

SPECIAL ISSUE

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REPUBLIC OF KENYA



KENYA GAZETTE SUPPLEMENT

MURANG'A COUNTY BILLS, 2020

NAIROBI, 1st September, 2020

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Kenya's Supplement to the Kenya Gazette



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

MURANG'A COUNTY BILLS, 2020

NAIROBI, 14 September, 2020

For information and the convenience of members of the public, the following bills are hereby published for their consideration:

The Murang'a County Land Revenue Bill, 2020

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THE MURANG'A COUNTY SAND HARVESTING BILL, 2020

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THE MURANG'A COUNTY SAND HARVESTING BILL 2020

A Bill For

AN ACT of Murang'a County Assembly to regulate sand harvesting and related activities and to ensure sustainable exploitation and utilization of sand, to provide for equitable sharing of the accruing benefits and for connected purposes.

ENACTED by the Murang'a County Assembly as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Murang'a County Sand Harvesting Act, 2020.

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

“authorized officer” includes any person acting under the authority of the licensing officer;

“committee” means the Sand Harvesting Management Committee established under section 3 of this Act;

“dealer” means the person who buys and sells sand;

“designated area” means any area designated as a sand harvesting area pursuant to section 8;

“executive committee member” means the County Executive Committee Member in charge of natural resources;

“harvester” means a person or the person's agent who gathers or collects sand from any of designated area of for the purpose of sale or own use;

“lake shore” shall include the land any artificial lake, dam or water mass;

“license” means a permit issued by the county government for a person to engage in sand dealing;

“license holder” means a person to whom a permit is granted under this Act;

“licensing officer” means the executive committee member responsible for matters relating to natural resources;

“sand harvesting” means the removal, extraction, harvesting or scooping of sand from a designated areas;

Objects and Purpose of the Act

3. The object and purpose of this Act is to provide for a legislative framework for regulating sand harvesting and in particular to—

- (1) require the registration of sand dealers and sand harvesting Associations;
- (2) designate sand harvesting areas, sand harvesting hours and sand transportation methods;
- (3) provide for the institutional framework for management and regulation of sand harvesting;
- (4) provide for the rehabilitation and protection of the environment from harmful effects of sand harvesting and related activities;
- (5) provide for benefit-sharing and investing back to the community part of the revenue collected from sand harvesting; and
- (6) enable communities to participate in the management of sand harvesting

PART II—ADMINISTRATION**County Sand Harvesting and Management Committee**

4. (1) There is established a County Sand Harvesting and Management Committee consisting of—

- (a) the executive committee member responsible for matters relating to natural resources who shall be the chairperson;
- (b) the chief officer responsible for matters relating to finance;
- (c) the chief officer responsible for matters relating to natural resources;
- (d) a representative of sand dealers appointed by the executive committee member;
- (e) a representative of special interest groups appointed by the Executive committee member;
- (f) two representatives of the Sand Harvesting Associations of opposite gender appointed by the Executive Committee Member

(2) The quorum of the Committee for purposes of the meeting shall be four members.

(3) The Secretary of the Committee shall be the Chief Officer responsible for matters relating to natural resources.

(4) The members under subsections 1 (a) and (b) may designate alternate members in writing and who shall be senior public officers.

Functions of the Committee

5. (1) The Committee shall—

- (a) maintain a register of all sand dealers;
- (b) advise executive committee member on the structure and operations of sand harvesting and related activities;
- (c) ensure that sand harvesting activities are compliant with this Act and any national laws, norms and standards;
- (d) ensure sustainable exploitation and utilization of sand resource;
- (e) collaborate with other environmental agencies in management of environment as relates to matters of sand harvesting;
- (f) formulate environmental conservancy programs in relation to sand harvesting;
- (g) recommend to the executive committee member designated sand harvesting areas for gazettelement;
- (h) recommend designated roads for transportation of sand and other excavated material in accordance with this Act; and
- (1) perform any other functions assigned by the Executive Committee Member.

