

**THE COUNTY LAW COMPLIANCE AND
ENFORCEMENT BILL, 2018**

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Clause

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**THE COUNTY LAW COMPLIANCE AND ENFORCEMENT
BILL, 2018**

A Bill for

AN ACT of Parliament to provide for the establishment of law compliance and enforcement units; to provide for the administration and management of the units in each county; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I— PRELIMINARY

1. This Act may be cited as the County Law Compliance and Enforcement Act, 2018. Short title.

2. In this Act— Interpretation.

“Board” means the County Public Service Board of the County established under section 57 of the County Government Act; No. 17 of 2012

“county law” means an Act of a county assembly or a subsidiary county legislation;

“county executive committee member” means the county executive committee member responsible for matters relating to the county public service;

“enforcement officer” means an officer appointed under section 4 of this Act;

“officer in charge” means the county executive committee member or an officer designated by the county executive committee member in writing;

“premises” means any building or structure where a regulated activity is undertaken or is about to be undertaken;

“regulated activity” means any activity, trade or business, the undertaking of which, requires a license, permit, approval or payment of service fee, by or to the county government;

“unit” means a county law compliance and enforcement unit established under section 4; and

“vessel” includes a hand-drawn cart, trolley, motor vehicle, motorbike, or bicycle.

3. The objects of this Act are to— Objects.

- (a) provide a framework and standards for the establishment and operation of county law compliance and enforcement units; and
- (b) regulate the conduct of county law enforcement and compliance officers.

**PART II— THE COUNTY LAW COMPLIANCE
AND ENFORCEMENT UNIT**

4. (1) A county government may establish a county law compliance and enforcement unit for the respective county. Establishment of the county laws compliance and enforcement unit.

(2) Where a unit is established under subsection (1), the Board shall—

- (a) determine the number of county law compliance and enforcement officers required for the effective performance of the unit;
- (b) appoint enforcement officers to the unit;
- (c) be responsible for the human resource function relating to the unit, including the qualifications, the ranks and lines of authority within the unit.

5. (1) Every enforcement officer shall subscribe to the code of conduct as set out in the Schedule. Code of conduct.

(2) A county executive committee member may prescribe for an additional code of conduct for enforcement officers working in the county.

6. The functions of the unit shall be to— Functions of the unit.

- (a) ensure compliance with and enforcement of all county laws;
- (b) inspect premises for compliance with trade licences and permits issued by the county government;
- (c) ensure legal compliance with all county revenue collection requirements including cess, royalties and land rates;
- (d) protect and guard the property of the county, including public utilities;

- (e) respond to complaints, relating to regulated activities, from residents of the county or persons affected by the regulated activity;
- (f) enforce county laws by issuing violation tickets;
- (g) assist the police or any other authority in the investigation of violations of county laws for purposes of preparation for court proceedings;
- (h) ensure a clean and safe environment in areas such as food standards, product safety, animal health and welfare based on standards developed by the relevant national government entities;
- (i) undertake educational and sensitization initiatives with consumers and businesses within the respective county; and
- (j) perform any other functions assigned under this Act or any other law.

(2) A 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.

7. (1) An enforcement officer may, in the performance of a duty under this Act or any other law, during the opening hours of a premises and without a warrant—

Power of entry by authorised officer

- (a) enter a premise in which a regulated activity is undertaken and carry out examinations or enquiries to determine whether the provisions of

this Act or any other relevant county law are being complied with;

- (b) require the production of, inspect, and examine a licence, register, record or other document relating to a regulated activity within the county;
- (c) carry out periodic inspections of all premises undertaking regulated activities within the county, to ensure that the provisions of this Act or any relevant county law are complied with;
- (d) with the written approval of the officer in charge-
 - (i) order the immediate closure of any premises which is likely to cause harm contrary to the provisions of this Act or any other county law; and
 - (ii) and by written notice, require the owner or operator of the premises to implement any remedial measures; and
 - (iii) issue an improvement notice requiring the owner or operator of premises to cease any unlawful activities and to take appropriate remedial measures, including the installation of new plant and machinery if necessary, within such reasonable time as the officer in charge may determine.

(2) A premises that is closed down under this section may resume its operations only with the written approval of the officer in charge.

8. (1) Where an enforcement officer has reasonable grounds to suspect that any property has been, or is being used for the purpose of carrying out a regulated activity contrary to this Act or any other law, the enforcement officer may make an *ex-parte* application to the relevant court, for an order to seize that property and for any other relevant order.

Seizure of property.

(2) Despite subsection (1), where it is not reasonably practicable, having regard to the urgency of the situation, the enforcement officer may seize the property without a warrant.

(3) Where an enforcement officer seizes property under subsection (2), the enforcement officer shall, within

forty-eight hours of the seizure, report the seizure to the relevant court and apply for an order for the detention of the property.

