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NYERI COUNTY ACTS, 2021

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SERVICES ACT, 2021**

No. 3 of 2021

Date of Assent: 21st April, 2021

Date of Commencement: See Section 1

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THE NYERI COUNTY INSPECTORATE AND ENFORCEMENT SERVICES ACT, 2021

AN ACT of the County Assembly of Nyeri to provide for the establishment of the Nyeri County Inspectorate Unit and to provide for its' organization, functions, powers and for matters connected thereto.

ENACTED by the County Assembly of Nyeri, as follows—

PART I—PRELIMINARY

Citation and commencement

1. This Act may be cited as the Nyeri County Inspectorate and Enforcement Services Act, 2021 and shall come into force upon publication in the *Kenya Gazette*.

Interpretation

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

“Animal” includes domestic animals, wild animals and poultry;

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

“Committee” means the disciplinary committee established under Section 8 of this 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 Nyeri or a subsidiary county law;

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

“Department” means the County Department responsible for matters pertaining to enforcement of County laws;

“Director” means a person for the time being in charge of the Inspectorate appointed under Section 9;

“Governor” means the governor of the County Government of Nyeri;

“Inspectorate” means the entire body of officers/unit that ensure the laws and regulations applying to the County are obeyed and enforce the same established under;

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

“Officer” means an officer appointed under section 6;

“Premise” 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.

Objects of the Act

3. The objects of this Act are to—

- (a) provide for institutional framework for the enforcement of compliance of County laws and Regulations;
- (b) regulate the conduct of the County Inspectorate officers; and-
- (c) establish by law, pursuant to Article 185(2) of the Constitution, an inspection mechanism so as to ensure the effective performance and exercise of the powers conferred on the County Government under Part 2 of the Fourth Schedule of the Constitution.

PART II—ESTABLISHMENT OF THE NYERI COUNTY INSPECTORATE UNIT

Establishment of Inspectorate Unit

4. (1) There is hereby established a Unit known as the Nyeri County Inspectorate Unit.

(2) The Inspectorate Unit shall consist of such number of officers as shall be determined from time to time by the County Public Service Board.

Functions of the Inspectorate Unit

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

- (a) promoting and fostering strict adherence to the rule of law and principles of natural justice within the County;
- (b) protecting and guarding property of the county, including the public utilities;
- (c) enforcement of compliance of the Nyeri County Laws and Regulations, and where permissible, national legislation;
- (d) inspection for compliance with trade licenses and permits;
- (e) regulation and control of traffic on county roads
- (f) managing the peace and order in public places;
- (g) protection of public entertainment sites;
- (h) enforcement of barriers and other restrictions of movements for enforcement purposes;
- (i) hoisting of flags; and
- (j) assisting the National Police Service in the prevention of crime in the county;
- (k) undertake educational and sensitization initiatives with consumers and businesses within the respective County.

(2) In addition to the matters listed at sub-section (1) above, 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 the Director of Inspectorate.

(3) The Unit shall in the performance of its functions under Subsection (1)—

- (a) keep proper records relating to any enforcement action taken under this act or any other law;
- (b) use specialized equipment approved by the relevant national government entities to determine compliance with county laws on matters such as weights and measures and noise level;
- (c) prepare reports, statements and attend court to give evidence or testimony related to the prosecution of county law offenders; and

- (d) collaborate with the relevant national and county agencies for the conduct of investigations and effective performance of its functions.

Appointment of Inspectorate officers

6. (1) The County Public Service Board shall competitively recruit and appoint Inspectorate officers into the Unit.

(2) The recruitment and appointment of Inspectorate officers into the Unit shall so far as is reasonable practicable—

- (a) uphold the principle that not more than two-thirds of the appointment shall be of the same gender;
- (b) reflect ethnic and geographical diversity of the people of the county; and
- (c) ensure equity of opportunity amongst all the wards in the County.

(3) Every officer of Inspectorate shall, on being enlisted, make and sign, in English or Kiswahili, the oath or affirmation set forth in the First Schedule to this Act.

Code of conduct

7. (1) Every Inspectorate officer shall subscribe to the code of conduct as set out in the Second Schedule.

(2) The Executive Committee Member may prescribe for an additional code of conduct for Inspectorate officers working in the County.

County Inspectorate Standing Orders

8. (1) The Executive Committee Member may issue administrative orders, to be called County Inspectorate Standing Orders.

