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HOMA BAY COUNTY ACTS, 2019

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**THE HOMABAY COUNTY INSPECTORATE
SERVICE ACT**

No. 1 of 2019

Date of Assent: 10th April, 2019

Date of Commencement: See Section 1

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**THE HOMA BAY COUNTY INSPECTORATE
SERVICE ACT, 2019**

AN ACT of the County Assembly of Homa Bay to provide for the establishment of Homa Bay County Inspectorate Service, provide for its organization, powers and functions and for connected purposes

ENACTED by the County Assembly of Homa Bay County, as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Homa Bay County Inspectorate Service Act, 2019 and shall come into force on the fourteenth day after its publication in the *Kenya gazette* and *County Gazette*.

Short title and commencement

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

Interpretation

“Animal” includes domestic animals, wild animals and poultry

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

“Committee” means the disciplinary committee established under Section 14 of the Act.

“Compliance enforcement” means any 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 Homa Bay or a subsidiary county law.

“County Secretary” means a person for the time being appointed as the County Secretary of Homa Bay County.

“Chief of Staff” means a person for the time being appointed as the County Chief of Staff of Homa Bay County.

“Court” means a court of competent jurisdiction over county laws

“Deployment” means the assigning of an officer within the service.

“Director” means the Director of the Inspectorate Service appointed pursuant to the provisions of this Act.

“Governor” means the governor of the County Government of Homa Bay.

“Officer” means an officer appointed under section 12.

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

“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.

“Service” means the Inspectorate service established under Section 4.

“Standing orders” means Administrative orders of the County Inspectorate Service for the general control, direction and information of the County Inspectorate Service.

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

“Supervisory Board” means the Inspectorate Coordination and Supervisory Board established under Section 16 (B)

3. The objects of this Act are to—

- (a) establish by law, in line with Article 185(2) of the Constitution mechanisms so as to ensure effective performance and exercise of county government powers pursuant to Part II of the 4th Schedule to the Constitution;
- (b) establish a legislative framework for the enforcement of all county laws;
- (c) to provide for institutional framework for the enforcement of the County laws; and
- (d) to regulate the actions of County Inspectorate officers;

Objective of the Act

- (e) to deliver an effective and independent inspectorate service within the County and shall among others ensure compliance with County legislation and provisions of the constitution by the county residents;
- (f) give effect to the provisions of Article 187 of the Constitution of Kenya, 2010 that requires the County Executive Committee to implement county legislations and to implement within the county, national legislation to the extent that the legislation so requires;
- (g) give effect to the provisions of article 189(1)(b) that requires the County Government to assist, support and as appropriate, implement legislation of the National Government.

**PART II — ESTABLISHMENT AND
ADMINISTRATION OF THE INSPECTORATE
SERVICE**

4. (1) There is hereby established a Service known as Homa Bay County Inspectorate Service.

Establishment of
Inspectorate
Service and
Inspectorate
Stations

(2) The service shall at all times be a department within the County Public Service.

(3) The service shall comprise of such maximum number of persons and personnel as shall be determined from time to time by the Board, and shall consist of the following units—

- (a) Inspectorate Unit
 - (b) Fire and Emergency Unit
 - (c) Disaster and Rescue Service Unit
 - (d) Traffic Unit;
 - (e) And such other unit as the board may require with the approval of the County Assembly
- (4) The ranks of the Inspectorate Shall Consist of;
- (a) Commissioned officers including—
 - (i) Director of Inspectorate Service;
 - (ii) Deputy Director of Inspectorate Service;
 - (iii) Senior County Superintendent;

- (iv) County superintendent;
- (v) Assistant County Superintendent.

- (b) County Inspectorate Officers including;
 - (i) County Chief Inspector;
 - (ii) County Inspector.
- (c) Non Commissioned County Inspectorate Officers including—
 - (i) Senior County sergeant;
 - (ii) County sergeant;
 - (iii) County Corporal and;
 - (iv) County constable.

(5) The Director shall publish in the *Kenya Gazette* and County Gazette, the establishment and location of every Inspectorate Service Station in the County.

(6) Inspectorate Officers Shall have seniority according to their position as set out in subsection 4(4).

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

Responsibility of
the Inspectorate
Service

- (a) protecting and guarding the property of the county;
- (b) enforcement of compliance with the Homa Bay 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 royalties;
- (f) service fee and land rates collection; and
- (g) prevention of crime in the county.

(2) In addition to the matters listed at sub-section 1, the Service shall be responsible for compliance and enforcement of any other matter that it may be required to do so by any other written law or as directed by any department in the county government.

6. (1) There shall be a Director appointed by the Governor through a competitive process undertaken by the Board.