(4) If the forty-eight hours under subsection (3) end outside ordinary court hours, or on a day that is not an ordinary court day, the enforcement officer shall report the seizure on the next court day.

(5) An order for the detention of property made under subsection (3) shall be valid for a period of sixty days and may, on application by the enforcement officer, be extended by the relevant court for a further period as may be necessary to enable, the production of the property in court in proceedings relating to an offence under this Act.

(6) The relevant Court may make an order for release of any property seized under this section if—

- (a) the enforcement officer is not able to prove that there are reasonable grounds to suspect that the property has been or is being used for the commission of an offence under this Act; or
- (b) no proceedings are instituted in the court for an offence under this Act in respect of that property within six months of the date of the detention order.

9. (1) Where property has been seized or detained under section 8, subject to any directions given by a court, the unit shall be responsible for proper preservation of the property.

Preservation or destruction of seized property.

(2) The unit shall keep a full inventory of the seized property and any other records of the property, for submission to the court.

(3) Upon seizure of property, the unit shall only deal with the whole or a part of the property in accordance with the directions of the court.

(4) In the case of perishable or rapidly depreciating property, the court may authorize the unit to sell or dispose of that property.

(5) A court shall not make an order for destruction of non-perishable property unless—

- (a) a notice has been issued in such manner as the

court may direct, to any person who, in the opinion of the court, appears to have an interest in the property; and

(b) that person has been given a reasonable opportunity to be heard.

(6) Where, upon the conclusion of proceedings, the court finds the owner of the property guilty of committing an offence, the Court may order the owner to pay for costs incurred in preserving the property.

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

Impounding of vessels.

11. An officer may impound any animal that is kept in a manner that is contrary to county law.

Power to impound animals.

12. (1) It is unlawful for any person to erect, build, establish or keep any structure on any area, public or private, without approval of the county government.

Unapproved building and structures.

(2) Where the existence of a structure under subsection (1) comes to the attention of the unit, the unit shall give the owner or occupier of the structure reasonable notice to demolish the structure or obtain county government approval.

(3) If the owner and or occupier fails to comply with a notice issued under subsection (2), within the specified period, the unit may obtain a court order to demolish such structures and surcharge the owner of the land or person who has constructed the costs of demolition.

(4) The surcharge under subsection (3) may be—

(a) added to rates payable by rent; or

(b) recovered by the county government as a civil debt.

13. (1) A notice required to be given shall be deemed to have been served if it is served upon the owner or the occupant of the premises.

Service of notice.

(2) Where the owner or occupant of a property cannot be traced, the notice shall be placed in a conspicuous place of the structure or buildings.

(3) An enforcement officer shall, in issuing a notice—

- (a) specify reasons for the decision taken by the unit;
- (b) give a person adequate time to take remedial action;
- (c) specify the manner and period within which the person is to respond to the notice or appeal the decision of the unit; and
- (d) comply with the principles set out in the Fair Administrative Action Act.

No.4 of 2015

14. The county executive committee member shall publish the fines to be imposed, by the unit, on persons whose vessels or goods have been impounded under this Act.

Penalties.

15. (1) Where an enforcement officer has a reasonable ground to believe that an offence has been committed under this Act or any county law, the officer may arrest the person committing the offence.

Power to arrest.

(2) Where the offence under subsection (1) relates to a regulated activity, the officer may arrest—

- (a) the proprietor of the activity;
- (b) an employee of the proprietor; or
- (c) any other person whom the officer reasonably believes is involved in the carrying out of the activity.

(3) Where a person who is believed to have committed a crime under any county law resists an arrest, an enforcement officer may use reasonable force to execute the arrest.

16. (1) Where an enforcement officer arrests a person, the officer shall immediately present the arrested person to the nearest police station.

Production in a police station.

(2) An enforcement officer, who arrests a person and fails to present the person to a police station immediately upon arrest commits an offence.

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

Identification of an officer.

(2) A uniform worn by enforcement officers shall be embedded with distinctive identification to ensure that the enforcement officer is—

- (a) distinguishable from non-law enforcement personnel; and
- (b) easily recognized by the public as an enforcement officer.

PART III—OFFENCES

18. A person who impersonates an enforcement officer appointed under this Act, commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand shillings or imprisonment for a period not exceeding two years, or to both.

Impersonating an officer.

19. A person who wilfully resists arrest, obstructs or interferes with the duties of an enforcement officer commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

Obstruction of an officer.

20. 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.

General penalty.

PART IV—MISCELLANEOUS PROVISIONS

21. The county executive committee member shall put in place arrangements in consultation with the—

Arrangements with other public offices.

- (a) Director of Public Prosecution to facilitate prosecution of persons who contravene county legislation;
- (b) Judicial Service Commission 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) relevant public authorities dealing with matters of incarceration of criminal suspects and convicts.