(2) In the performance of its functions under this Act, the Committee shall, subject to any other law allow the participation of the people who affected by its decisions in making decisions of those decisions.

Sand Harvesting Associations

6. (1) The Committee shall approve the establishment of such number of Sand Harvesting Associations in accordance with the law relating to the registration of associations, self-help groups and community based organizations.

(2) Before approving the formation of an association under subsection (1), the Committee shall have regard to the following factors

- (a) drainage network of the river and the designated sand harvesting sites;
- (b) the need to ensure full participation of the community including all interest groups; and

(c) viability and sustainability of the association.

(3) An association shall be responsible for sustainable management of sand harvesting activities in its area and in particular to—

- (a) ensure that before sand harvesting activities are commenced, an Environmental Impact Assessment is undertaken in accordance with the provisions of Environment Management Coordination Act;
- (b) ensure that annual Environmental Audits are conducted for all sand harvesting sites including closed sites; and
- (c) ensure sustainable management of sand harvesting along riverbeds;
- (d) undertake the rehabilitation of the closed sites; and
- (e) perform any other function assigned to it under this Act.

Considerations by the committee and associations

7. The Committee and the associations shall be guided by the following considerations in discharging their mandate—

- (1) sand darns and gabions shall be constructed in designated sand harvesting sites and that there shall be at least two hundred meters between one gabion and another;
- (2) all vehicles transporting sand shall use designated access roads only to sand harvesting sites;
- (3) upon closure of a designated sand harvesting site, the site shall be rehabilitated appropriately by the Association, county government and approved dealer under the supervision of the Committee;
- (4) sand shall be restricted to the riverbeds and no such harvesting shall be allowed on riverbanks;
 - (a) only persons who have attained the age of eighteen years and residing within the local community shall be employed as sand loaders;
 - (b) licensed sand dealers shall pay a negotiated and agreed wage to sand loaders subject to the prescribed minimum wage fixed by the executive committee member; and
 - (c) sand loaders may organize themselves into organized groups with a chairperson and shall be under the direction and control of the Association.

PART III—SAND HARVESTING REQUIREMENTS

Sand harvesting sites

8. (1) The Committee shall from time to time and on the advice of the Associations designate and document sand harvesting sites.

(2) In considering an application for the designation of a sand harvesting site under paragraph (1) the Committee shall give notice of that application to the community around the proposed sand harvesting site.

(3) Where there is an objection to the designation of a site as a sand harvesting site the committee shall consider and make a decision on such objection.

(4) In considering and deciding on an objection under subsection (3) the Committee may convene a meeting of the community around the proposed sand harvesting site to seek their concurrence.

(5) Every sand harvesting area shall be clearly demarcated and documented by the Committee in consultation with Association.

(6) A person shall not harvest sand from any area not designated as a sand harvesting site by Committee.

(7) Each designated sand harvesting site shall have an environmental management plan to guide in the rehabilitation of the sites.

On-farm Sand and lakeshore Sand Harvesting

9. On-farm and lakeshore sand harvesting shall be carried out subject to fulfilling the following conditions—

(1) Sand harvesting shall not exceed six feet in depth;

(2) Sand harvesting sites shall be at least fifty meters from the nearest riverbanks or dykes for on-farm sand harvesting;

(3) Sand harvesting shall not be undertaken concurrently with rehabilitation of the sites;

(4) On-farm sand harvesting shall only be undertaken by open-cast harvesting method and no underground tunneling or extraction of sand shall be undertaken.

Sand Harvesting on River Beds

10. (1) Sand harvesting from any riverbed shall be undertaken in a manner that allows adequate reserve of the sand is retained to ensure water retention.

(2) Sand harvesting shall not be undertaken on any river bank.

(3) Loading of sand shall be done in the designated harvesting sites through controlled access points.

