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EMBU COUNTY BILLS, 2024

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CONTENT

Bill for Introduction into the County Assembly of Embu—	PAGE
The Embu County Laws Compliance and Enforcement Bill, 2024.....	1

KEVIN'S CATERING SUPPLEMENT

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**THE EMBU COUNTY LAWS COMPLIANCE AND
ENFORCEMENT BILL, 2024**

ARRANGEMENT OF CLAUSES

Clause

PART I — PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3— Objects and purpose.

**PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF
THE COUNTY LAWS COMPLIANCE AND ENFORCEMENT
UNIT**

- 4— Establishment of the county laws compliance and enforcement unit.
- 5— Code of conduct.
- 6— Functions of the Unit.
- 7— Powers of entry by enforcement officer.
- 8— Power to arrest.
- 9— Production in police station.
- 10— Seizure of property.
- 11 — Preservation or destruction of seized property.
- 12— Power to impound vessels.
- 13— Power to man cess barriers, bus parks and parking places.
- 14— Power to impound animals.
- 15 — Summons and bonds.
- 16— Unapproved building and structures.
- 17— Service of Notice.
- 18— Identification of an Officer.

PART III—OFFENCES

- 19— Impersonating an officer.
- 20— Obstruction of an Officer.
- 21— General penalty.

PART IV—MISCELLANEOUS PROVISION

- 22—Fines.
- 23—Arrangement with other public offices.
- 24—Transition.
- 25—Regulations.
- 26—Limitation of certain rights.

FIRST SCHEDULE—CODE OF CONDUCT**SECOND SCHEDULE—COMMITMENT TO THE CODE OF
CONDUCT FOR ENFORCEMENT
OFFICERS**

**THE EMBU COUNTY LAWS COMPLIANCE AND
ENFORCEMENT BILL, 2024**

A Bill for

AN ACT of the County Assembly of Embu to provide for the establishment of laws compliance unit; management and administration of the unit to ensure compliance with and enforcement of county laws; and for connected purposes

ENACTED by the County Assembly of Embu, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Embu County Laws Compliance and Enforcement Act, 2024 and shall come into effect upon publication in *Gazette*.

Interpretation

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

“Animal” includes domestic animals, and poultry;

“Authority” means the Embu County Revenue Authority;

“Board” means the County Public Service Board of Embu

“Compliance and 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 Executive Committee” means the Embu County Executive Committee;

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

“County law” means any law enacted by the County Assembly of Embu or a county statutory instrument;

“Court” means a court of competent jurisdiction as defined in the Constitution of Kenya 2010;

“Officer” means an enforcement officer appointed under section 4;

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

“premise” means any building, area or structure where a regulated activity is undertaken or is about to be undertaken including 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 to the 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 Compliance and Enforcement Unit established under Section 4;

“Vessel” includes motor vehicles, motorbikes, bicycles and any other motorised or non-motorised vessel.

Objects and purpose

3. The object of this Act is to provide for establishment and operation of a county laws compliance and enforcement unit and to regulate the conduct of county enforcement officers.

PART II—ESTABLISHMENT OF THE COUNTY LAWS COMPLIANCE AND ENFORCEMENT UNIT

Establishment of the county laws compliance and enforcement unit

4. (1) There is established a unit known as Embu County Laws Compliance and Enforcement Unit.

(2) County Public Service Board shall—

(a) appoint and determine the number of enforcement officers required for the effective performance of the unit; and

(b) be responsible for the human resource function relating to the unit, including the qualifications, the ranks and lines of authority within the unit.

Code of conduct

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

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

(3) The declaration of commitment to the Code shall take the form and structure set out in the Second Schedule.

Functions of the unit

6. (1) The functions of the Unit shall be to—
- (a) ensure compliance with and enforcement of all county laws and regulations;
 - (b) inspect premises for compliance with trade licences, approvals and permits issued by the county government;
 - (c) ensure legal compliance with all county revenue collection requirements including cess 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 and any other related laws;
 - (h) undertake educational and sensitization initiatives with consumers and businesses within the county;
 - (i) ensure safety of county government employees while on duty;
 - (j) provide crowd management and control during county government functions; and
 - (k) perform any other functions assigned under this Act or any other law.
- (2) 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.

Power of entry by Enforcement officer

7. An Enforcement officer shall have powers to—

- (a) enter into a premise, with or without a warrant, 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 written law; and
 - (ii) by written notice, require the owner or operator of the premises to implement any remedial measures.

