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**MACHAKOS COUNTY WARD DEVELOPMENT
FUND ACT, 2014
(No. 2 of 2014)**

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Commencement Date: 2nd December, 2014

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**MACHAKOS COUNTY WARD DEVELOPMENT
FUND ACT, 2014**

**AN ACT of Machakos County Assembly to provide for
the establishment, administration and use of Ward
Development Fund and for connected purposes.**

ENACTED by the Machakos County Assembly as
follows—

PART 1—PRELIMINARY

1. This Act may be cited as the Machakos Ward Development Fund Act, 2014. Short title.

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

“Clerk” means the Clerk of Machakos County Assembly;

“Community” means residents of a particular geographical area or region defined as a Ward or village having common interests;

“Committee” means the County Ward Development Fund Management Committee established under Section 5;

“Fund” means the Ward Development Fund established under Section 4;

“Executive Committee Member” means the County Executive Committee member responsible for finance;

“Officer administrating the Fund” means the person appointed as such under section 8;

“Officer of the Fund” means the officer seconded by the County Ward Development Fund Management Committee to the Ward under section 9;

“Ward Development Fund Committee” means the Committee established under Section 33;

“Ward Fund Account” means the account maintained for every ward in accordance with Section 16;

3. The object and purpose of this Act is to ensure that a specific portion of the County annual budget is devoted to Object and purposes of the Act.

the wards for purposes of development, wealth creation and in particular the fight against poverty at the Ward level.

**PART II—ESTABLISHMENT AND
ADMINISTRATION OF THE FUND**

4. (1) There is established a Fund to be known as the Ward Development Fund which shall be administered by the Officer administering the Fund under the direction of the County Ward Development Fund Management Committee.

Establishment of
Fund

(2) The Fund shall consist of—

- (a) an amount of not less than five percent of the total revenue of the County in every financial year and which includes the remittances to the County by the National Treasury and the ordinary revenue of the County;
- (b) any monies accruing to, donated, lent or received by the Fund from any other lawful source.

(3) The amount referred to in subsection 2 (a) shall be calculated on the basis of the most recent audited accounts of revenue.

(4) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained by the County Treasury for the purposes for which the Fund is established.

(5) There shall be paid out of the Fund payments in respect to any expenses incurred in pursuance of the provision of this Act

5. (1) There is established a Committee to be known as the County Wards Development Fund Management Committee.

Establishment of
the County Ward
Development
Management
Committee

(2) The County Management Committee shall consist of—

- (a) the Chief Officer of the County Department for the time being responsible for matters relating to finance or a designated alternate not below the level of Director;
- (b) the Chief Officer of the County Department for

the time being responsible for matters relating to public works or a designate alternate not being below the level of Director;

- (c) the Chief Officer of the County Department for the time being responsible for matters relating to devolved units or a designated alternate not being below the level of Director;
- (d) the Clerk of the County Assembly or a designated alternate not below the level of Director;
- (e) four persons qualified in matters relating to law, finance, accounting, engineering, economics or community development, competitively and transparently recruited by the County Public Service Board and appointed by the Executive Committee member in accordance with subsection (4) taking into account gender balance, special interests and the diversity of the County;
- (f) the person responsible for legal matters in the County who shall be an ex-officio member.
- (g) the officer administering the Fund who shall be an ex-officio member.

(3) The Executive Committee member shall appoint the Chairperson of the County Management Committee from amongst the four persons appointed in accordance with of subsection (2) (e).

(4) The names and curriculum vitae of the persons competitively and transparently recruited as members of the County Management Committee pursuant to subsection (2) (e) shall be submitted to the County Assembly for approval before the appointment.

6. (1) The conduct and regulation of the business and affairs of the Committee shall be as provided in the First Schedule.

(2) Except as provided in the first schedule, the Committee may regulate its own procedure.

7. (1) The functions of the County Ward Development Fund Management Committee shall be to—

Conduct of business and affairs of the County Ward Development Fund Management Committee.

Functions of the County Management Committee.

- (a) ensure allocation and disbursement of funds in every Ward;
- (b) ensure prudent management of the Fund;
- (c) receive and review the annual reports and returns from the Wards;
- (d) ensure maintenance of proper records, returns and reports from the Wards;
- (e) ensure timely submission to County Assembly of various returns, reports and information as required under this Act;
- (f) consider project proposals submitted from various Wards in accordance with this Act and make appropriate recommendations to the County Assembly;
- (g) consider and report to the County Assembly with recommendations, names of persons required to be approved by the County Assembly under this Act;
- (h) continually review ,oversee the implementation, policy framework and legislative matters that may arise in relation to the Fund; and
- (i) perform such other functions as may be necessary for the implementation of this Act

8. (1) There shall be an Officer Administering the Fund who shall be competitively recruited by the County Public Service Board and appointed by the Executive Committee member.

