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BUNGOMA COUNTY BILLS, 2023

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**THE BUNGOMA COUNTY INSPECTORATE, COMPLIANCE
AND ENFORCEMENT BILL, 2023**

A Bill for

AN ACT of the County Assembly of Bungoma to provide for the establishment of Bungoma County Enforcement Inspectorate Unit and formatters connected thereto

ENACTED by the County Assembly of Bungoma, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Bungoma County Inspectorate, Compliance and Enforcement Act, 2023.

Interpretation

2. In this Act, unless context otherwise requires—

“Animal” includes both domestic and wild species;

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

“Officer” means an officer appointed under section 5;

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

Objects and purpose

3. The objects and purpose of this Act are—

(a) to provide for an institutional framework for the enforcement of Bungoma County laws; and

(b) to regulate the actions of County Inspectorate officers.

Jurisdiction

4. Any powers and responsibilities conferred under this Act is limited to the jurisdiction of Bungoma County.

**PART II—COMPOSITION AND ADMINISTRATION OF THE
INSPECTORATE**

Composition of the County Inspectorate

4. (1) There is established an Inspectorate known as Bungoma County Inspectorate.

(2) The Inspectorate shall consist of such number of officers and be constituted in such manner and such organisation as the Executive Member may, in consultation with the County Public Service Board, determine.

Functions of the Inspectorate

6. (1) The Inspectorate shall be responsible for —

- (a) protecting and guarding the property of the county;
- (b) enforcing the compliance with the Bungoma 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;
- (g) maintaining law and order within urban centres in the county; and
- (h) prevention of crime in the county.

(2) In addition to the matters listed at subsection (1), the Inspectorate shall be responsible for the enforcement of compliance of any other matter that it may be required to do so by any other written law or as directed by the Executive Member.

Director of the Inspectorate

7. There shall be a director of the Inspectorate who shall have superintendence over all officers of the Inspectorate.

Powers and duties of the Director

8. (1) The director shall, subject to consultation with the Executive Member, exercise such powers and perform such duties as are or may be provided by or under this Act.

(2) The Executive Member may, in consultation with the County Public Service Board, appoint one or more officers who shall deputise the director.

(3) An officer appointed under subsection (2) shall exercise such powers and perform such of the duties of the director may delegate by general or special order in writing.

(4) The Director shall be appointed in such manner and on such terms and conditions as the County Public Service Board may determine.

Appointment of enforcement officers

9. The County Public Service Board shall recruit enforcement officers for the Inspectorate from among persons competitively sourced, taking into account the ethnic and geographical diversity of the people of the county.

Deployment, promotion and discipline of officers

10. (1) The County Public Service Board shall be responsible for the recruitment, promotion, discipline of the officers.

(2) Despite sub-section (1) the County Public Service Board may delegate any of its functions of deployment, promotion and discipline of officers, in writing, any of its functions to the County Secretary or the Director.

Grounds for breach of discipline

11. (1) The grounds constitute a breach of discipline of officers of the Inspectorate includes —

- (a) disobedience to lawful orders;
- (b) misconduct;
- (c) corruption;
- (d) neglect of duty;
- (e) remissness in discharge of any duty;
- (f) drunkenness; or
- (g) any intentional act rendering an officer unfit for the discharge of his or her duty.

(2) Subject to the provisions of the County Governments Act (No. 17 of 2012) and the Public Service Code of Conduct and such Rules as may be made by the Executive Member, the County Public Service Board may, prescribe the following punishment for breach of discipline—

- (a) dismissal from service;
- (b) compulsory retirement;
- (c) reduction in rank or grade;
- (d) stoppage of promotion;
- (e) forfeiture of seniority for not more than one year;
- (f) forfeiture of increment in pay; or
- (g) censure.

(3) The County Public Service Board, or any other superior officer authorised to act in this behalf, may place under suspension any officer against whom action under sub-section (1) is required to be taken or against whom any enquiry is required to be made.

(4) Notwithstanding the provisions of this section, nothing shall affect any officer's liability to a criminal prosecution or any offence with which he or she may be charged.