(4) No sand harvesting shall take place within one-hundred metres of either side of any physical infrastructure including bridges, roads, railway lines, dykes, among others.

Sand harvesting Regulations

11. (1) The County Executive Committee Member shall by Regulation, make regulations on sand harvesting generally but not limited to –

(a) designated hours for sand harvesting; and

(b) designated hours and roads for transporting harvested sand.

(2) A person who contravenes this section commits an offence is liable upon conviction to a fine not exceeding five hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

Pricing Regulations

12. (1) The Committee shall provide minimum pricing guidelines for sale of sand within the county, but such prices shall take into consideration the requirements of the Restrictive Trade Practices Act and the market forces.

(2) Any person who sells sand shall be required to issue a receipt to the purchaser and keep records of such for periodic inspection by the relevant authorities.

PART IV – LICENSING PROVISIONS

Licensing of Sand Harvesters and Transporters

13. (1) No person shall use, cause or permit to remove sand from any river, farm, ranch or other land for the purposes of sale unless valid license issued under this Act for such trade or business.

(2) The license in Subsection (1) shall stipulate the duration for which it shall be in use.

(3) No person or agent shall transport sand from any part of the county, unless a valid license for such business has been issued by the government.

(4) No person shall carry on or engage in any trade occupation or business of sand harvesting unless the person is licensed to carry on such trade, occupation or business by the government.

(5) A person who contravenes this section commits an offence.

Licensing Officer

14. (1) The Executive Committee Member shall be the licensing officer responsible for the issuing of licenses under this Act.

(2) The Executive Committee Member may, in writing, delegates any one or all the powers under this Act to any one or more authorized officers.

(3) Every license shall contain conditions for ensuring sustainable sand harvesting including but not limited to—

(a) the requirement for sand harvesters to furnish the licensing officer with an environmental impact assessment relating to the site for which a license is sought;

(b) the requirement for rehabilitation of sites upon closure;

(c) any other condition as may be prescribed by the executive committee member under this Act.

Application For a Licence

15. (1) An application for license under this Act shall be in the prescribed form provided that the Executive Committee Member may, by regulation require.

(2) The Executive Committee Member shall consider each application made under this section and determine whether to issue a license to the applicant or not within thirty days.

(2) If a Executive Committee Member refuses to issue a license, they shall at the time of giving notification of the refusal, inform the applicant in writing of the reasons of the refusal.

Licence Conditions

16. A license shall be issued—

(1) subject to an obligation to rehabilitate the site and surrounding areas upon closure;

(2) for the category or categories of business activity specified in the license; and

(3) subject to the regulations and any other conditions provided in the license.

Licence Fees and Forms of a Licence

17. (1) An applicant for a license shall pay such application fee as may be prescribed by the Executive committee member by Regulation.

(2) A license shall be in such form as the Executive Committee Member may from time to time determine and shall be signed by the Executive Committee Member or a person authorized in that behalf

(3) The Executive Committee Member may issue different classes of licenses for different purposes.

(4) The license issued under this Act shall not be transferred from the holder thereof to another person without the consent of the Executive Committee Member or a person authorized in that behalf.

(5) An application for the transfer of any license shall be in such form as may be prescribed by the Executive Committee Member and shall be accompanied by the license to which it relates, provided that the Executive Committee Member may in any case require an applicant for the transfer of a license to submit or supply such further information as the Executive Committee Member shall deem necessary.

(6) For every transfer there shall be payable to the government such fee as may be prescribed by the Executive Committee Member.

(7) A memorandum of the transfer of any license shall be endorsed on the license by the Executive Committee Member.

(8) A person who contravenes this section commits an offence.

Alteration of a Licence

18. (1) Subject to this Act, a licensing officer may alter a license from one form of dealership to another on written application by the licensee.

(2) A licensee shall only engage in the type of sand dealing as authorized under the license.

(3) A person who contravenes this section commits an offence.