Appointment and
Authority of
Director

(2) The Governor shall cause to be forwarded to the County Assembly the name of the person appointed as the Director for approval in line with the provisions of the Public Appointments (County Assemblies Approval) Act 2017.

7. (1) The Director shall be the Chief of the Inspectorate Service and shall be responsible for—

Functions and
Powers of the
Director

- (a) the property and business of the inspectorate;
- (b) day-to-day operations of the inspectorate;
- (c) the administration, organization and co-ordination of officers of the inspectorate;
- (d) issuing Standing Orders for the running of the Inspectorate;
- (e) Ensure the implementation of policy and operational directions of the Inspectorate;
- (f) 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;
- (g) 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;
- (h) determine the establishment and maintenance of Inspectorate posts, outposts, units or unit bases in the County and determine the boundaries of the Inspectorate outposts or unit bases;
- (i) recommend the establishment of centers or places for the training of officers joining the Inspectorate Service and other officers;
- (j) promote co-operation with the National Police Service and other security agencies;
- (k) perform any other function that may be assigned by the Governor.

(2) The Director shall establish the inspectorate

stations at all decentralized units as it deems fit and necessary.

8. A person qualifies for appointment as the Director of the County Inspectorate Service if the person—

Qualification of the Directors

- (a) is a citizen of Kenya
- (b) holds a Security Management related degree from a recognized university in Kenya;
- (c) must have at least served in the rank of a Major in the Kenya Defense Forces or Senior Superintendent of Police in the Kenya Police Service;
- (d) satisfies the provisions of Chapter Six of the Constitution

9. (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.

Administrative duties and powers

(2) The Director shall ensure that every inspectorate posts, outposts and units are allocated sufficient funds to finance their activities.

(3) The remuneration of members of the Inspectorate Service and officers under this Act shall accordingly be determined by the Board and in regard to the terms of the Salaries and Remuneration Commission.

10. (1) An officer of the inspectorate shall, upon being enlisted, sign before an officer authorized by law to administer oaths, or before the Governor, in English or Swahili the oath of office and allegiance set out in the Second Schedule: Provided, However, that the oath of office and allegiance for the Director shall be administered in a public event as may be set out by the Governor.

Oath of Office and Allegiance

(2) The board shall ensure that Certificates of Appointment are issued to all persons appointed as Inspectorate Officers during the oath.

11. No officer shall engage in any trade, business or employment, or take part in any form whatsoever, of commercial undertaking or offer professional services, outside the scope of his or her duties as an officer of the County inspectorate service.

Prohibition from other employment

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

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

Appointment of
Inspectorate
Officers

(2) The Board shall ensure that recruitment and appointment of officers into the service reflects ethnic and geographical diversity of the people of the county.

13. (1) The Director shall be responsible for deployment and administration of the scheme of service of the officers.

Deployment and
Scheme of service
of the officers

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

Establishment of
the Disciplinary
Committee

(2) The Committee shall comprise of—

- (a) the Chairperson who shall be the County Director of Human Resource;
- (b) three persons from the Inspectorate service chosen by the Director;
- (c) the County Legal officer or a representative from the County Legal department; 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.

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

Powers of the
Disciplinary
Committee

- (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;
 - (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) warning;
- (b) transfer to another Inspectorate Service Station within the County;
- (c) interdiction of an officer;
- (d) suspension;
- (e) demotion;
- (f) deduction of salary;
- (g) dismissal

16. (1) Any officer aggrieved by the decision of the Disciplinary Committee may appeal to the High Court. Appeals

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

PART IV—POWERS OF OFFICERS

17. The jurisdiction of the inspectorate Service shall cover the enforcement of county laws and other applicable laws and regulations. Jurisdiction of the inspectorate

18. (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 of compliance and enforcement. Powers of entry into a premise

(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.

19. (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 Power of arrest

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; or
 - (ii) an employee of the proprietor; or
- (c) any other person whom the officer reasonably believes that 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 a crime or is about to commit a crime under any county law resists an arrest.

20. Where an officer arrests any person under section 19 above, he or she shall immediately forward the person arrested to the nearest police within 24 hours.

Production in court
or police station

21. (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.

Power to impound
goods

(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.

22. 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 Service Station.

Power to impound
vessels

23. An officer may impound any animal that is kept contrary to any county law. Power to impound animals

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

25. (1) It shall be unlawful for any person to erect, build establish or keep any structure, building, shed, kiosk or any other structure whatsoever or for whatever purpose on any area or public or private without approval of the County Government. Unapproved buildings and structures

(2) Where it has come to the attention of the County Government that there is or are such structures mentioned in subsection (1) above which have been put, constructed or erected without County Government Approval, the County Government shall give the owner or occupier of such structure Seven (7) days notice to demolish the structure or obtain County Government approval.

