

COUNTY GOVERNMENT OF MURANG'A



COUNTY ASSEMBLY OF MURANG'A

THIRD ASSEMBLY – SECOND SESSION

SELECT COMMITTEE ON DELEGATED COUNTY LEGISLATION

REPORT ON PROPOSED AMENDMENTS TO THE PUBLIC FINANCE MANAGEMENT ACT
{MURANG'A COUNTY TAX WAIVERS } REGULATIONS, 2023.



Clerk's Chambers
County Assembly of Murang'a

MURANG'A

NOVEMBER, 2023

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CHAIRPERSON'S FOREWORD

Hon. Speaker, in exercise of the powers conferred by section 159 of the Public Finance Management Act, 2012 and Article 210 of the Constitution of Kenya, the County Executive Member (CECM) for finance drafted the Public Finance Management Act (Murang'a County Tax Waivers) Regulations, 2023, herein after referred to as the Murang'a County Tax Waivers Regulations of the Regulations.

The objects and purposes of the Regulations is to;-

- (a) give effect to Article 210 of the Constitution of Kenya as regards tax waivers and the administration thereof;
- (b) ensure transparency in the administration of taxes and other revenue, in particular in the waivers thereof; and
- (c) provide for the procedure applicable to and requirements for tax waivers.


The regulations cover the following parts.

Part I provides for preliminaries including short title, interpretation and object and purpose of the Regulations.

Part II establishes authority to waive tax and administration of tax waivers in the county.

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the County Assembly for the support and services extended to the Members to enable the Committee complete this report. The Committee lastly thanks the Secretariat for their dedicated effort and hard work. On behalf of the Select Committee on Delegated County Legislation, it is my pleasure and duty to present the report on Murang'a County Tax Waivers Regulations, 2023.

Thank you

Signed.....

Hon. Moses Muchiri Maina - (Chairperson)

Dated.....Oct 30.....2023

1.0 Preface

1.1 Committee establishment and Mandate

The departmental Committee on Delegated County Legislation derives its mandate from the provisions of Standing Order 202 and Section 12 of the Statutory Instruments Act, 2013.

Delegated Laws are those Laws made by a person or body to whom the County Assembly has expressly donated part of its law-making power by an act of Parliament, referred to as the regulation making authority. Statutory Instruments are said to include any rule, order, regulation, direction, form, tariff of costs or fees, letter patent, commission, warrant, proclamation, by-law, resolution, guideline or other instrument issued, made or established in the execution of a power conferred by or under an Act of the County Assembly.

The Committee is mandated to consider the following in respect of any statutory instrument submitted to the Assembly whether it-

- (a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
- (b) infringes on fundamental rights and freedoms of the public;
- (c) contains a matter which in the opinion of the committee should more properly be dealt with in an Act of the Assembly;
- (d) contains imposition of taxation;
- (e) directly or indirectly bars the jurisdiction of the Courts;
- (f) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
- (g) involves expenditure from the County Revenue Fund or other public revenues;
- (h) is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
- (i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
- (j) appears to have had unjustifiable delay in its publication or laying before Assembly;

- (k) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- (l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- (m) inappropriately delegates legislative powers;
- (n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- (o) appears for any reason to infringe on the rule of law;
- (p) inadequately subjects the exercise of legislative power to Assembly scrutiny; and,
- (q) accords to any other reason that the Committee considers fit to examine

1.2 Committee Membership

The Committee comprises of the following members.

