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***EMBU COUNTY GAZETTE
SUPPLEMENT***

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SCHEDULE

THE EMBU COUNTY PUBLIC APPOINTMENTS BILL, 2014**A Bill for**

AN ACT of the County Assembly of Embu to provide for procedures for vetting of specified public officers as envisaged under Chapter Six of the Constitution of Kenya, 2010 and other statutory appointments and to provide for matters connected with or incidental to the foregoing

ENACTED by the County Assembly of Embu as follows –

PART I—PRELIMINARY**Short title and commencement**

1. This Act may be cited as the Embu County Public Appointments (County Assembly Approval) Act, 2015 and shall come into operation on the date of publication in the gazette.

Interpretation

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

“appointing authority” means any person who, under the Constitution or any other written law, is required to make an appointment for which the approval of County Assembly is required;

“appointment” includes any re-appointment to the same body whether or not in the same capacity;

“candidate” means a person who has been proposed or nominated for appointment to a county public office;

“clerk” means the Clerk of the County assembly;

“committee” means the relevant Committee of the County Assembly or such other Committee as the Speaker may direct;

“county” means Embu County;

"vetting" means the process of establishing the suitability of a person to serve in a public office within the County Government as specified by the Constitution of Kenya, 2010.

Object and purpose of the Act

3. The object and purpose of this Act shall be to provide for the procedure of vetting and approving appointments made by an appointing authority where the approval of the County Assembly is required in order to—

(a) ensure compliance with necessary legal requirements;

- (b) enhance accountability;
- (c) promote transparency in public appointments.

Application

4. For the avoidance of doubt, the provisions of this Act shall apply to persons whose appointment is subject to the approval of the County Assembly as provided for by the Constitution or any other law.

PART II— APPOINTMENTS APPROVAL PROCEDURE

Exercise of Powers of Appointment

5. (1) An appointment under the Constitution or any other written law for which the approval of County Assembly is required shall not be made unless the appointment is approved or deemed to have been approved by the County Assembly in accordance with this Act.

(2) An appointment made contrary to subsection (1) shall be null and void.

Notification of vetting requirements

6. An advertisement inviting applications for nomination for appointment to an office to which this Act applies shall indicate that a candidate so nominated shall be required to obtain the approval of the County Assembly.

Notification of Nomination

7. (1) An appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the County Assembly.

(2) A notification under subsection (1) shall be—

- (a) in writing; and
- (b) lodged with the Clerk of the County Assembly.

(3) A notification of appointment shall be accompanied by information concerning the nominee, having regard to the issues mentioned in section 8 (5).

(4) For purposes of this Act, a notification of nomination shall be deemed to be duly given on the day on which it complies fully with subsections (2) and (3).

Vetting process

8. (1) Upon receipt of notification of nomination, the Clerk shall cause a notification to be made to the Assembly upon which it shall stand committed to the relevant Sectoral Committee.

(2) Upon receipt of a notification under subsection (1) the committee shall determine the time and place for the holding of the approval hearing.

(3) The Clerk shall notify a candidate of the time and place for the holding of an approval hearing and the committee shall—

(a) notify the public of the time and place for holding an approval hearing at least seven days prior to the hearing; and

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(b) make the notice referred to under subsection (3)(a) above using modalities applicable under section 91 of the County Governments Act.

(4) The committee shall vet the respective candidate by way of scrutinizing the information provided by the appointing Authority and holding an approval hearing in accordance with this Act and the County Assembly Standing Orders.

(5) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background and any other matter that the committee may deem relevant.

(6) Subject to this Act, all committee proceedings on public appointments shall be open and transparent.

(7) Despite subsection (6), a committee may, on its own motion or on the application of a candidate or any other concerned person, determine that the whole or part of its sittings shall be held in closed session on the following grounds—

- (a) if making public the matters subject to discussion in the sittings is likely to endanger public security; or
- (b) so as to protect public decency; or
- (c) If it would be against public interest to make public the matters subject to discussion in the sitting.

(8) The committee shall use the questionnaire specified in the Schedule as the criteria for vetting a candidate.

(9) Any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.

(10) A candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate's nomination shall thereupon lapse.

Issues for consideration

9. The issues for consideration by the County Assembly in relation to any nomination shall be—

- (a) the procedure used to arrive at the nominee;
- (b) any constitutional or statutory requirements relating to the office in question; and
- (c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.

