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MOMBASA COUNTY BILLS, 2024

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THE MOMBASA COUNTY WARD EQUITABLE DEVELOPMENT BILL, 2024

A Bill for

AN ACT of the County Assembly of Mombasa to provide a framework for the promotion of equitable development in the wards within the Mombasa County by providing for the allocation of funds for ward-based development projects; to provide mechanisms for selection of projects; to provide an oversight mechanism for the utilization of funds allocated for ward-based development projects; and for connected purposes.

ENACTED by the County Assembly of Mombasa, as follows —

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Mombasa County Ward Equitable Development Act, 2024.

Interpretation

No. 16 of 2011

2. In this Act—

"Commission" means the Commission on Revenue Allocation established under Article 215(1) of the Constitution;

"community" means residents of a particular geographical area or region defined as a ward;

"County" means the County of Mombasa;

"County Executive Committee Member" means the County Executive Committee Member responsible for matters related to Finance;

"Committee" means the County Assembly Committee responsible for matters related to Finance and Budget;

"Revenue" has the meaning assigned to it under the Commission on Revenue Allocation Act; and

"Ward" means one of the wards into which Kenya is divided under Article 89 of the Constitution.

Objects of the Act

2. The objects of this Act are to—

(a) promote the objects of devolution set out under Article 174 of the Constitution by providing a legal framework that promotes equitable development across all wards in the County;

(b) provide a framework for the participation of the residents of

each ward in the identification of priority projects in the County in respect of which Funds are allocated under this Act;

(c) promote the decentralisation of functions and provision of services by County Government to the extent that it is efficient and practicable pursuant to Article 176 of the Constitution;

(d) to ensure equitable sharing of resources within the County; and

(e) provide a framework for citizens led development to assist the County Government in planning and prioritizing the use of its resources.

Guiding principles

4. All persons and entities under this Act shall, in the performance of their functions under this Act, be guided by the following principles—

(a) the promotion of the equitable social and economic development of all persons residing within the ward in order to ensure the realisation of their economic and social rights under Article 43 of the Constitution;

(b) the principles and objects of devolution set out under Articles 174 and 175 of the Constitution;

(c) the promotion of the national values and principles of governance set out under Article 10 of the Constitution; and

(d) the use of public funds in a prudent and responsible manner in accordance with Article 201 of the Constitution.

PART II—ALLOCATION OF RESOURCES FOR WARD DEVELOPMENT PROJECTS

County Government to ensure equitable development

5. (1) The County Government shall allocate its resources equitably across all the wards in the County.

(2) For purposes of sub-section (1) the County Executive Committee shall—

(a) within the medium term, ensure that development projects are spread out equitably across all the wards in the County; and

(b) determine the criteria for allocation that incorporates proportion of population, equal share and land area of each ward.

(3) In determining the criteria for allocation under sub-section (2)(b), the County Executive Committee shall ensure that the allocation—

(a) is not less than fifty per cent of the County Government's allocation for development budget as provided under section 107(2)(b) of the Public Finance Management Act; and

(b) is complimentary to any other development efforts by the County Government or any other agency.

(4) Nothing in this Act shall be construed to provide for the exclusion of an area from any other development programmes.

(5) Any other County Government Development Projects shall continue alongside the projects funded under this Act.

County Assembly approval of criteria

6. (1) The criteria under section 5(2)(b) shall—

(a) be submitted by the County Executive Committee Member to the respective County Assembly for approval; and

(b) apply for such period as shall be determined by the County Assembly.

(2) The County Assembly shall consider and either approve or reject the criteria within twenty-one (21) days of receipt of the criteria.

(3) If the County Assembly fails to approve or reject the criteria within the period specified under sub-section (2), the criteria shall be deemed to have been approved and shall be applicable for a period of three years.

PART III—IDENTIFICATION OF WARD-BASED PROJECTS FOR EQUITABLE DEVELOPMENT WITHIN WARDS

Identification of projects

7. (1) The residents of each ward shall identify development projects for implementation in the respective County in accordance with this Part.

(2) The County Executive Committee Member shall co-ordinate the process of identifying projects for implementation in the respective wards and shall, for this purpose, conduct public participation.