Cancellation of a Licence

19. A licensing officer may cancel a license if —

(1) the application form contains any material mis-representation or false statement;

(2) any information given in the application for the business was materially incorrect so as to create a false impression of the ownership of the business or the nature of its business activity;

(3) the licensee carries on a prohibited activity;

(4) a condition imposed is breached; or

(5) the licensee is convicted of an offence under this Act.

Review of a Licence

20. (1) Any person aggrieved by the decision of a licensing officer may apply for review of the decision before a court.

(2) All applications for review shall be filed within fourteen days of the decision.

(3) Before applying for a review under this section, an aggrieved person has the right to petition the County Executive Committee Member.

PART V—GENERAL PROVISIONS

Collection of Revenue by the County Government

21. (1) The Executive Committee Members shall —

- (a) facilitate the collection of revenue from sand dealers in designated sand harvesting sites or along access roads;
- (b) ensure that at least ten per cent of the revenue collected is allocated to the Committee and the Associations to facilitate their operations;
- (c) ensure that part of the revenue collected is allocated for community projects; and
- (d) ensure rehabilitation of closed sand harvesting sites and access roads within sand harvesting area.

(2) For purposes of section 27, the government may mount barriers on access roads leading to sand harvesting sites in accordance with the Traffic Act, Cap 403 Laws of Kenya.

(3) The barriers shall be supervised by authorized officers and revenue collectors.

(4) A trader transporting sand shall stop at such barrier and pay the prescribed fees and charges to the authorized officer.

(5) A person who contravenes this section commits an offence and the vehicle used to commit the offence may be impounded at a police station.

Power to Order Closure of a Site

22. (1) The licensing officer, authorized officer or police officer may order a license holder to stop any sand harvesting activities and close

the site if it appears that the site is in a condition dangerous to human life or detrimental to public health or safety.

(2) The order provided in subsection (1) shall remain in force until the licensing officer is satisfied that the conditions have been satisfactorily improved.

(3) Any person who contravenes an order issued under this section commits an offence.

Powers of Entry

23. (1) The licensing officer, authorized officer or a police officer may at any reasonable time—

- (a) enter the premise, farm, ranch or vehicle and carry out any inspection for the purpose of enforcement of this Act; or
- (b) undertake any work that may be necessary to remedy any breach or failure to comply with the provisions of this Act or any of the conditions under which a license is issued; and

(2) A person obstructing an officer referred to in subsection (1) from undertaking their functions commits an offence and is liable on conviction, to a fine not exceeding two hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

(3) A police officer or authorized officer may detain any vehicle and confiscate any goods where it shown those goods have been obtained in contravention of this Act.

(4) The detained or impounded vehicles referred to in subsections (4) shall not be released to the owner until authorized by a court or until the owner has paid prescribed penalty charges.

(5) Any authorized officer or a police officer shall, before undertaking any inspection activities in this Act, produce to the relevant person proper identification documents.

(6) Any officer, employee or agent shall, in pursuant of the provisions of this act, if the matter or thing is done in good faith while executing the functions, powers or duties of the office, render the officer, employee or agent shall be personally exempt for any action, claim or demand whatsoever.

Rehabilitation of closed sites

24. (1) The Committee shall monitor the rehabilitation of all designated sand harvesting sites and their adjacent environment including

access roads, riverbanks, and catchment areas among others to ensure environmental sustainability.

(2) The Committee shall require every licensee to prepare and submit to it a rehabilitation plan for every designated sand harvesting area.

Offences

25. (1) A person who—

- (a) carries out sand harvesting or otherwise deals with sand without a valid license;
- (b) carries out sand harvesting outside designated sites;
- (c) overloads sand to a vehicle for transportation contrary to prescribed requirements;
- (d) collects fees or charges and is not authorized to do so under any law;
- (e) transports sand outside the designated roads for such transportation;
- (f) does not stop on a barrier erected by the county government, authorized officer or police officer;
- (g) establishes a separate entity in a designated site without lawful authority under this Act;

commits an offence and shall, on conviction is liable to a fine not exceeding one million shillings or to an imprisonment term not exceeding five or to both.

