be a member of the Office if that person—

(a) delivers a written statement of resignation to the Governor;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(c) is declared bankrupt;

(d) is unable to perform the functions of his or her office by reason of mental or physical incapacity;

(e) ceases to be a member of the nominating body in accordance with section 6 (2);

(f) dies.

15. Where a vacancy occurs in the membership of the Office under section 13 or 14, the Governor shall appoint a new member in accordance with the provisions of this Act.

16. (1) There shall be a secretary to the Office who shall be competitively recruited by the County Public Service Board and appointed by the Governor.

(2) A person shall be qualified for appointment as a secretary to the Office if the person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;
(c) has at least seven years proven experience at management level;
(d) has extensive experience in public administration; and
(e) meets the requirements of Chapter Six of the Constitution.

(3) The secretary shall be the chief executive officer of the Office and head of the secretariat and shall be responsible to the Office.

(4) The secretary shall hold office for a term of five years and shall be eligible for re-appointment for a further term of five years.

17. (1) The secretary may be removed from office by the Governor in accordance with the terms and conditions of service if—
(a) is unable to perform the functions of the office by reason of mental or physical incapacity;
(b) is declared or becomes bankrupt;
(c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
(d) delivers a written statement of resignation to the Governor;
(e) without reasonable cause, is absent from three consecutive meetings of the board or committee within one financial year;
(f) found guilty of professional misconduct by the relevant professional body;
(g) disqualified from holding a public office under the Constitution;
(h) convicted of an offence and is sentenced to imprisonment for a term of six months or more;
(i) where required, fails to declare his or her interest in any matter being considered or to be considered by the Office;
(j) engages in any gross misbehaviour or gross misconduct.
(2) Before the Secretary is removed from office under subsection (1), the Secretary shall be given—

(a) sufficient notice of the allegations made against him or her; and

(b) an opportunity to present his or her defence against the allegations.

18. (1) The business and affairs of the Office shall be conducted in accordance with the Second Schedule.

(2) The Office may regulate its own procedure subject to the law governing meetings and proceedings of Boards of State Corporations.

(3) The Office may invite any person to attend any of its meetings and to participate in its deliberations, but that person shall not vote on any matter requiring decision of the Office.

19. No matter done by a member of the Office or any officer, employee or agent of the Office shall, if the matter is done in good faith while executing the functions, powers or duties of the Office, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever.

PART III—RESIDENTS PARTICIPATION FORUM

20. (1) The Office shall facilitate the convening of a residents' participation forum on the request of the county executive committee or county assembly.

(2) The Office shall, when a forum is convened, ensure that the forum is fully publicized to enable the attendance and participation of a wide section of the population, including gender and marginalized groups and communities.

(3) The Office shall facilitate meaningful participation of the residents in the forum including—

(a) ensuring accessibility to the forums; and

(b) the use of language that is understandable by the residents including person with disabilities.
21. The Office shall facilitate the convening of a residents participation forum to discuss and give views on—

(a) issues of public interest in the county;
(b) the implementation of county policies and plans;
(c) the administration and functioning of the county; or
(d) the delivery of services by the county public service in the county.

22. The forum shall be open to all residents of the county who desire to attend and residents shall be allowed to speak through representatives or directly.

23. The convener of the forum must ensure that the forum is fully publicized to enable attendance and participation of a wide section of the population, including marginalized groups and communities.

24. (1) A person from this county may request facilitation for purposes of convening a resident initiative forum from the Office.

(2) Where the Office declines to issue a request under subsection (1), the Office shall issue written reasons for such decline.

(3) A person dissatisfied with the decision of the Office under subsection (2) may appeal to the relevant county executive committee member for review of that decision.

PART IV—PETITIONS

25. A petition to County Executive Committee shall be in the form set out in the third Schedule and shall—

(a) be handwritten, printed or typed;
(b) be in English or Kiswahili and be written in temperate language;
(c) be free of alterations and interlineations in its text;
(d) be addressed to the secretary;
(e) have its subject-matter indicated on every sheet if it consists of more than one sheet;
(f) confirm that efforts have been made to have the matter addressed by the relevant body and that there has been no response on the matter from the relevant body or that the response has not been satisfactory;

(g) confirm that the issues in respect of which the petition is made are not pending before any court or other constitutional or legal body;

(h) conclude with a clear, proper and respectful prayer, reciting the definite object of the petitioner or petitioners in regard to the matter to which it relates;

(i) subject to paragraph (m), contain the names, addresses, identification numbers, signature or a thumb impression of the petitioner or of every petitioner, where there is more than one petitioner;

(j) contain only signatures or thumb impressions, as the case may be, and addresses and identification numbers written directly onto the petition and not pasted thereon or otherwise transferred to it;

(k) in the case of a petition presented by a Member of County Assembly on behalf of a petitioner, be countersigned by the Member presenting it; and

(l) if the petitioner is unable to sign, be signed by a witness in whose presence the petitioner shall make his or her mark or thumb impression on the petition.