- | | |
|---------------------------|--------------------|
| 1. Hon. Moses Muchiri | - Chairperson |
| 2. Hon. Mark Gicheru | - Vice Chairperson |
| 3. Hon. Moses Mirara | - Member |
| 4. Hon. Boniface Ng'ang'a | - Member |
| 5. Hon. Margaret Gichia | - Member |
| 6. Hon. Alex Wanyoike | - Member |
| 7. Hon. Bernard Ruiru | - Member |
| 8. Hon. Esther Kamindo | - Member |
| 9. Hon. Hannah Wairimu | - Member |
| 10. Hon. Priscilla Mwangi | - Member |

1.3 Committee Secretariat

The Secretariat supporting the Committee comprises of the following staff:

- | | |
|----------------------|---------------------------|
| 1. Grace W. Thiong'o | - Senior Clerk Assistant. |
| 2. Yvonne Njoki | - Head of Legal Services. |
| 3. Elizabeth Irungu | - Clerk Assistant. |
| 4. Naomi Maina | - Hansard Reporter. |
| 5. Eliezerih Kiragu | - Sergeant At Arms. |

2.0. BACKGROUND

The Select Committee on Delegated County Legislation was established pursuant to Standing Order 202 and Section 5 of the Statutory Instruments Act and is mandated to consider all statutory instruments laid before the County Assembly, including consultation before making statutory instruments. The workshop engaged in prepublication scrutiny of the instrument.

Section 2 of the Statutory Instruments Act and Standing Order 202 defines a statutory Instrument as

'any rule, order, regulation, direction, form, tariff of costs or fees, letter patent, commission, warrant, proclamation, by-law, resolution, guideline or other instrument issued, made or established in the execution of power conferred by or under an Act of the Assembly under which that statutory instrument or subsidiary legislation is expressed authorized to be issued.'

Hon. Speaker, The County Executive Committee Member in charge of Finance and Economic Planning submitted the Murang'a County Tax Waivers Regulations, 2023 to the County Assembly on July 20, 2023. The Office of the Clerk forwarded the same to the Committee on Delegated County Legislation for tabling by the Chairperson of the Committee.

Hon. Speaker, the Committee held two meetings within the precincts of the Assembly (September 18 and October 3, 2023) and engaged the Legal Office in scrutinizing the regulations

3.0 TERMS OF REFERENCE/OBJECTIVES

The objective of the function was to analyse the Murang'a County Tax Waivers Regulations, 2023, and as pre-publication scrutiny, propose amendments after which the Regulations can be gazetted.

4.0. AMENDMENTS TO THE MURANG'A COUNTY TAX WAIVERS REGULATIONS, 2023.

The Committee invited the County Executive Committee Member in charge of Finance and Economic Planning in a workshop held on October 11 - 13, 2023 at Elysian Hotel, Nairobi to thoroughly scrutinize the Regulations and came up with the following amendments for adoption.

Amending Clause 5;

Amendment of Regulation 5 (2) (d) where the waiver is for the purpose of exempting a patient treated within the county hospitals who has financial hardship and who has applied for waiver.

There is need to provide for waivers of hospital bills and fees, in exceptionally needy cases. This is informed by the cost of medical services that can be prohibitive to the poor. However, these amendments MUST be accompanied by an evaluation criterion to ensure it is not abused.

4.0 OBSERVATIONS.


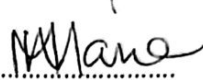

The Committee made the following observations on the regulations;

- (a) The Committee noted that the regulations were necessary to give legal footing to the CECM where there is need to waive certain taxes.
- (b) That despite the waivers being provided to in law, there is need to ensure that the provision is not abused, and the exceptions should be rare, as opposed to the norm to avoid abuse and ensure that the county government raises revenue.

5.0 RECOMMENDATIONS.

After lengthy deliberations, it was resolved that; -

The Committee RESOLVED unanimously that the Murang'a County Tax Waivers Regulations, 2023 be published in the gazette by the County Executive Committee Member for Finance with the necessary proposed amendments at the pre-publication stage.

NAME	DESIGNATION	SIGNATURE
Hon. Moses Muchiri	Chairperson	
Hon. Mark Gicheru	Vice Chairperson	
Hon. Moses Mirara	Member	
Hon. Boniface Ng'ang'a	Member	
Hon. Margaret Gichia	Member	
Hon. Alex Wanyoike	Member	
Hon. Bernard Ruiru	Member	
Hon. Esther Kamindo	Member	
Hon. Hannah Wairimu	Member	
Hon. Priscilla Mwangi	Member	