Rules for the administration of the Inspectorate

12. The Executive Member shall, make rules relating to—

- (a) the collection and communication by officers of information and intelligence;
- (b) the description and arms, regalia, clothing and other necessities to be supplied to the Inspectorate;
- (c) the places of residence of members of the Inspectorate;
- (d) the duties to be performed by officers of different ranks and the manner in which and the conditions subject to which officers shall exercise their powers and perform their duties;
- (e) the efficiency and discipline of the Inspectorate; and
- (f) the prevention of abuse of powers and neglect of duties by officers.

PART III—POWERS AND DUTIES OF OFFICERS

General duties of officers

13. It shall be the duty of every officer to—

- (a) obey and execute every lawful order issued by a competent authority, and to endeavour by all lawful means to give effect to the lawful commands of his or her superiors;
- (b) take steps consistent with county laws and regulations to bring offenders to justice or to prevent the commission of cognizable offences;
- (c) to prevent the commission of public nuisances;
- (d) to apprehend without unreasonable delay all persons whom he or she is legally authorised to apprehend and for whose apprehension there is sufficient reason;
- (e) to discharge their duties in accordance with the constitution including observing the rights of arrested persons;

- (f) to aid national law enforcement agencies when called upon in such ways as would be lawful and reasonable on the part of the agency aided; and
- (g) to discharge such duties as are imposed upon him by any law for the time being in force in the county.

Duties of officers towards the public and arrested persons

14. It shall be the duty of every officer—

- (a) to afford every assistance within his power to disabled or helpless persons in the streets;
- (b) to take charge of intoxicated persons and lunatics at large who appear to be dangerous or incapable of taking care of themselves;
- (c) to take prompt measures to procure necessary help for any person under arrest or in custody who is wounded or sick, and, while guarding or conducting any such person, to have due regard to his condition;
- (d) to arrange for the proper sustenance and shelter of every person who is under arrest or in custody;
- (e) in conducting searches, to refrain from needless rudeness and the causing of unnecessary annoyance;
- (f) in dealing with women, children and the elderly, to act with strict regard to decency and with reasonable gentleness;
- (g) to prevent any loss or damage to impounded property; and
- (h) to endeavour to avert any accident or danger to the public.

Duties of officers to keep order in streets, roads and public spaces

15. It shall be the duty of every officer—

- (a) to regulate and control the traffic in the streets within designated areas of towns and urban areas within the county;
- (b) to prevent obstruction in the streets in towns and urban areas within the county;
- (c) to endeavour to prevent the infraction of any rule, regulation or order made under this Act or any other law for the time being in force in the county relating to road use; and
- (d) to keep order in the streets, and at and within bus parks, markets, fairs and all other places of public gathering.

Duty to conform to reasonable directions given by officers

16. (1) All persons shall be bound to conform to the reasonable directions of an officer given in fulfilment of any of his duties under this Act.

(2) An officer may restrain or remove any person resisting or refusing or omitting to conform to any direction referred to in sub—section (1) and may either take such person to a police officer or, in trivial cases, release him when the occasion is past.

Power of officers to give information

17. An officer may give any evidence before a court and apply for any legal process as may be required by law against any person committing an offence under county laws and national laws.

Powers as to inspection

18. An officer generally or specially authorised by the Executive Member may enter any shop or premises for the purpose ensuring compliance with county laws.

Power of officers to search suspected persons in streets

19. If an officer in good faith suspects that a person has possession or apparent possession of any article believed to be stolen property or an article that is of danger to public safety, the officer may—

- (a) search and examine the article and require an account thereof; and
- (b) if the account given by the possessor is manifestly false or suspicious, detain such article and report the facts to the police, who shall thereon proceed according to relevant sections of the law.

Powers to direct against contravention of laws

20. (1) An officer may direct any person acting or about to act contrary to county laws and regulations to desist or to abstain from so doing.

(2) In case of refusal or disobedience to the warning in subsection (1) the officer may—

- (a) arrest the person offending; or
- (b) seize any objection or thing used or about to be used in contravention of such direction.

(3) Any item seized in subsection (2) shall be disposed of according to the order of a court dealing with county matters.