Officer
administering the
Fund

(2) A Person is qualified to be appointed the Officer Administering the Fund if that person has—

- (a) at least a university degree in finance, accounting, engineering, economics, community development, law or a related field from a recognized university;
- (b) at least five years working experience in public finance or a relevant field; and
- (c) satisfies the requirements of Chapter Six of the constitution.

(3) The Officer Administering the Fund shall be the Chief Executive Officer of the Fund and secretary to the County Management Committee and shall be subject to the directions of the County Management Committee and shall—

- (a) be responsible for the day to day management of the affairs of the Committee and administration of the Fund;
- (b) be responsible for the day to day management of the affairs and staff in the service of the Committee;
- (c) prepare quarterly returns on the movement of funds as appropriate for submission to the County Assembly;
- (d) keep or cause to be kept proper books of accounts and other books and records related to the Fund;
- (e) prepare, sign and transmit to the Auditor General accounts of the Fund in accordance with Public Audit Act; and
- (f) perform any other duties that may be reasonably assigned by the Committee from time to time.

(4) The Officer Administering the Fund shall serve for a term of four years renewable once.

9. The Executive Committee member shall, upon request by the County Management Committee, facilitate secondment to the Fund of such officers from the County Public Service as may be necessary for the proper management of the Fund.

Secondment of staff.

10. The County Management Committee may, by resolution either generally or in any particular case, delegate to any Committee or to any member, officer, employee or agent of the County Management Committee, the exercise of any of the powers or the performance of any of the functions or duties of the County Management Committee under this Act or under any other written law.

Delegation by the County Management Committee

PART III—FINANCIAL PROVISIONS

11. (1) Every disbursement from the Fund shall be approved and minuted by the County Management Committee.

Disbursement
from the Fund

(2) All disbursement from the Fund shall be for specific projects as submitted by the Wards in accordance with the procedures outlined in this Act.

(3) All disbursements shall be made through the Ward bank accounts maintained for every Ward in accordance with section 16 of this Act.

(4) Notwithstanding the provisions of subsection (3), payments for a joint project as outlined in subsection 29(4) or a joint procurement, may be made directly to a supplier or to an account established for the purpose with due approval of the County Management Committee.

(5) The record of the amounts received by each ward and the record of expenditure of amounts so received shall be submitted to the County Management Committee within thirty days after the close of the relevant financial year together with a copy of the relevant bank statements and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received.

(6) Each Ward Development Fund Committee shall set aside five per centum of the total allocation to cater for the administrative expenses.

(7) Each Ward Development Fund Committee shall account for the sum set aside under subsection (6) and shall cause to be kept proper books of accounts.

(8) The County Management Committee shall set out general conditions and requirements for release of funds, to ensure efficient and effective management of resources.

(9) The County Management Committee may impose reasonable requirements, including restrictions, on a particular ward and such restrictions or requirements shall be reported together with the monthly returns to be submitted to the Executive Committee member in accordance with this Act.

12. (1) The Member of the County Executive Committee, with the concurrence of the relevant County Assembly Committee, shall for each financial year allocate funds to each ward in accordance with section 26.

Allocation of Funds.

(2) Once funds are allocated for a particular project, they shall remain allocated for that project and may only be re-allocated for any other purpose during the financial year with the approval of the County Management Committee.

(3) If for any reason a project is cancelled or discontinued during the financial year, funds allocated for such a project shall be returned to the Fund and credited to the account of the Ward from which the funds were withdrawn.

(4) Unspent funds shall be allocated to any eligible projects and such project may be new or ongoing at the end of the financial year.

(5) For the avoidance of doubt, a return as set out in the second schedule shall be made for each financial year and every previous financial year on which any funds remain unspent.

13. (1) All receipts, savings and accruals to the fund and the balance of the Fund at the end of each financial year shall be returned to the Fund and applied in accordance with section 12 (5) of this Act.

Funds to be retained in the Fund.

(2) 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 accounts in accordance with section 12 (3) or funds which are not utilized for whatever reasons.

