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NYERI COUNTY BILLS, 2021

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CONTENT

	PAGE
Bill for Introduction into the County Assembly of Nyeri—	
The Nyeri County Inspectorate and Enforcement Services Bill, 2021	1

**THE NYERI COUNTY INSPECTORATE AND ENFORCEMENT
SERVICES BILL, 2021**

A Bill for

AN ACT of the County Assembly of Nyeri to provide for the establishment of Nyeri County Inspectorate Unit and for matters connected thereto.

ENACTED by the County Assembly of Nyeri, as follows—

PART 1—PRELIMINARY

Citation and commencement

1. This Act may be cited as the Nyeri County Inspectorate Unit 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 the County Governments 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;

“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 county laws; and
- (b) regulate the actions of the County Inspectorate officers.

PART II—ESTABLISHMENT OF THE COUNTY INSPECTORATE UNIT

Establishment of Inspectorate Unit

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

(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.

(3) The Inspectorate shall be a unit under the Executive Committee Member.

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 life and property of the county;
- (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.

(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.

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

Appointment of Inspectorate officers

6. (1) The County Public Service Board shall, in consultation with the Executive Committee Member 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 before the Director, in English or Kiswahili, the oath or affirmation set forth in the First Schedule to this Act.

(4) All persons who immediately before the commencement of this Act were officers or employees of the Municipal and County Councils shall upon commencement of this Act become members of the Inspectorate in accordance with this Act in such ranks as the Board shall designate.

(5) Notwithstanding subsection (4), all officers or employees of the County Council shall undergo vetting by the Board to assess their suitability and competence to continue service with regards to compliance

with the requirements of Chapter six of the Constitution, the Leadership and Integrity Act and other written laws applicable to public officers.

Certificate of Appointment and Badges for officers

7. (1) The Board shall ensure that a certificate of appointment is issued to every person appointed as an inspectorate officer.

(2) The certificate of appointment shall—

- (a) be in the form prescribed in the Regulations of this Act;
- (b) be signed by the Director;
- (c) be proof of appointment under this Act; and
- (d) form the basis for issuance of a badge and all other equipment to an officer.

(3) An officer shall at all times carry the badge as proof of appointment.

Deployment, Promotion and Ranking of Officers

8. (1) The Board in consultation with the Executive Committee Member shall be responsible for deployment, promotion and discipline of officers of the Inspectorate.

(2) The Board in consultation with the Executive Committee Member shall develop the various ranks of officers in the unit and shall publish ranks in the Kenya Gazette as stipulated in the Second Schedule to this Act.

Director of Inspectorate

9. (1) There shall be a Director who shall be a public officer appointed by the County Public Service Board through a competitive process.

(2) The Director shall be the head of the Inspectorate and shall be responsible for—

- (a) The day-to-day operations of the Inspectorate;
- (b) The property and business of the Inspectorate; and
- (c) The administration, organization and control of the other officers and staff of the Inspectorate.

(3) The functions of the Director shall be to—

- (a) foster cooperation and collaboration between the Inspectorate service and the National Police in the performance of the

- inspectorate functions and shall in so doing ensure obedience to any directions issued by the Inspector General of Police;
- (b) ensure the implementation of policy and operational directions of the Inspectorate;
 - (c) prepare budgetary estimates and develop an Inspectorate plan before the end of each financial year, setting out the priorities and objectives of the Inspectorate and the justification thereof;
 - (d) determine the establishment and maintenance of Inspectorate posts, outpost, units bases in the county and determine the boundaries of the Inspectorate outposts or unit bases;
 - (e) determine the distribution and deployment of officers in the Inspectorate;
 - (f) recommend the establishment of, manage and maintain training institutions, centers places for the training of officers joining the Inspectorate and other officers;
 - (g) promote co-operation with the national police service and other security agencies;
 - (h) issue and document Inspectorate Standing orders;
 - (i) cooperate with other public or private bodies to provide reliable inspector statistics on crime rate, detection rate, public confidence in the inspector, number of complaints against the inspector; as well as personnel statistics; and
 - (j) perform any other lawful act on behalf of the Inspectorate.

Qualifications of Director

10. A person shall qualify to be appointed as Director if that person—

- (a) is a citizen of Kenya;
- (b) satisfies the provisions of Chapter Six of the Constitution;
- (c) hold a degree from a University recognized in Kenya; and
- (d) such other qualifications as may be set out by the County Public Service Board.

County Inspectorate Standing Orders

11. (1) The Director 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

12. (1) The Director may in consultation with the Executive Committee Member, 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.

(4) The Director shall ensure the development of procedures which facilitate uniform keeping records at all Inspectorate posts.

Training Institutions

13. (1) The Inspectorate may establish and maintain training institutions for purposes of training of its officers.

(2) Training in the institutions referred to in accordance to the training curriculum.

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

(4) The Board shall develop guidelines on on the curriculum, examination and certification of the inspectorate trainees.

Delegations of Powers by the Director

14. The Director may delegate in writing any of the powers conferred upon him by this Act or, unless a contrary intention appears, by any other written law, to any gazetted officer of or above the rank of senior and such delegation—

- (a) may be made subject to such conditions, exceptions or qualifications as are specified in the written notice of delegation;
- (b) is revocable at will; and
- (c) does not affect the exercise of a power or the performance of a function by the Director.

Establishment of the Disciplinary Committee

15. (1) There is established an internal disciplinary committee that shall be responsible for maintaining discipline in the Inspectorate units.

(2) The Committee shall comprise of—

- (a) the Chairperson who shall be the Chief Officer in charge of the Inspectorate;
- (b) three persons from the Inspectorate unit chosen by the County Executive Committee member;
- (c) a representative from the Office of the County Attorney; and
- (d) a representative from the County Public Service Board.