Power to arrest

8. (1) Where an Officer has reasonable ground 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; or
 - (ii) an employee of the proprietor; or
 - (iii) any other person whom the officer reasonably believes 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 an offence or is about to commit an offence under any County law resists an arrest.

Production in police station

9. Where an Officer arrests any person under section 8 above, the Officer shall immediately forward the person arrested to the nearest Police Station or Post.

Seizure of property

10. (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.

(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.

Preservation or destruction of seized Property

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

Impounding of vessels

12. Where an Officer reasonably believes that a vessel is parked or controlled in any manner contrary 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 County Enforcement Station.

Power to man barriers Bus parks and other parking places within the County

13. (1) Where the Authority has erected or placed barriers for the purpose of revenue collection and inspection of receipts, the Enforcement Unit shall—

- (a) deploy Officers for receipts inspection;
- (b) arrest without warrant any person who fails to pay or produce payment receipts or permits;
- (c) Enforcement Officers shall man all the bus parks and the other parking places within the County;
- (d) Enforcement Officers in uniform may take all reasonable steps to prevent any vehicle from being driven past any barrier erected, and a driver who fails to comply with any reasonable signal given by an Enforcement Officer in uniform requiring the driver to stop the vehicle before the barrier, commits an offence and is liable on conviction to imprisonment for a term not

exceeding twelve months, or to a fine not exceeding fifty thousand shillings or both.

- (e) Enforcement officers shall have the power to follow, intercept and without a warrant, arrest any person, or impound any vehicle having evaded payment of cess at designated collection points.
- (f) Enforcement Officer shall have the power to arrest any person abetting evasion of payment of cess or any other levies.

(2) Nothing in this law shall prevent the enforcement unit from erecting a temporary barrier to effectively enforce compliance of any county law or regulation.

Power to impound animals

14. (1) An Officer may impound any animal that is kept contrary to any other Law applicable.

(2) The Enforcement Officer shall ensure that any impounded animal is taken to a County holding grounds and Enforcement yards awaiting disposal as per the relevant County Laws or upon payment of prescribed fees to the Authority.

Summons and bonds

15. (1) Subject to this act or any other law, an Enforcement officer may apply before a subordinate court for summons, warrant or other legal process.

(2) The Enforcement Officers shall give bonds to offenders where necessary.

Unapproved building and structures

16. (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.

(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.

Service of notice

17. (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.

(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.

Identification of an officer

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

(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

Impersonating an officer

19. (1) A person other than an Enforcement officer, who without the written authority of the Director of Enforcement—

- (a) puts on or assumes, either in whole or in part, the uniform, name, designation or description of an enforcement officer, or a uniform, name or designation, resembling or intended to resemble the uniform, name or designation of an Enforcement Officer;
- (b) or in any way pretends to be an Enforcement officer for any purpose which he would not by law be entitled to do of his own authority,

Commits an offence and shall be liable on conviction, to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years, or both.

(2) Notwithstanding subsection (1), a person may, with the approval of the head of Enforcement, use part of enforcement uniform for artistic purposes.

Obstruction of officers

20. Any person who—

- (a) assaults, resists or willfully obstructs an Enforcement officer in the due execution of the Enforcement officer's duties;
- (b) assaults, resists or willfully obstructs any person acting in aid of the Enforcement officer; or
- (c) intentionally or recklessly, destroys an enforcement officer' property,

Commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

General Penalty

21. 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 Kenya shillings 50,000 or to imprisonment for a term not exceeding one year or both.

PART IV—MISCELLANEOUS PROVISIONS

Fines

22. All fines imposed and recovered on an offender shall be paid to and collected by the County Government as revenue.

Arrangement with other public offices

23. The County Executive Committee Member shall put in place arrangements to —

- (a) engage 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 the County offences into the County Revenue Fund;

- (b) liaise with the Director of Public Prosecution for the purposes of facilitating prosecution of those who contravene County laws;
- (c) engage the Relevant public authorities dealing with matters of incarceration of criminal suspects and convicts.

Transition

24. Notwithstanding any other provision of this Act to the contrary, a person who, immediately before the commencement of this Act was an enforcement officer shall remain an enforcement officer under this Act unless the Board redeploys such officers.