(2) The County Inspectorate Standing Orders shall be for the general control, direction and information of the County inspectorate.

(3) The County Inspectorate Standing Orders shall not be inconsistent with the Constitution, this Act or any regulations made thereunder.

(4) The County Inspectorate Standing Orders shall be published in the *Gazette* by the Executive Committee Member.

(5) The Inspectorate Standing Orders shall be made available to all officers and wherever possible, be accessible to the public.

Inspectorate stations

9. (1) The Executive Committee Member may establish Inspectorate stations at all decentralized units as it considers fit for the better performance of its function.

(2) The Executive Committee Member shall publish in the *Kenya Gazette*, the establishment and location of every Inspectorate station in the county.

(3) Each Inspectorate post shall—

- (a) be the centre for the administrative and command functions of the Inspectorates in respect of the area of Jurisdiction; and
- (b) provide room for operational creativity to the inspectorate officers under the inspectorate.

Training

10. (1) The Inspectorate may collaborate with other training institutions to provide training to its officers.

(2) The County Executive Member shall develop guidelines on the curriculum, examination and certification of the inspectorate trainees.

Surrender of public property

11. (1) An inspectorate officer who is dismissed from the Inspectorate, or resigns from office, or otherwise leaves the Inspectorate, shall forthwith deliver over to the person authorized by rules or appointed for that purpose every article which has been supplied to him and which he or she has not been expressly authorized to keep or use for his private benefit.

(2) Any person who –

- (a) fails to comply with subsection (1); or
- (b) returns such property in a damaged condition, the damage not being attributable to the proper discharge of his duties in the Inspectorate;

commits an offence, and shall be liable on conviction, whether or not any penalty is otherwise imposed, for the cost of replacing such property, or, as the case may require, for the cost of repair, and such cost shall be recoverable by the government by deduction from any moneys due to the Government.

PART III—POWERS OF THE INSPECTORATE

Powers to maintain law and order

12. (1) The Inspectorate shall maintain law and order by—

- (a) regulating and controlling traffic; and
- (b) preventing obstruction in—
 - (i) public places;
 - (ii) public roads;
 - (iii) streets;
 - (iv) places of worship;
 - (v) sports areas;
 - (vi) during cultural events; or
 - (vii) any other gatherings.

(2) Any person who disobeys any lawful order given by any officer acting under subsection (1) is guilty of an offence, and may be arrested without a warrant unless he /she gives his/her name and address and satisfied the officer that he/she will duly answer any summons or other legal proceedings which may be taken against him.

Power of entry by authorized officer

13. (1) An officer may, 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 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 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.

Power to arrest

14. (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, 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;

(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.

Court to issue warrant

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

Power to impound goods

16. (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) Sub-section (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.

Impounding of vessels

17. 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.

Power to impound animals

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

Identification of an Officer

19. (1) An Officer shall produce a service identity document when exercising a power under this Act or any other law.

(2) A uniform worn by Officers shall be embedded with distinctive identification to ensure that the Officer is—

- (a) distinguishable from non-Inspectorate personnel; and
- (b) easily recognized by the public as an Inspectorate Officer.

Unapproved building and structures

20. (1) A person shall not carry out development within a county without a development permission granted by the respective county executive committee member.

(2) A person who commences any development without obtaining development permission 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 months or to both.

(3) If the owner and or 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.

Enforcement notice

21. (1) A county executive committee member for the time being responsible for matters relating to physical and land use planning shall serve the owner, occupier, agent or developer of property or land with an enforcement notice if it comes to the notice of that county executive committee member that—

(a) a developer commences development on any land after the commencement of the Physical and Land use Planning Act without the required development permission having been obtained; or

(b) Any condition of a development permission granted under the Physical and Land use Planning Act has not been complied with.

(2) An enforcement notice shall—

(a) specify the development alleged to have been carried out without development permission or the conditions of the development permission alleged to have been contravened;

(b) specify measures the developer shall take, the date on which the notice shall take effect, the period within which the measures shall be complied; and

(c) require within a specified period the demolition or alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities.

(3) Where a person on whom an enforcement notice has been served is aggrieved by that notice, that person may appeal to the relevant County Physical and Land Use Planning Liaison Committee within fourteen days

of being served with the notice and the committee shall hear and determine the appeal within thirty days of the appeal being filed.