(3) The County Executive Committee Member may, for purposes of subsection (2), establish a committee to be known as the Ward Projects Identification Committee which shall be an *adhoc* committee tasked with facilitating the identification of Ward projects.

(4) The Ward Projects Identification Committee shall comprise of—

(a) a Chairperson who shall be appointed by the County Executive Committee Member through a notice in the *Gazette*;

(b) one person representing the business community in the Ward;

(c) one person representing the youth in the Ward;

(d) one person representing either gender in the Ward;

(e) one person representing professionals residing the Ward;

(f) one person nominated by a registered group representing persons with disability in the Ward; and

(g) the Ward Administrator who shall be the Secretary.

(5) In nominating the members under sub-section (4) the County Executive Committee Member shall take into account gender balance and representation of ethnic minority groups.

(6) The Ward Projects Identification Committee may co-opt from time to time not more than three (3) members with specialised knowledge or expertise to assist in the discharge of the functions of the committee on such terms as the Committee may specify.

(7) The members of the Ward Projects Identification Committee shall serve a term of three years and shall be eligible for reappointment for one further term.

(8) The members of the Ward Projects Identification Committee shall be paid such sitting allowances as shall be determined by the County Executive Committee Member.

(9) For the avoidance of doubt, the members of the Ward Projects Identification Committee shall not be entitled to any salary.

(10) To be eligible for nomination to the Ward Projects Identification Committee, one shall—

(a) be a Kenyan citizen above eighteen years of age;

(b) be a resident of the respective Ward; and

(c) have a minimum of O-level academic qualification except the Chairperson who shall be expected to have a minimum of a University Degree.

(11) The conduct and regulation of business and the affairs of the Ward Projects Identification Committee shall be in accordance with the Schedule.

(12) The County Executive Committee Member shall designate County Public Service Officers to offer technical assistance to the respective Ward Administrator during the project identification process.

Selection of projects by the County Executive Committee

8. (1) The County Executive Committee Member shall consolidate and submit the proposals received under section 7 to the County Executive Committee for prioritization and determination of projects for implementation in each ward.

(2) The County Executive Committee Member shall submit to the County Assembly, a report on the projects identified under sub-section (1) to the respective County Assembly for approval.

(3) The County Executive Committee Member shall publicize the projects approved by the County Assembly for implementation in each ward by notice in the *Gazette* and through such other means as the County Executive Committee Member shall consider appropriate.

(4) The County Executive Committee Member shall align the project identification and selection processes with the County Budget Cycle as set out in the Public Finance Management Act.

Criteria for selection of projects

9. When approving a project for implementation under this Act, the County Assembly and the County Executive Committee Member shall ensure that the project—

(a) is a community-based project which aims at—

(i) ensuring the development of infrastructure that would promote the delivery of basic services and goods to persons residing at the lowest unit of decentralization established pursuant to section 54 of the County Governments Act;

(ii) enhancing the standards of living of persons residing within the ward through the delivery of basic goods and services;

(iii) promoting access to facilities that are key in the delivery of services to residents in the respective wards; or

(iv) promoting the economic development of residents within the respective ward through activities that promote the development of talent, growth of Micro and Small Enterprises and access to markets;

(b) falls within the scope of functions of County Governments as set out under Part 2 of the Fourth Schedule to the Constitution;

(c) does not duplicate any other project being undertaken under the National or County Government; and

(d) is of such nature as to ensure that the prospective benefits arising out of the project are available to a cross-section of the residents of a particular area.

Integration of projects in county planning

10. The projects identified under section 7 shall be included in—

(a) the County Budget Estimates provided for under section 13 of the Public Finance Management Act, 2012;

(b) the County Fiscal Strategy Paper provided for under section 117 of the Public Finance Management Act, 2012;

(c) the development plan provided for under section 126 of the Public Finance Management Act, 2012; and

(d) any other plan or document provided for under law, which may be determined by the Commission as being necessary for the implementation of this Act.

PART III—IMPLEMENTATION OF PROJECTS

Functions of the County Executive Committee Member

11. For the purposes of this Act, the County Executive Committee Member shall—

(a) ensure timely and efficient disbursement of funds for the implementation of Ward Development Projects;

(b) ensure efficient management of the funds in the implementation of Ward Development Projects;

(c) co-ordinate the implementation of projects at inter-ward level;

(d) receive and address complaints that may arise from the implementation of this Act;

(e) keep an inventory of all projects undertaken by the County Government under this Act;

(f) prescribe guidelines on best practices and implement measures to enable the implementation of projects in line with the with those measures; and

(g) perform such other duties as may be necessary for the proper implementation of this Act.