Regulations

25. The County Executive Committee Member shall in consultation with the relevant departments and Committees in the County Government may make regulations to —

- (a) further prescribe and regulate the conduct of Enforcement Officers;
- (b) provide for uniform features and identification documents; and
- (c) facilitate the implementation of this Act.

Limitation of certain rights

26. (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.

(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.

FIRST SCHEDULE*(Section 5(1))***CODE OF CONDUCT****Duty to act impartially**

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

- (a) not discriminate against any person;
- (b) exercise fairness, self-control, tolerance; and
- (c) respect all persons and their traditions, beliefs and lifestyles if they are compatible with the rule of law.

Respectful conduct

2. An Enforcement Officer shall, in the execution of duties—

- (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 victimize 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 within the exercise of a duty under this Act.

Confidentiality

3. An Enforcement Officer shall—

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

Improper Motive

4. An Enforcement Officer shall—

- (a) not 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.

Provision of information

5. An Enforcement Officer shall in undertaking enforcement give the affected persons the reasons for the action.

Duty to report misconduct

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.

Conflict of interest

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

(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.

Gifts and hospitality

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.

Keep True Records

9. An Enforcement Officer shall—

- (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) not intentionally omit to make any oral or written statement or entry in any record or document; and
- (d) not alter, deface, erase, conceal, or destroy any record or document, kept or made in connection with any enforcement activity.

Enforcement action

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

Use of force

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

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

(3) Whenever it is necessary for an enforcement officer to resort to the lawful use of force, the officer shall—

- (a) exercise restraint in and act in proportion to the seriousness of the offence and the legitimate object to be achieved;
- (b) minimize damage and injury, and respect and preserve human life;
- (c) ensure that assistance and medical aid are secured to any injured person at the earliest possible opportunity ; and
- (d) report the incident promptly to the officer's supervisors.

Protection of Arrested persons

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.

Breach of Code

13. (a) An Officer who breaches this code shall be subject to the disciplinary procedures of the County Public Service.

(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.

SECOND SCHEDULE

(Section 5(3))

COMMITMENT TO THE CODE OF CONDUCT FOR ENFORCEMENT OFFICERS.

I.....

Personal Number.....holder of National ID/Passport No..... and Post Office Box No.

do hereby confirm that I have read and understood the Code of conduct for enforcement officers in Embu County Government and hereby solemnly declare and commit myself to abide by the provisions of the Code at all times.

SIGNED at

By the said

Deponent

This.....day of.....20,.....)

Before Me

Judge/ Magistrate/ Commissioner for Oaths

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the establishment of the county laws enforcement and compliance unit in Embu County and to provide for the administration and management of the unit.

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 the county laws enforcement and compliance unit is informed by the recognition that the county requires officers who can be responsible for ensuring compliance with the laws enacted by the Embu county government. County legislation like any other law requires implementation and enforcement. To achieve enforcement of the laws, the Embu County government must through legislation, establish a proper institutional framework with specific powers geared at enforcing the county laws. The existing enforcement framework was adopted from the defunct local authorities and there is a need to align them with the existing legal and institutional framework.

Enforcement includes inspection of compliance with county laws, arrests of those who offend the county law, their prosecution, and judicial determination of accusations and punishment of those who contravene the county law.

Enforcement further extends to impoundment of property and animals which is traded and kept contrary to county law.

The arresting or impounding officer must have a legal backing from which such power should be given.

It is upon the above consideration that this Bill seeks to provide for county laws compliance and enforcement unit and to regulate the conduct of enforcement officers.

The structure of the Bill is as follows:

Part I: Preliminary

Clauses 1–3) of the Bill contain the Preliminary provisions Short title and object and purpose of the Act.

Part II: Establishment, Functions and Powers of the County Laws Compliance and Enforcement Unit

Clauses 4-18 provide for the establishment, functions, and powers of the County Laws Compliance and Enforcement unit. The Part also provides

for the appointment, identification of, and code of conduct of the enforcement officers.

Part III: Offences

Clause 19-21 provides for the offences created under this Act and the penalties. There is also a provision for the general penalty in cases where there is no penalty provided for an offence.

Part: Miscellaneous Provision

Clause 22-26 are miscellaneous provisions that deal with the issue of fines, arrangements with other public offices, transition, power to make regulations, and limitations of certain rights.

Dated the 15th January, 2024.

PHILIP KINYUTU NZANGI,
*Chairperson, Administration, Devolution,
Public Service, Governance and ICT.*