(4) Any party aggrieved with the determination of the county physical and land use planning liaison committee may appeal to the court only on a matter of law and the court shall hear and determine the appeal within thirty days.

(5) A person who has been served with an enforcement notice and who refuses to comply with the provisions of that notice 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 months or to both.

Costs of demolition

22. (1) The surcharge mentioned in section 20(3) herein above may be—

(a) added to rates payable by rent; and/or

(b) recovered by the County Government as a civil debt

(c) an invoice raised by the County Government shall be *prima facie* evidence of expenses incurred by County Government for the demolition.

Service of Notice

23. 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) it is served upon the owner; or

(c) it is served upon the occupant.

Conduct of Inspectorate

24. (1) All Officers of the Inspectorate shall at all times perform their functions with impartiality and objectivity.

(2) No officer shall subject any person to torture or to any other cruel, inhumane or degrading treatment.

Obedience of orders

25. (1) An officer shall promptly obey all lawful orders in respect of the execution of his or her office which he or she may from time to time receive from a superior in the Inspectorate.

(2) An Officer shall—

- (a) promptly obey and execute all orders and warrants lawfully issued to him;
- (b) collect and communicate intelligence affecting law and order;
- (c) take all steps necessary to prevent the commission of an offence and public nuisance;
- (d) detect offenders and bring them to justice; and
- (e) apprehend any person whom he or she is legally authorized to apprehend and for whose apprehension sufficient ground exists.

Conflict of Interest

26. (1) An inspectorate officers shall declare and register any personal interest in a matter in accordance with the Leadership and Integrity Act.

(2) An inspectorate officers with a personal interest in any matter shall—

- (a) not exercise enforcement functions in relation to that matter but shall bring the matter to the attention of the head of the unit; and
- (b) not seek to improperly influence a decision about that matter.

PART IV—OFFENCES

Impersonating an officer

27. Any person who impersonates an officer appointed under this Act, commits an offence and shall be liable, upon conviction, to a fine not exceeding Kenya Shillings 500,000 or imprisonment for a period not exceeding three years, or to both.

Obstruction of an officer

28. Any person who willfully resists arrest, obstructs 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

29. (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

30. A person who is convicted of an offence under this Act for which no penalty is prescribed is upon conviction of that offence, liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

PART V—MISCELLANEOUS PROVISIONS

Arrangements with other public offices

31. (1) The Executive Committee Member in consultation with the County Attorney shall put in place arrangements with—

- (a) the Director of Public Prosecution for the purpose of facilitating prosecution of those who contravene county legislation;
- (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; and.
- (c) the relevant public authorities dealing with matters of incarceration of criminal suspects and convicts

Transition

32. (1) All persons who were immediately before the commencement of this Act officers or employees of the Inspectorate shall upon commencement of this Act, becomes officers or employees of the Inspectorate in accordance with this Act in such ranks as the Board shall designate.

Regulations

33. (1) The Executive Committee Member may make regulations generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the executive Committee Member may with the approval of the County Assembly make regulations—

- (a) prescribing the administrative organization of the service;
- (b) prescribing the rules of procedure generally for the good order and management of the inspectorate;
- (c) prescribing the conduct of inspectorate officers.

FIRST SCHEDULE

(s.6(3))

OATH / AFFIRMATION OF OFFICE

I.....
 (Full Names) DO SWEAR/DO SOLEMNLY AND SINCERELY
 AFFIRM THAT I will be faithful and bear true allegiance to the
 Constitution and the Governor of Nyeri County during my
 without favour or affection,
 malice or ill will; that I will at all times do my utmost to reserve the peace
 and to prevent offences against the peace; that while I shall continue to
 hold the said office, to the best of my skill and knowledge, discharge all
 the duties thereof faithfully according to law and will not; I will subject
 myself to the Constitution, all Acts, orders and rules now or in future
 without the jurisdiction of the Inspectorate and that I will discharge my
 duties and the duties of the Inspectorate according to law, without fear,
 favour, affection or ill will. (SO HELP ME GOD)

OATH / AFFIRMATION OF SECRECY

I..... (Full
 names) DO HEREBY SWEAR BY THE ALMIGHTLY GOD /
 SOLEMNLY AND SINCERELY AFFIRM THAT I will not, without due
 authority, disclose or make known to any person any information acquired
 by me by reason of the duties performed by me on behalf or under the
 direction of the Inspectorate or by reason of any office or employment
 held by me pursuant to the Nyeri County Inspectorate Act. (so help me
 God)