(2) A person who contravenes any provisions of this Act, for which no penalty is provided shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings or to an imprisonment term not exceeding three years or to both

Regulations

26. (1) The Executive Committee Member shall make regulations generally for the better carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for the—

- (a) guidelines for sand harvesting and related activities;
- (b) criteria for determining the number of Associations approve under this Act;

- (c) the terms and conditions of all classes of licenses issued under this Act;
- (d) conditions applicable to different types of sand harvesting;
- (e) loading requirements depending on tonnage;
- (f) forms required under this Act;
- (g) rehabilitation of closed sites;
- (h) designation of sand sale yards;
- (i) pricing per lorry load based on tonnage;
- (j) grading, packaging and value addition of sand; and
- (1) such other matters as the as may be necessary for full implementation of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to provide for a legislative format and regulate sand harvesting and related activities and to ensure sustainable exploitation and utilization of sand, to provide for equitable sharing of the accruing benefits and for connected purposes.

Part I (Clauses 1-3) contains preliminary matters.

Clauses 1 and 2 set out the short title of the Bill and interpretation of terms respectively while clause 3 provide for the objects and purpose of the Bill.

Part II (Clauses 5-7) provides for the administration of the Bill through the Sand Harvesting and Management, the County Executive Committee Member and the functions of the Committee and Sand Harvesting Associations.

Part III (Clauses 8-12) provides for sand harvesting requirements . Clause 8 provides for sand harvesting sites, clause 9 provides on-farm harvesting, clause 11 provides for regulations with regards to harvesting and transportation of sand and clause 12 is on pricing regulations.

Part IV (Clauses 13-20) provides for the licensing provisions , including the licensing of officers, licensing of sand dealers, application for license, license conditions, fees, transfer of a license, alteration of a license and review of a licence.

Part V (Clauses 21 -36) is on general provisions. Clause 21 deals with collection of revenue, clause 22 is on powers to order closure of a site, clause 25 is on offences, Clause 34 is on Regulations.

The Bill will not occasion any additional charges but will instead will add to the county revenue through regulation of sand collection activities which if done well and procedurally will earn the county government significant income from revenue of licenses.

Dated the 21st July, 2020

SAMMY WAWERU MWANGI,
Member of County Assembly.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to provide for a legislative forum and resolve any pressing and related matters and to ensure sustainable economic and financial of state, to provide for economic stability of the country and for connected purposes.

Part I (Clases 1-3) contains preliminary matters.

Clases 1 and 2 are on the short title of the Bill and interpretation of terms respectively while Clases 3 provides for the object and purpose of the Bill.

Part II (Clases 5-7) provides for the administration of the Bill through the State Planning and Management, the County Executive Committee Member and the Members of the Committee and State Planning Association.

Part III (Clases 8-13) provides for and planning requirements. Clases 8 provides for and planning requirements, Clases 9 provides for and planning requirements, Clases 10 provides for and planning requirements, Clases 11 provides for and planning requirements, Clases 12 provides for and planning requirements, Clases 13 provides for and planning requirements.

Part IV (Clases 14-20) provides for the licensing provisions, including the licensing of officers, licensing of and dealers, application for license, license conditions, fees, transfer of a license, alteration of a license and review of a license.

Part V (Clases 21-26) is on general provisions. Clases 21 deals with collection of revenue, Clases 22 is on powers to enter premises of a person, Clases 23 is on offences, Clases 24 is on penalties.

The Bill will not occasion any additional charges but will instead add to the county revenue through regulation of and other activities which it does not and procedurally will save the county government significant income from revenue of license.

Drafted: 21st July, 2019

SAJIMU WANG'ANGI
WANG'ANGI WANG'ANGI