(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.

26. (1) The surcharge mentioned in section 25(3) herein above may— Cost of Demolition

- (a) be added to rates payable by rent and or
- (b) be recovered by the County Government as a civil debt

(2) An invoice raised by the County Government shall be prima facie evidence of expenses incurred by County Government for the Demolition.

27. Any notice required to be given shall be deemed and have been served if— Service of Notice

- (a) it is placed on a conspicuous place of the structure or buildings;
- (b) served upon the owner, or
- (c) served upon the occupant.

PART V—OFFENCES

28. (1) It shall be unlawful for an inspectorate officer to subject any person to torture or other cruel, inhuman or degrading treatment. Prohibition against torture

(2) An inspectorate officer who subjects a person to torture commits an offence and shall be liable upon conviction to imprisonment for life.

29. 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. Impersonating an officer

30. Any person who willfully resists arrest, obstructs or interferes with the duties of an inspectorate officer, commits an offence and shall be liable upon conviction to a fine not exceeding Kenya shillings 50,000 or to imprisonment for a term not exceeding one year or to both. Obstruction of an Officer

31. (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. Destruction of Country Property

(2) In addition to the penalties prescribed in subsection 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.

32. 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 100,000 or to imprisonment for a term not exceeding one year or to both General Penalty

PART VI — MISCELLANEOUS PROVISIONS

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

34. The Governor and the Director shall put in place arrangements with— Arrangements with other public bodies

- (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.

35. The Director may in consultation with the relevant departments and committees in the county government make regulations, with the approval of the County Assembly to—

Regulation

- (a) further prescribe and regulate the conduct of Inspectorate officers;
- (b) facilitate the implementation of this Act.

SCHEDULE 1**OATH OF OFFICE AND ALLEGIANCE- (S10)**

I do swear/ solemnly and sincerely affirm that I will be faithful and bear true allegiance to the Constitution and the Governor of Homabay County during mywithout fear, favour, malice or ill- will; that I will at all times do my best to do my duties; that I shall continue to hold the said office to the best of my skill and knowledge, discharge all the duties thereof faithfully according to the law and will always discharge my duties and the duties of the Inspectorate according to law without fear, favour, affection, ill- will. (SO HELP ME GOD.)

SCHEDULE 2**OFFENSES AGAINST DISCIPLINE**

1. It shall be an offence against discipline for any officer to—
 - (a) unlawfully strike, or use or threaten violence against any officer or any other person;
 - (b) use any obscene, abusive or insulting language in any form to any officer;
 - (c) uses threatening or insubordinate or disrespectful language, word, act or demeanor to an officer senior in rank;
 - (d) cause disturbance in any premises;
 - (e) be drunk while on duty;
 - (f) drink intoxicating liquor or psychotropic substances or drugs, or smoke in uniform when actively engaged on duty in a public place;
 - (g) willfully disobey any lawful command or order;
 - (h) absent himself without leave;
 - (i) be found sleeping while on duty;
 - (j) leave his post or place of duty before he/she is regularly relieved, except in fresh pursuit of an offender who it is his/her duty to apprehend;
 - (k) while under arrest or in detention, leave or escape from such arrest or detention before he/she is set at liberty by proper authority;
 - (l) neglect or refuse to assist in the apprehension of any officer charged with any offence, when lawfully ordered to do so;

- (m) resist any lawful arrest;
- (n) without reasonable cause, fail to attend to any parade, instruction, class or court or any other duty which he is required to attend;
- (o) sell, pawn, lose by neglect, make away with or willfully or negligently damage, or fail to report any loss or damage to, any arm, ammunition, accoutrement, uniform or other article of personal issue or any vehicle or other property committed to his charge belonging to the Government or for which the Government is responsible;
- (p) be in improper possession of any public or private property;
- (q) commit any act of plunder or wanton destruction of any property;
- (r) be negligent in the performance of his/her duty;
- (s) appear on duty untidy or dirty in his/her person, arms, clothing or equipment;
- (t) make or sign any false statement in any document or official record;
- (u) without proper authority, disclose or conveys any information concerning any investigation or other matter;
- (v) feign any disease or infirmity;
- (w) without proper authority, demands or exacts from any person, any carriage, portorage or provisions;
- (x) commit an act which amounts to corruption under any law in force in Kenya;
- (y) make any false statements upon joining the Service;
- (z) refuse or neglect to make or send any report or return which it is his/her duty to make or send; or
- (aa) knowingly make any false accusation or complaint or statement against any officer or other person, affecting the character of such person, or wilfully suppress any material fact.