LAMU COUNTY GAZETTE SUPPLEMENT

BILLS, 2017

NAIROBI, 2nd February, 2017

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THE LAMU COUNTY INSPECTORATE, COMPLIANCE AND ENFORCEMENT BILL, 2017

A Bill for

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

ENACTED by the County Assembly of Lamu as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Lamu County Inspectorate, Compliance and Enforcement Act, 2017 and shall come into force on a day to be gazetted by the Governor.

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

   “Animals” includes domestic animals, wild animals and poultry

   “Board” means the County Public Service Board of Lamu County established under section 57 of County Government Act, 2012

   “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.

   “County Law” means any Act of the County Assembly of Lamu or subsidiary 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 Lamu.

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

   “Officer means an officer appointed under section 6.

   “Premises” means any building or structure where a
regulated activity is undertaken or is about to be 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 permits, 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.

3. The objects of this Act are—

(a) To provide for institutional 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

4. (1) There is hereby established a Unit known as Lamu County Laws Enforcement Inspectorate Unit.

(2) The County Executive Committee Member shall publish in the Kenya and County Gazette, the establishment and location of every Inspectorate Units Station in the County.

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

(a) Protecting and guiding the property of the County;

(b) Enforcement of compliance with the Lamu 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 loyalties;
(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. (by any other county law)

PART III—APPOINTMENT, DEPLOYMENT, RANKING AND DISCIPLINE OF OFFICERS

6. (1) The County Public Service Board shall, in consultation with the Member of the County Executive Committee, competitively recruit 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 County.

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

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

8. (1) There shall be 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 Department; and

(d) a representative from the County Public Service Board.

(3) At any disciplinary proceedings, an officer shall be represented by a Representative/advocate of their choice.
9. (1) The disciplinary committee shall have power to:

(a) Receive and investigate a complaint regarding an inspectorate officer;

(b) Summon and interrogate witnesses;

(c) Call for or require the production 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 any officer;

(b) suspension;

(c) dismissal;

(d) demotion;

(e) deduction of salary; or

(f) transfer to any other sections another within the County.

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 of the Disciplinary Committee.

PART IV—POWERS OF OFFICERS

11. (1) An officer shall, at all reasonable times, enter upon any premises or place in which there is a reasonable ground to believe that a regulated activity is being undertaken, for the purposes of 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 shall apply to a magistrate for a warrant
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.

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

(a) The person committing or who is about to commit the offence;

(b) Where the offence relates to 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 arrest, where a person whom is believed to have committed a crime or is about to commit a crime under any county law resists an arrest.

13. Where an officer arrests 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.

14. (1) Where an officer has reasonable grounds to believe that a person is trading in goods contrarily 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 by the 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 from dealing with the impounded goods in any other manner permitted by order of the court or by any other law.
15. Where an officer reasonably believes that a vessel is parked or controlled in any manner contrarily 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.

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

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

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 sub-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 or occupier does not demolish or obtain approvals within the 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.

19. (1) The surcharge mentioned in section 18(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 invoiced raised by the County Government shall be prima facie evidence of expenses incurred by County Government for the demolition.

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 buildings;
(b) served upon the owner, or
(c) served upon the occupant.

PART V—OFFENCES

21. Any person who impersonates an officer appointed under this Act, commits an offence and shall be liable, upon conviction to pay a fine not exceeding five hundred thousand (500,000) Kenya shillings or imprisonment for a period not exceeding three years, or to both.

22. Any person who willfully resists, obstructs or interferes with the duties of an inspectorate officer commits an offence and shall be liable upon conviction to a fine not exceeding fifty thousand (50,000) Kenya shillings or to imprisonment for a term not exceeding one year or to both.

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 fifty thousand (50,000) Kenya shillings or to imprisonment for a term not exceeding one year or both.

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

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 fifty thousand (50,000) Kenya shillings or to imprisonment for a term not exceeding one year or both.

PART VI—MISCELLANEOUS PROVISIONS

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

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

(a) the Director of Public prosecution for the purpose of facilitating prosecution of those who contravenes the County laws;
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(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 the transmission of fines paid by those convicted of county offences into the County Revenue Fund.

(c) the relevant public authorities dealing with matters of incarceration of criminal suspects and convicts.

27. The County Executive Committee Member shall in consultation with the relevant departments and committees in the County Government make regulations to—

(a) further prescribe and regulate the conduct of inspectorate enforcement officers;

(b) facilitate the implementation of this Act.
SCHEDULE I

STRUCTURE OF THE INSPECTORATE ENFORCEMENT
DEPARTMENT

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

(i) Chief Officer in charge of inspectorate
(ii) Director of enforcement
(iii) Principle enforcement officer
(iv) County enforcement officer
(v) Sub-county enforcement commander
(vi) Senior superintendent
(vii) Superintendent
(viii) Chief inspector
(ix) Inspector
(x) Senior sergeant
(xi) Sergeant
(xii) Officers
MEMORANDUM OF OBJECTS AND REASONS

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 institutional 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 laws, their prosecution and judicial determination of accusations and punishment of those who offend the county law.

Enforcement further extends to impoundment of property and animals, which is traded and kept contrary to county laws. The arresting or impounding officer must have a legal backing from which such powers should be derived from. It is upon the above consideration that this Bill seeks to provide for county laws enforcement institutions and their powers.

The structure of the Bill is as follows:

PART I
Clause 1 - 3 of the Bill contains the preliminary provisions
Clause 1 state the title of the Bill
Clause 2 deals with interpretation of terms as used in the Bill
Clause 3 states the object of the Bill

PART II
Clause 4 and 5 provides for the establishment of Inspectorate Unit and the 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 Disciplinary Committee, which is tasked with the discipline within the inspectorate units, and the powers 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 & 19 makes provisions that deal with unapproved buildings 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 no penalty is provided for an offence.

**PART VI**

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

Dated 28th January, 2017

JAMES NJUGUNA KOMU,
Chair, Intergovernmental, Labour and Public Service Committee.