SECOND SCHEDULE

(S.7)

CODE OF CONDUCT

1. An inspectorate officers shall, in the implementation of this Act
 or any other law—

- (a) not unlawfully discriminate against any person;
- (b) exercise fairness, self-control, tolerance;
- (c) respect all persons and their traditions, beliefs and lifestyles if
 they are compatible with the rule of law; and
- (d) not do anything which compromises or which is likely to
 compromise the impartiality of those who work for, or on behalf
 of, the authority.

2. An inspectorate officers shall, in the exercise of duty—

- (a) treat all persons with respect;
- (b) uphold the human rights and fundamental freedoms of all persons
 as set out in the Constitution;
- (c) consider any special needs, vulnerabilities and concerns of a
 person;
- (d) not conduct themselves in a manner which may be regarded as
 bringing the officer or the unit into disrepute;
- (e) not bully, abuse, harass, or victimise any person;
- (f) not intimidate or attempt to intimidate any person who is or is
 likely to be the subject of any enforcement action, a complainant
 or any other person that the inspectorate officers interacts with in
 the exercise of a duty under this Act.

3. An inspectorate officers shall—

- (a) not disclose information obtained in the exercise of the officer's
 duties without lawful authority;
- (b) exercise powers of search or entry only when it is lawful,
 necessary and proportionate to do so;
- (c) not gather, retain, use or disclose information or data relating to
 any person for personal benefit.

4. An inspectorate officers shall not—

- (a) use their position or office to improperly secure for themselves or
 any other person, an advantage or disadvantage; and

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(b) not use the resources of the unit or the county government for personal gain.

5. An inspectorate officer shall in undertaking enforcement action, give the affected persons the reasons for the enforcement action.

6. An inspectorate officer shall report any conduct by another inspectorate officer, which the inspectorate officer reasonably believes involves a failure to comply with this code of conduct, in accordance with the reporting mechanisms established within the unit.

7. (a) An inspectorate officer shall declare and register any personal interest in a matter in accordance with the Leadership and Integrity Act.

(b) An inspectorate officer with a personal interest in any matter shall—

(i) not exercise enforcement functions in relation to that matter but shall bring the matter to the attention of the head of the unit; and

(ii) not seek to improperly influence a decision about that matter.

8. An inspectorate officers shall, upon receiving any gift or hospitality exceeding a value to be determined by the County Public Service Board in accordance with the Leadership and Integrity Act, provide written notification to the head of the unit of the existence and nature of that gift or hospitality and register the gift or hospitality in accordance with the Leadership and Integrity Act.

9. An inspectorate officer shall—

(a) omit to make any oral or written statement or entry in any record or keep accurate records of enforcement action undertaken by the officer as required within the unit;

(b) not make any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for enforcement purposes;

(c) intentionally document; and

(d) alter, deface, erase, conceal or destroy any record or document, kept or made in connection with any enforcement activity.

10. (a) Enforcement action or investigations shall be based on reasonable suspicion of an actual or possible offence or crime.

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(b) An inspectorate officer shall follow the principle that everyone who is the subject of an enforcement action or investigation is presumed innocent until found guilty by a court of law.

11. (a) An inspectorate officers, in exercising powers of arrest, shall as far as possible apply non-violent methods before resorting to any use of force.

(b) Any use of force shall be the minimum appropriate force in the circumstances and only if other means remain ineffective.

(c) Whenever it is necessary for an inspectorate officers to resort to the lawful use of force, the officer shall—

(i) exercise restraint in and act in proportion to the seriousness of the offence and the legitimate object to be achieved;

(ii) minimise damage and injury, and respect and preserve human life;

(iii) ensure that assistance and medical aid are secured to any injured person at the earliest possible opportunity; and

(iv) report the incident promptly to the officer's supervisors.

12. An inspectorate officer shall take every reasonable step to protect the health and safety of arrested persons and shall take immediate action to secure medical assistance for such persons where required.

13. (a) An officer who breaches this code shall be subject to the disciplinary procedures of the unit.

(b) Where a breach of this code constitutes an offence under this Act or any other law, the officer shall be liable to prosecution and punishment under the relevant laws.