Impounding of Animals

21. An officer has a duty to seize and take to any public pound for confinement therein any animals found straying in any street or trespassing upon any public property.

Charge of unclaimed property

22. (1) An office shall take temporary charge of all—

(a) unclaimed movable property found by, or made over to him or her; and

(b) movable property found lying in any public place or street.

(2) An officer taking charge of any property under sub-section (1) shall hand over the property in manner as may be prescribed by the Executive Member.

(3) The Executive Member shall issue a proclamation specifying unclaimed property and requiring any person who may have a claim to appear before him or some other officer delegated to act in this behalf to establish his or her claim within three months from the date of such proclamation.

(4) If the property in sub-section (3), or any part thereof, is subject to speedy and natural decay, or consists of livestock, or if the property appears to be of a value of less than two thousand shillings, it may forthwith be sold by auction under the orders of a magistrate and the net proceeds of such sale form part of county revenue.

(5) The Executive Member shall, on being satisfied of the title of the claimant to the property referred to in this section (4), release the property.

(6) If no person establishes a claim to such property within the period prescribed in sub-section (4), it shall be at the disposal of the Government.

PART V—INSPECTORATE REGULATIONS

Power of Executive Member to make regulation

23. (1) The Executive Member may, in the absence of any county laws, make regulations for—

(a) regulating the conditions under which vehicles may remain parked in streets and public places, and the use of streets as parking places for vehicles;

- (b) regulating traffic of all kinds in streets and public places, and the use of streets and public places by persons riding, driving, cycling, walking or leading or accompanying cattle, so as to prevent danger, obstruction or inconvenience to the public;
- (c) prescribing situations during which animals shall be driven along the streets, or along certain specified streets;
- (d) regulating and controlling the manner and mode of conveying timber, scaffold poles, ladders, iron girders, beams, bars, or other unwieldy articles through the streets, and the route and hours for such conveyance;
- (e) licensing and the controlling of the playing of music, the beating of drums or other instruments and the blowing or sounding of horns or other noisy instruments in or near streets or public places;
- (f) regulating the conduct, behaviour or action of persons constituting assemblies and processions on or along the streets;
- (g) prohibiting the hanging or placing of any cord or pole across a street, or the making of a projection or structure so as to obstruct traffic or the free access of light and air;
- (h) prohibiting or controlling the placing of building materials or other articles or the fastening or detention of any animal in any street or public place;
- (i) closing certain streets or places temporarily, in cases of danger from ruinous buildings or other cause;
- (j) guarding against injury to person and property in the construction, repair and demolition of buildings, platforms and other structures from which danger may arise to the passenger, neighbour or public;
- (k) prohibiting or regulating the setting fire to or burning any straw or other matter or lighting a bonfire or letting off or throwing a firework in or upon a street or building or the putting up of any post or other thing on the side of or across, a street for the purpose of affixing thereto lamps or other contrivances for illumination;
- (l) licensing or controlling places of public amusement or entertainment;
- (m) regulating the means of entrance and exit at places of public amusement, entertainment or assembly, and providing for the

maintenance of public safety and the prevention of disturbance thereat;

- (n) licensing or controlling the musical, dancing, mimetic, theatrical or other performances for public amusement;
- (o) regulating, in the interest of public order, decency or morality, the employment of artists and the conduct of the artists and audience at such performances and the hours during which and the places at which such performances may be given;
- (p) regulating or prohibiting the sale of any ticket or issue of any pass for admission to a place of public amusement;
- (q) fixing the fees to be charged for any licence or permission required under this Act.

(2) The regulations made under this section shall be published in the county gazette and in the locality affected thereby by affixing copies thereof in conspicuous places or by advertising the same in such local newspapers.

Erection of barriers on streets

24. The Executive Member may authorise the inspectorate to erect barriers on any street for the purpose of stopping temporarily vehicles driven county roads in order to satisfy they have not been contravened licensing laws in respect of any such vehicle and in order to collect cess or royalties.