22. A county government may enact legislation on law enforcement and compliance to provide for—

County legislation.

- (a) matters not provided for under this Act;
- (b) the conduct of enforcement officers; and
- (c) the effective implementation of this Act.

23. A unit shall establish a record keeping and reporting system on compliance and enforcement action undertaken pursuant to this Act and the respective county legislation.

Reporting system.

24. (1) Subject to Article 24 of the Constitution, the right to privacy under Article 31 of the constitution, the right to property under Article 40 and the right to freedom of movement under Article 39 may be limited to the extent provided for in this section for the purpose of safeguarding legitimate overriding interests.

Limitation of certain rights.

(2) A limitation of a right or fundamental freedom under subsection (1) shall apply only for the purposes of—

- (a) preventing the commission or continuation of an offence under this Act;
- (b) investigating an offence under this Act;
- (c) ensuring public order within the county;
- (d) maintaining public health and safety within the county; or
- (e) ensuring the enjoyment of the rights and fundamental freedoms by an individual does not prejudice the rights and fundamental freedom of others in the county.

(3) The limitation of a fundamental right and freedom under this section shall relate to—

- (a) the right to privacy to the extent of allowing—
 - (i) a premises is to be searched;
 - (ii) property is to be seized;

- (b) the right to property to the extent of detaining, confiscating or destroying any property used in the commission of an offence under this Act.
- (c) the right to freedom of movement and residence set out in Article 39 of the Constitution—
 - (i) when the person is lawfully held in custody; and
 - (ii) as a term of bail or bond imposed by a court.

SCHEDULE
CODE OF CONDUCT

s. 4

1. An enforcement officer shall, in the implementation of this Act or any other law— Duty to act impartially.

- (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 enforcement officer shall, in the exercise of duty— Respectful conduct.

- (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 enforcement officer interacts with in the exercise of a duty under this Act.

3. An enforcement officer shall— Confidentiality

- (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 enforcement officer shall no— Improper motive.
- (a) use their position or office to improperly secure for themselves or any other person, an advantage or disadvantage; and
 - (b) not use the resources of the unit or the county government for personal gain.
- 5.** An enforcement officer shall in undertaking enforcement action, give the affected persons the reasons for the enforcement action. Provision of information.
- 6.** An enforcement officer shall report any conduct by another enforcement officer, which the enforcement officer reasonably believes involves a failure to comply with this code of conduct, in accordance with the reporting mechanisms established within the unit. Duty to report misconduct.
- 7.** (a) An enforcement officer shall declare and register any personal interest in a matter in accordance with the Leadership and Integrity Act. Conflict of interest. No. 19 of 2012.
- (b) An enforcement 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 enforcement officer 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. Gifts and hospitality. No. 19 of 2012.
- 9.** An enforcement officer shall— Keep true records.
- (a) 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 omit to make any oral or written statement or entry in any record or 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.

Conduct of investigations or enforcement action.

(b) An enforcement 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 enforcement officer, in exercising powers of arrest, shall as far as possible apply non-violent methods before resorting to any use of force.

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 enforcement officer 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 enforcement 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.

Protection of arrested persons.

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

Breach of code

(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.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to provide for the establishment of law enforcement and inspectorate units in each county and to provide for the administration and management of the units.

Under Article 185 of the Constitution, counties have the power to make laws that are necessary for, or incidental to, the effective performance and exercise of the powers of county governments under the Fourth Schedule. The establishment of a county compliance and enforcement units is informed by the recognition that counties require officers who can be responsible for ensuring compliance with the laws enacted by the county governments.

The role of enforcement officers within the counties is therefore integral to the daily operations and conduct of businesses within the counties. It is however necessary that a national law broadly set out the functions and expected conduct of the enforcement officers to ensure the safety and wellbeing of the residents of the counties and to provide an enabling environment for the conduct of business and other regulated activities at the county level.

In addition, currently, reports abound of enforcement officers and county *askaris* mishandling the public. The approach and conduct of the enforcement officers shapes community notions of the county government and therefore, professionalism should be ensured.

This legislative proposal therefore provides a legal framework for the appointment, functions and a uniform code of conduct for the enforcement officers.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative power but county governments may delegate legislative authority to the relevant county executive committee member as may be appropriate.

The Bill does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Part 2 of the Fourth Schedule to the Constitution designates various powers to the counties, including licensing and implementation of various county activities as some of the functional areas of the county government. The functions of enforcement units are to ensure compliance laws enacted

pursuant to Article 185 of the Constitution and Part 2 of the Fourth Schedule to the Constitution.

The Bill therefore affects the powers and functions of the county government and it is therefore a Bill that concerns counties in terms of Article 110(1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

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

Dated the 15th August, 2018.

GEORGE KHANIRI,
Senator.