Funds allocated to Ward Development Projects

12. (1) Funds allocated for a project shall only be re-allocated for any other purpose during the financial year with the approval of the County Assembly.

(2) If for any reason a project is cancelled or discontinued during the Financial Year, Funds allocated for that project shall be reallocated to another project to be implemented in the same ward.

(3) Where—

(a) a project is to be carried out for a period of more than one Financial Year; and

(b) the financial obligations relating to the project exist for the subsequent year the County Executive Committee Member shall seek the approval of the County Assembly for the appropriation of monies in the subsequent Financial Year during which the project is to be undertaken for the completion of that project.

(4) The allocation of additional funds to a ward with respect to a project that received funds during the previous Financial Year shall have priority over a new project where—

(a) there is in place an existing contract for the implementation of the project in the current financial year including the potential of significant penalties for the cancellation or delay in implementation of the contract;

(b) there is in place, a cost sharing agreement with the national government or other entity that contributes at least forty-nine (49) percent of the total cost of the project;

(c) it is determined that the monies allocated for the carrying out of the project are not adequate; and

(d) there is demonstrable actual work in progress in relation to the project.

(5) The County Executive Committee Member and the County Assembly shall not approve the reallocation or appropriation of Funds under sub-section (3) unless—

(a) a contract or financial commitment exists in relation to the project;

(b) the completion time for the project does not extend to a period of more than two years; and

(c) substantial work has commenced on the project and it cannot be completed within a period of one year.

(6) A project shall not include an activity that involves a personal award in cash or in kind to any person.

(7) All funds allocated to a ward shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the account or funds which are not utilized for whatever reasons.

PART IV—REPORTING AND OVERSIGHT

County Assembly approvals

13. (1) A County budget or County plan under the County Governments Act, 2012 or the Public Finance Management Act, 2012 dealing with allocation of resources shall contain information on the manner in which the resources have been equitably distributed amongst the wards in the County.

(2) A County Assembly—

(a) shall not approve a County plan or budget that does not comply with sub-section (1); and

(b) may amend a County plan or the development expenditure in a County Budget in order to ensure the equitable allocation of resources across the wards of the respective County.

Maintenance of records

14. A County Executive Committee Member shall maintain comprehensive and accurate records including a system of internal accounts with respect to the projects, the process of accountability and the conduct of audits in relation to the funds allocated under this Act.

Report to County Assembly

15. (1) A County Executive Committee Member shall submit quarterly reports to the County Assembly on setting out information on—

(a) the projects under implementation and the status of the implementation of such projects;

(b) monies expended with respect to each project;

(c) the management of the finances allocated with respect to a project including the receipt and disbursement of funds and the accountability of funds received pursuant to this Act;

(d) mechanisms for the monitoring and evaluation of projects implemented under this Act;

(e) services and works procured in relation to each project;

(f) the schedule of the works required to be undertaken and status of the implementation of each project;

(g) the timelines for completion of specific phases of the project including any delays in the completion of specific delays and the reasons for the delays;

(h) compliance with principles of sound management systems;

(i) compliance with the standards for service delivery, prescribed in this Act or any other law;

(j) the manner in which the funds have been utilized in relation to the project;

(k) the monies disbursed and any unutilized balance;

(l) steps taken towards operationalization of all the projects;

(m) activities undertaken to ensure the maintenance and continuity of projects;

(n) any recommendations with respect to the criteria for apportionment of projects; and

(o) such other information as the County Executive Committee Member may considers necessary.

(2) It shall be gross misconduct for a County Executive Committee Member to fail to report to the County Assembly Committee on the matters provided for under sub-section (1).