Period for consideration and Report

10. (1) A committee shall within fourteen days from the date on which the notification of nomination was given under section 7—

- (a) consider a nomination;
- (b) prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated; and
- (c) table the report in the County Assembly for consideration and debate.

11. Failure of County Assembly to Act on Nomination (1) The County Assembly shall, upon receipt of the committee report under section 10 debate on the report and make a decision to approve or reject the appointment within seven days.

(2) If, after expiry of the period referred under subsection (1), the County Assembly has neither approved nor rejected a nomination of a candidate, the candidate shall be deemed to have been approved.

Notification of decision

12. The Clerk shall notify the appointing Authority of the decision of the County Assembly within seven days of the decision being made.

Rejection of Nomination

13. (1) Where the nomination of a candidate is rejected by the County Assembly, the appointing Authority may submit the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly.

(2) The name of a candidate rejected under subsection (1) shall not be re-submitted for approval.

Powers of the Committee

14. (1) The committee shall have the powers conferred by Article 195 of the Constitution to summon any person to appear before it for the purpose of giving evidence or providing information during an approval hearing.

(2) Any person who—

- (a) disobeys any order made by a committee for attendance or for production of papers, books, documents or records; or
- (b) refuses to be examined before, or to answer any lawful and relevant question put by a committee, commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year, or to both.

PART III—MISCELLANEOUS**Rules**

15. (1) The Speaker may in accordance with the Standing Orders make rules generally for the better carrying out of the provisions of this Act.

Savings

16. A person who, prior to the commencement of this Act was appointed to a position for which the approval of the County Assembly is required and was vetted and approved for appointment by the County Assembly, shall be deemed to have been appointed in accordance with this Act.

SCHEDULE**S.8(9)****CRITERIA FOR VETTING/APPROVAL OF NOMINEES FOR APPOINTMENT TO PUBLIC OFFICE BY COUNTY ASSEMBLY****QUESTIONNAIRE**

Notes:

- (a) This questionnaire applies to appointments to public office arising by or under the Constitution or any other, law where the approval of the County Assembly is a requirement.
- (b) The questionnaire shall be used by the relevant County Assembly Committee to vet a nominee appearing before the committee in the process of approval by the County Assembly.

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- (c) The questionnaire shall be filled and submitted by the nominee to the relevant County Assembly Committee through the Clerk on or before a date set by the committee.
 - (d) The submission of false information in the questionnaire is an offence and may result in prosecution.
 - (e) Any form of canvassing by a nominee shall lead to disqualification.
 - (f) The nominee must answer all the questions.
 - 1. Name: *(State Full Name)*
 - 2. Position: *(State Position for which you have been nominated)*
 - 3. Sex:
 - 4. Date of Birth *(State year and Place of Birth)*
 - 5. Marital Status:
 - 6. Daytime phone Number:
 - 7. Mobile Phone Number:
 - 8. Email Address:
 - 9. ID No./Passport Number:
 - 10. Personal Identification Number:
 - 11. Nationality:
 - 12. Postal Address:
 - 13. City/ Town:
 - 14. Knowledge of languages *(Specify Languages):*

15. Education: (List, in reverse chronological order, each university, college, or any other institution of higher education attended and indicate, in respect of each, the dates of attendance, academic award obtained, whether a degree was awarded, and the dates on which each such degree was awarded).

16. Employment Record: (List in reverse chronological order all Government agencies, business or professional corporations, companies, firms or other enterprises with which you have been affiliated as an officer, director, partner, proprietor, employee or consultant).

17. Honors and awards: (List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards and any other special recognition for

outstanding service or achievement and in respect of each, state the date of award and the institution or organization that made the award).

18. Professional association: (where applicable): (List all professional associations of which you are or have been a member and give any positions held and the respective dates when each such position was held).

19. Memberships: (List all professional, business, fraternal, scholarly, civic, charitable or other organizations, (other than those listed in response to Question 16) to which you belong or have belonged).

20. Published writings:

- (a) List the titles, publishers and dates of books, articles, reports letters to the editor, editorial pieces or other published materials you have authored or edited.
- (b) Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of any bar association, committee, conference or organization of which you were a member.