26. (1) A petition to the County Executive Committee shall be submitted to the Secretary by the petitioner.

(2) The Secretary shall, within seven days of the date of receipt of the petition, review the petition to ascertain whether the petition meets the requirements of this Act.

(3) Where the secretary considers that a petition does not comply with section 25, the secretary may give such directions as are necessary to ensure that the petition is amended to comply with that section.

27. (1) The Secretary shall, if satisfied that the petition meets the requirements of this Act, forward the petition to the county executive committee or the relevant body for consideration.
28. (1) The county executive committee, the relevant body or a committee appointed in relation to a petition may hold public hearing and may—

(a) invite individuals to submit memoranda or appear before the committee to give evidence on a petition;

(b) invite any Executive Secretary or any person holding public office to appear before them to give evidence relating a petition;

(c) employ qualified persons to assist it in the discharge of their functions;

(d) with the support from the Office, hold public hearing in relation to the petition.

(2) The Office shall be involved in any public hearing referred to in subsection (1).

(3) The evidence given by a person invited under sub section (1) shall be taken down in writing and a copy of it sent to the person who gave the evidence.

(4) The presentations and comments given during a public hearing shall be recorded and a copy of it shall be publicized by posting the copy in a conspicuous place at the offices of the county government and on the website as the case may be.

(5) A person giving evidence may, within seven days from the date of receipt of the copy under sub section (3), suggest corrections to his or her evidence due to inaccurate reporting and the evidence shall be printed with such corrections as may be appropriate.

(6) The county executive committee, the relevant body or the committee may at its discretion refuse to hear any irrelevant evidence or to listen to any unruly or unmanageable person giving evidence.

(7) Any document received at the investigation of a petition shall not be withdrawn or altered without the knowledge and approval of the executive committee.
(8) A document submitted to the investigation of a petition may be released to the person who submitted it at the conclusion of the deliberations.

(9) The committee under section 27(2) shall, as soon as practicable after the conclusion of the investigation, submit its findings and recommendation to the county executive committee or the relevant body for a final decision to be made on the petition.

(10) The county secretary shall, within fifteen days of the decision of the County executive or the relevant body, in writing, notify the petitioner of the decision.

29. The Secretary shall, within fourteen days after the decision is communicated to the petitioner or petitioners, with support from the Office—

(a) give notice of the decision to the public by posting a copy in a conspicuous place at the offices of the county government;

(b) inform the public that a copy or extract of the decision is available on its website;

(c) publish the decision in the county Gazette, print or electronic media; or

(d) publish the decision in such other manner as may be appropriate for the dissemination of information.

30. (1) The secretary shall keep and maintain a register in which shall be recorded all petitions and supporting documents, and the decisions of the county executive committee or the relevant body.

(2) The register of petitions under subsection (1) shall be accessible to the public during working hours.

31. Any petitioner who is dissatisfied by the decision of the county government or the relevant body may appeal to the Commission on Administrative Justice pursuant to the Commission on Administrative Act, 2011.

32. A petition may be presented or submitted to the Assembly by the petitioner or a Member of the Assembly on behalf of the petitioner in accordance with the Standing Orders of the Assembly.
PART V—FINANCIAL PROVISIONS

33. The funds of the Office shall consist of—

(a) monies allocated by the County Assembly for the purposes of the Office;

(b) such monies or assets as may accrue to the Office in the course of the exercise of its powers or in the performance of its functions under this Act; and

(c) all monies from any other source provided, donated or advanced to the Office.

34. The financial year of the Office shall be the period of twelve months ending on the thirtieth day of June in each year.