(3) At any disciplinary proceedings, an officer may be represented by a representative/advocate of their choice.

Powers of the Disciplinary Committee

16. (1) The Disciplinary committee shall have power to—

- (a) receive and investigate a complaint regarding an inspectorate officer;
- (b) summon and interrogate witnesses;
- (c) call for or require the production of documents for examination; and
- (d) recommend the appropriate disciplinary action against an inspectorate officer to the Public Service Board;

(2) The disciplinary actions the committee may recommend include—

- (a) Interdiction of an officer;
- (b) Suspension;
- (c) Dismissal;
- (d) Demotion;
- (e) Deduction of salary; or

(f) Transfer to another inspectorate unit within the county.

Appeal

17. (1) Any person dissatisfied or affected by the decision of the Disciplinary Committee may appeal to the Public Service Commission against the decision.

(2) An appeal under subsection (1) shall be in writing and made within ninety days after the date of the decision, but the Commission may entertain an appeal later if, in the opinion of the Commission, the circumstances warrant it.

(3) The right to appeal does not bar any person from applying for judicial review against the decision of the Disciplinary Committee.

Surrender of Public Property upon Resignation, etc.

18. (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 IV—POWERS AND CONDUCT OF THE INSPECTORATE

Powers to maintain law and order

19. (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

20. (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

21. (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

22. 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

23. (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

24. 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

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

Identification of an Officer

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

Unapproved Building and Structures

27. (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

28. (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

29. (1) The surcharge mentioned in section 31(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

30. 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.

Control and Conduct of Inspectorate

31. (1) The Inspectorate shall perform its functions under the overall direction, supervision and control of the Director and shall be impartial and objective at all times in all matters.

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

(3) Any officer proved to have contravened the provisions of this section is guilty of a felony.

Obedience of Orders

32. (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

33. (1) No member of the Inspectorate shall engage in any trade, business or employment, if the trade, business or employment is in conflict of interest with the performance of the inspectorate officer's duties.

(2) For avoidance of doubt, the laws on anti-corruption, the Public Officers Ethics Act, 2003, the Leadership and Integrity Act, and other relevant laws shall apply to members of the Inspectorate.

PART V—OFFENCES

Impersonating an Officer

34. 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.

Obstruction of an Officer

35. Any person who wilfully 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

36. (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

37. 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 to both.

PART VI— MISCELLANEOUS PROVISIONS

Allocation of Funds

38. (1) The County Assembly shall allocate adequate funds to enable the Inspectorate to perform its functions and the budget for the Inspectorate shall be a separate vote.

(2) The Director shall ensure that every inspector post, outposts and unit is allocated sufficient funds to finance its activities.

Fines

39. All fines imposed and recovered by a competent court on an offender shall be paid to and collected by Judiciary and remitted to the exchequer revenue.

Arrangements with other Public Offices

40. 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 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;
- (c) The relevant public authorities dealing with matters of incarceration of criminal suspects and convicts.

Transition

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

(2) Notwithstanding subsection (1) above, all officers referred to in subsection (1) shall undergo vetting by the Board to assess their suitability and competence to continue in service with regards to compliance with the requirements of Chapter 6 of the Constitution, the Leadership and Integrity Act and other written law applicable to public officers.

(3) The Board shall discontinue the service of any officer who fails in the vetting referred to in subsection (2).

Regulations

42. The Executive Committee Member may make regulations and Standing Orders for the Unit consistent with the provisions of this Act, for

prescribing anything which by this Act is required to be prescribed, or relating to any of the following matters—

- (a) in consultation with the County Attorney, on the rules of procedure;
- (b) in consultation with the Board, forms of certificates of appointment and other forms to be used under this Act;
- (c) on the conduct of Inspectorate enforcement officers.

FIRST SCHEDULE

OATH / AFFIRMATION OF OFFICE

(s.6(3))

I.....(FullNames)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)

MEMORANDUM OF OBJECTS AND REASONS

Nyeri County legislation like any other law requires implementation and enforcement. To achieve enforcement of the laws, the County government must through legislation, establish a proper institutional framework with specific powers geared at enforcing the county laws.

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

Enforcement further extends to impoundment of property and animals which is traded and kept contrary to county 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 enforcement institutions and their powers.

The structure of the Bill is as follows—

PART I—(clauses 1–3) of the Bill contains the preliminary provisions.

Clause 1 states the title of the Bill and clause 2 deals with interpretation of terms as used in the Bill. Clause 3 states the objects of the Bill.

PART II—Clauses 4 and 5 provide for the establishment of Inspectorate unit and Inspectorate Unit Stations and the responsibilities and functions of the Inspectorate Unit.

PART III—Clause 6 -8 provides for the appointment of Inspectorate officers, their deployment, promotion discipline and ranking. It also makes provision for the establishment of the Disciplinary Committee which is tasked with the maintenance of discipline within the inspectorate units and the powers of the Disciplinary Committee.

This part also provides for a mechanism of appeal from the decision of the disciplinary committee.

PART IV—Clauses 11-16 provides for the various powers which have been bestowed upon the inspectorate officers. Clause 17 requires them to identify themselves in every situation.

Clause 18 and 19 make provisions that deal with unapproved building and the consequences of such buildings.

Clause 20 provides for the mode of service of notices.

PART V—Clause 21-24 provide for the offences created under this Act and their punishment. There is also a provision for general penalty in cases where no penalty is provided for an offence.

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

Dated the 2nd December, 2020.

NJUGUNA KAWANJIKU,
Member of County Assembly.