21. Public Office, Political Activities and Affiliations:

- (a) List chronologically any public offices you have held or are currently holding, including the terms of service and whether such positions were elected or appointed
- (b) List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities. Also include any linkage you have to a political party at present.
- (c) Have you ever been dismissed or otherwise removed from office for a contravention of the provisions of Leadership and Integrity Act, 2012?
- (d) Have you ever been adversely associated with practices that depict bias, favoritism or nepotism in the discharge of public duties?

22. Deferred Income/Future Benefits: (List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you

expect to derive from previous business relationships, professional services, firm memberships, etc).

23. Outside Commitment during Service in Office: (Do you have any plans, commitments or agreements to pursue outside employment with or without compensation during your service in office? If so explain)

24. Sources of income: (List sources and amounts of all income received during the calendar year preceding your nomination and in the current calendar year).

25. Tax Status: (State whether you have fully complied with your tax obligations to the State (or to the County Government where applicable) up to the end of the financial year immediately preceding the nomination for appointment)

26. Statement of net Worth: (State your Financial net worth)

27. Potential Conflict of interest:

- (a) Identify the family members or other persons, parties, categories of litigation or financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to rise.
- (b) Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

28. Pro-Bono/Charity Work/Donations to charity: (Describe what you have done by way of pro bono or charity work, listing specific instances, the amount contributed and the amount of time devoted to each).

29. Have you ever been charged in a court of law in the last three years? If so, specify the nature of the charge, where the matter is ongoing, the present status of the matter, or where the matter is concluded, the judgment of the court, or otherwise, how the case was concluded.

30. Have you ever been adversely mentioned in an investigatory report of County Assembly or any other Commission of Inquiry in the last three years?

31. Have you any objection to the making of enquiries with your present employer/referees in the course of consideration of your nomination?

32. References (List three persons who are not your relatives who are familiar with your character, qualification and work).

MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide a legislative framework through which nominees for appointment to public offices, for which County Assembly approval is required under the Constitution or any other law, are vetted and approved for appointment by the County Assembly.

The Bill is structured as follows:

Clause 1 provides for; the short title, and commencement when enacted.

Clause 2 provides for the interpretation of terms used in the Act. This is intended to provide clarity during the interpretation and implementation of the Act.

Clause 3 describes the object and purposes of the Act.

Clause 4 provides the scope of the Act.

Clauses 5-7 — requires that no appointment to a public office for which County Assembly approval is required shall be made unless the person nominated for appointment to the office is approved by the County Assembly in accordance with the provisions set out in the Act. The appointing Authority is required to notify the County Assembly in writing, through the Clerk, about a proposed appointment, and is required to provide sufficient information regarding the nominee to enable the Assembly conduct an approval hearing.

Clause 8 — provides for the approval hearing. Among other things, it obligates the Clerk to notify a candidate of the time and place of holding an approval hearing. Similar notification is to be given to the public generally by the relevant committee of the County Assembly it also provides that members of public may contest the suitability of a person to be appointed to the office for which the person has been nominated by furnishing the Clerk with the requisite written evidence on oath. It also provides that a candidate for whom an approval hearing is to be conducted may opt out of the approval process, and the candidate's nomination to the office concerned shall lapse accordingly.

Clause 9 — sets out the issues to be considered during hearing

Clauses 10-12 — require the relevant committee of the County Assembly to hold an approval hearing and submit its report, together with its recommendations, to the County Assembly within fourteen days from the date of notification of nomination. If there is failure by the committee to hold an approval hearing as required, the candidate nominated for appointment shall be deemed to have been approved, as provided for in clause 11.

Clause 13 — obligates the Clerk of the County Assembly to notify the appointing authority of the decision of the House. If a candidate for appointment is rejected by the committee, the appointing Authority may submit another name to the committee with respect to the same position, for fresh consideration.

Clause 14 — vests a committee of the County Assembly with similar powers as those of the high court for calling witnesses to appear before it to give evidence or provide information as may be necessary.

Clause 15 — provides for the promulgation of rules to aid in the implementation of the Act.

Clause 16 — provides for the savings to cater for officers who have already been vetted by the County Assembly before the commencement of the Act.

Schedule — outlines the criteria to be used in vetting candidates during approval hearings.

The coming into effect of this Bill will not occasion additional expenditure to the county.

Dated the 2nd June, 2015.

MARTIN MWANGI NYAGA,
Chairperson, Administration Committee.