35. (1) Before the commencement of each financial year, the Office shall cause to be prepared estimates of the revenue and expenditure of the Office for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Office for the financial year concerned and, in particular, shall provide for—

(a) maintenance of buildings and grounds of the Office;

(b) the funding of the schedules and organization of public participation meetings;

(3) The annual estimates shall be approved by the Office before the commencement of the financial year to which they relate and shall be submitted to the secretary for tabling in County Assembly.

(4) No expenditure shall be incurred for the purposes of the Office except in accordance with the annual estimates approved under subsection (3).

36. (1) The Office shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Office.

(2) Within a period of three months after the end of each financial year, the Office shall submit to the Auditor-General the accounts of the Office in respect of that year together with a—

(a) statement of the income and expenditure of the Office during that year; and
(b) statement of the assets and liabilities of the Office on the last day of that financial year.

(3) The annual accounts of the Office shall be prepared, audited and reported upon in accordance with the provisions relating to public audit.

37. The Office shall open and maintain such bank accounts as shall be necessary for the performance of its functions.

PART VI—MISCELLANEOUS

38. The County Executive committee shall oversee the performance of the activities of the Office under this Act and may, in writing, give the Office directions on matters of policy not inconsistent with the provisions of this Act.

39. (1) The Office shall, at the end of each financial year cause an annual report to be prepared.

(2) The Office shall submit the annual report to the Governor and the County Assembly not later than three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates—

(a) the financial statements of the Office;

(b) a description of the activities and outcomes of public participation; and

(c) any other information, that the Office may consider relevant.

(4) The Office shall cause the annual report to be published and publicized in the County Gazette and such other manner as the Office may determine.

40. (1) The Office shall publish and publicize all important information affecting the county within its mandate.

(2) A person may request for information within the mandate of the Office in public interest.

(3) A request for information under subsection (2)—

(a) shall be addressed to the Secretary or such other person as the Office may designate for that purpose;
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(b) may, where the Office incurs expense in providing the information, be subject to payment of a reasonable fee; and

(c) may be subject to confidentiality requirements of the Office.

41. Subject to section 91 of the County Governments Act, the Office shall, in such manner as it considers appropriate, publish a notice for public information specifying—

(a) the location of all its offices; and

(b) its address or addresses, telephone numbers and other means of communication or contact with the Office.

42. A person or petitioner who—

(a) without justification or lawful excuse, obstructs, hinders, threatens a member of the Office or a member of staff acting under this Act;

(b) submits false or misleading information;

(c) without reasonable excuse, fails to appear before a meeting of the Office when required to do so;

(d) misrepresents to or knowingly misleads a member of the Office or a member of staff of the Office acting under this Act,

commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

43. A person who is aggrieved by a decision of the Office under this Act may apply to the Office for review of that decision.

44. (1) The executive committee member responsible for matters relating to information may, in consultation with the Office, make regulations for the better carrying into effect of the provisions of this Act.

(2) The executive committee member referred to in subsection (1) shall make regulations in the conduct and modalities of meetings in various fora.
FIRST SCHEDULE

PUBLIC PARTICIPATION GUIDELINES

The following guidelines shall guide the county government and the Office when conducting public participation activities:

1. Build a realistic timeframe for the consultation, allowing reasonable period for each stage of the process.

2. Be clear as to the type of the public, community or profession to be consulted, the issues or matter for consultation and for what specific purpose.

3. Ensure that the consultation document is as simple and concise as possible, providing the summary of the issues or matter for consultation and clearly setting out the questions to be addressed.

4. Publish and distribute the documents as widely as possible, including but not limited to providing hard copies, television advertisements, websites, community radio announcements and traditional media.

5. Ensure that all responses are carefully and open-mindedly analysed and the results made widely available to the public, including an account of the views expressed and the reasons for the decisions taken.

6. Disclose all information relevant for the public to understand and evaluate the decision.

7. Ensure that stakeholders have fair and equal access to the public participation process and their opportunity to influence decisions.

8. Ensure that all commitments made to the public, including those by the decision-maker, are made in good faith.

9. Undertake and encourage actions that build trust and credibility for the process among all the participants.

10. Be personally responsible for the validity of all data collected, analyses performed, or plans developed by it or under its direction.

11. Ensure that there is no misrepresentation of work performed or that was performed under the relevant body’s direction.

12. Examine all of its relationships or actions, which could be legitimately interpreted as a conflict of interest by clients, officials, the public or peers.

13. Should not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination.

14. Should not accept fees wholly or partially contingent on the client’s desired result where that desired result conflicts with its professional judgment.