Funding of projects

16. (1) The relevant Committee of a County Assembly shall—

(a) scrutinize the County budget and the County plans referred to under this Act, the County Governments Act, the Public Finance Management Act to ensure compliance with this Act and the integration of the principle of equitable development in the budget and the plans;

(b) scrutinize the reports of the County Executive Committee Member and make appropriate recommendations to the County Assembly;

(c) upon petition by a member of the public or on its own initiative, conduct inquiries on any project that the Committee suspects impropriety;

(d) oversee the implementation of the policy framework and legislative matters that may arise in relation to this Act;

(e) engage the Commission, the County Executive Committee Member and any other relevant stakeholder so as to jointly deliberate and provide solutions to issues relating to achieving equitable development within the County; and

(f) undertake any other function as may be assigned by the County Assembly.

PART V—MISCELLANEOUS PROVISIONS

Offences and penalties

17. Any person who misappropriates any funds or assets or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine of not less than five hundred thousand shillings, or to both.

Regulations

18. (1) The County Executive Committee Member may make regulations—

(a) furthering the provision for the criteria for the allocation of funds to a ward under this Act;

(b) setting the timelines for the activities to be undertaken under this Act;

(c) setting the parameters for project identification;

(d) outlining the format of preparation and submission of the list of, and the description of, projects proposed by the entity for funding pursuant to this Act;

(e) determining the minimum and maximum number of projects that may be undertaken in a ward to ensure efficiency and effectiveness in utilization of funds under this Act;

(f) outlining the process of receipt, consideration and approval of projects for implementation under this Act;

(g) outlining the procedure for consolidation of projects which are of the same nature and which would bring greater benefit to the residents of the County if implemented as one project;

(h) specifying the process of engagement with the residents of the respective wards under this Act; and

(i) any other matter not provided for under this Act.

SCHEDULE (s. 7 (11))

CONDUCT OF THE AFFAIRS OF THE WARD PROJECTS IDENTIFICATION COMMITTEE

Election of the Vice-chairperson of the Ward Projects Identification Committee

1. The members of the Ward Projects Identification Committee shall elect a Vice-chairperson from among themselves.

Meetings of the Ward Projects Identification Committee

2. (1) The Ward Projects Identification Committee shall hold at least four but not more than six sittings in the same financial year.

(2) The meetings shall be convened by the Secretary in consultation with the Chairperson.

(3) A seven-days notice shall be issued to every member of the Committee before convening of any meeting of the Committee.

(4) The Chairperson shall preside at all meetings of the Committee and in the absence of the Chairperson, the Vice-chairperson shall preside.

(5) In the absence of both the chairperson and the vice-chairperson, the members present and forming a quorum shall elect one of their members to preside over the meeting of the Committee.

Conflict of interest

3. (1) If a member of the Committee is directly or indirectly interested in any proposed project or matter before the Committee and is present at a meeting of the Committee at which the project or other matter is the subject of consideration, the member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the project or be counted in the quorum of the meeting during the consideration of the matter.

(2). A member or any other staff serving the Committee and whose personal interest conflicts with their official duties shall—

(a) in writing, declare the personal interest to their supervisor or other appropriate person or body and comply with any directions given to avoid the conflict; and

(b) refrain from participating in any deliberations with respect to the matter.

(3) A disclosure of interest made under sub-section (1) shall be recorded in the minutes of the meeting at which it is made.

(4) A person who contravenes sub-section (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five

hundred thousand or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

Quorum

4. The quorum of the meetings of the Ward Projects Identification Committee shall be six (6) members.

Decisions of the committee

5. A decision of the Ward Projects Identification Committee shall be carried out by a majority of the members present and voting and, in case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

Minutes

6. Minutes of all meetings shall be kept and entered in records kept for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill principally seeks to promote the decentralization of development within the County by creating a framework for identifying projects that are beneficial to the residents of the respective wards and the County generally and providing a framework for the implementation of such projects.

The Bill is premised on Article 174 of the Constitution which sets out the objects of devolution, among them being to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them; to recognize the right of communities to manage their own affairs and to further their development; to promote Social and Economic Development and the provision of proximate, easily accessible services throughout Kenya by decentralizing the provision of services pursuant to Article 176 (2) of the Constitution; and to ensure equitable sharing of national and local resources throughout Kenya.

Statement on the Delegation of Legislative Powers and Limitation of Fundamental Rights and Freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

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

The Bill is not a Money Bill within the meaning of Article 114 of the Constitution.

Dated the 13th August, 2024.

PATRICK MBELLE,
Member of County Assembly.