Suffering or unfit animals to be destroyed

25. (1) An officer who in any street or public place finds any animal so diseased, or so severely injured, and in such a physical condition, that, in his opinion, it should be destroyed, shall cause that animal to be destroyed subject to the consent of the owner.

(2) If the owner is absent or refuses to consent to the destruction, the officer shall, summon the veterinary officer in charge of the area in which the animal is found to give a report on the nature of the animal.

(3) If the veterinary officer certifies that the animal is so diseased or so severely injured, or in such a physical condition, that it is cruel to keep it alive, the officer may, without the consent of the owner, destroy the animal or cause it to be destroyed.

(4) The veterinary officer may direct the officer to remove the animal before it is destroyed from the place where it is found to such other place as he may think fit without causing it great suffering.

(5) An animal shall be destroyed as far as possible from any street or public place and screened from the public gaze while it is being destroyed.

Appeal

26. (1) Any person aggrieved by any act by, or conferment of power to, the Inspectorate pursuant to a regulation under this section may appeal to the Executive Member.

(2) An appeal under this section shall be preferred in the form of a memorandum, setting forth concisely the grounds of objection to the act or conferment of power.

(3) The Executive Member may, after giving a reasonable opportunity to the applicant to be heard and after such further inquiry, if any, take corrective measures or confirm, vary or set aside the conferment of power appealed against.

(4) The Executive Member may suspend further action or exercise of the power appealed against pending the disposal of the appeal.

PART VII—OFFENCES, PENALTIES AND PROCEDURE

Obstruction of an officer

27. Any person who intentionally resists arrest, obstructs or interferes with the duties of an officer commits an offence and shall be liable upon conviction to a fine not exceeding a hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

Impersonating an officer

28. Any person who impersonates an officer appointed 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 to both.

General Penalty

29. 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 One Hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

PART VIII—MISCELLANEOUS PROVISIONS

Indemnity

30. An officer shall not be liable to any penalty or to payment of any damage on account of an act done in good faith in pursuance of any provision of this Act or any other law, rule, regulation or order for the time being conferring power to officers of the Inspectorate.

Complaints

31. A person may bring a complaint against any officer for anything done under any provision of this Act or of the rules, regulations or orders made there under by delivering a complaint in writing to the Executive Member.

Fines

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

Arrangements with other public bodies

33. The county government shall put in place arrangements 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 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.

Power to make regulations

34. The Executive Member may, in addition to the regulations prescribed section 23, make further regulations for the better carrying out the purposes of this Act.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide a proper institutional framework for the enforcement of Bungoma county laws and regulations through the establishment of a county Inspectorate and compliance And Enforcement department.

The Bill is structured into in to six parts:

Part I of the Bill contains the preliminary provisions. These include the title of the Bill, the interpretation of terms as used in the Bill, the objects of the bill and the jurisdiction of the Act.

Part II deals with the composition and administration of the Inspectorate. It deals with the functions of the inspectorate, its superintendence and the powers and duties of its director. It also prescribes the manner for the appointment deployment, promotion and discipline of enforcement officers.

Part III deals with the powers and duties of officers. It enumerates the general duties of officers and the appointment of enforcement officers. It also provides for the duties of enforcement officers towards the public and arrested persons. The part also provides for the power of enforcement officers to give evidence in legal proceedings and the powers to inspect premises. It also deals with the officers' power to search suspected persons in streets and provides for the power of impounding of animals and charge over unclaimed property

Part IV makes provision for inspectorate regulations which should give the sort of laws to be enforced by the inspectorate. It also deals with the erection of erection of barriers on streets. The type of animals to be destroyed. It also provides for an appeal mechanism to the executive member in charge of the inspectorate for actions of enforcement officers.

Part V provides for offences, penalties and procedure. This includes provisions against the obstruction of an officer and the impersonation of enforcement officers.

Part VI provides for miscellaneous provisions including indemnifying officers of the inspectorate, providing for complaints, the making provisions for arrangements between the county government and others institutions of law. It also makes provisions for the making of further regulations by the executive member.

This Bill is not a money Bill within the meaning of article 114 of the Constitution.

JAMES MUKHONGO,
Chairperson, Finance and Economic Planning Committee.