14. (1) A portion of the Fund, equivalent to five per centum (hereinafter referred to as the "Emergency Reserve") shall remain unallocated and shall be available for emergencies that may occur within the Ward.

Emergency Reserve.

(2) The Ward Development Fund Committee shall determine the allocation of the emergency reserve in accordance with this Act.

(3) In this section, "emergency" means an urgent, unforeseen need for expenditure for which it is in the opinion of the committee that it cannot be delayed until the next financial year without harming the public interest of the constituents.

15. (1) A bank account of the Fund shall be opened and maintained by the County treasury.

Bank account of
the Fund.

(2) The signatories to the account of the Fund maintained in accordance with subsection (1), shall be the Officer Administering the Fund and two other persons appointed by the County Ward Development Fund Management Committee from among its members.

(3) The signing instructions shall be such that the signature of the Officer Administering the Fund shall be mandatory on all payment cheques or instruments intended for actual release of money from the Fund, plus any one of the other two signatories.

16. (1) For purpose of disbursement of funds under this Act, there shall be opened and maintained a ward account for every ward at any commercial bank, approved by the Executive Committee Member into which all Funds shall be kept and such an account shall be known by the name of the ward for which it is opened and each ward shall maintain only one account.

Ward Fund
Account.

(2) The bank account opened pursuant to subsection (1), shall be separate from that of the County treasury.

(3) At least three signatories shall be required for every cheque or instrument for actual payment or withdrawal of funds from a Ward Fund Account and the signing instructions shall be such that there shall be at least one signature of an officer seconded by the Committee and at least two signatories of two members of the County Management Committee.

(4) The Officer of the Fund shall hold the authority to incur expenditure of the funds at the ward fund account.

(5) Funds from the Ward Fund account shall only be withdrawn as disbursements for a particular project in accordance with the provisions of section 11 of this Act.

(6) Every payment or instruction for payment out of the ward fund account shall be on the basis of a minuted resolution of the Ward Development Fund Committee.

(7) All receipts, savings and accruals to the Ward Fund Account and the balances thereof at the end of each financial year shall be returned to the County Management Committee Fund Account.

(8) All unutilized funds shall remain in the Ward Fund Account and no investment elsewhere shall be permitted, provided that funds meant for a project that is cancelled or discontinued shall be returned to the fund account in accordance with section 11.

(9) All unutilized funds of the Project Management Committee shall be returned to the Ward Fund Account.

(10) Any accruing revenues, interests and liabilities from any ward fund account shall be declared to the County Management Committee as part of the annual returns.

17. (1) An accurate record of all disbursements made for projects to every ward shall be kept and updated every month by the County Management Committee.

Records of disbursement to be kept.

(2) The disbursement of funds to the ward fund account shall be effected at the beginning of the first quarter of each financial year with an initial amount equivalent to twenty-five centum of the annual allocation for the Ward and thereafter the Ward Fund Account shall be replenished in three equal installments at the beginning of the second, third and fourth quarters of the financial year.

(3) The Officer Administering the Fund shall submit to the Executive Committee member, an annual report of the activities, operations and expenditure under this Act who shall submit it to the Assembly.

(4) At the end of every financial year the Executive Committee member shall submit separate accounts of the County Management Committee and accounts of each Ward Development Fund Committees to the Auditor-General.

18. (1) The personal emoluments of officers of the County Government working or involved in the management of the Fund shall be determined by the Executive Committee member after consultation with the County Ward Development Fund Management Committee upon the advice of the Salaries and Remuneration Commission and shall be provided under the recurrent expenditure of the County Government.

Remuneration and allowances.

(2) Out of the pocket expenses incurred by any person officially involved in the management of the Fund or the implementation of projects under the Fund, including public officers shall be reimbursed.

(3) Sitting and other allowances for the members of the County Management Committee and the Ward Development Fund Committee shall be determined by the Executive Committee Member upon the advice of the Salaries and Remuneration Commission.

PART IV—SUBMISSION OF WARD PROJECT PROPOSALS

19. (1) The list of proposed ward based projects to be covered under this Act shall be submitted by the Chairperson of the Ward Development Fund Committee to the County Ward Development Fund Management Committee after approval by the Ward Development Fund Committee for that Ward.

Submission of
Projects.

(2) The County Ward Development Fund Management Committee shall receive and compile the list of proposed ward projects submitted to it under this Act and grant the necessary approval where the requirements of this Act has been fulfilled.

20. (1) The list of the proposed Ward projects shall be submitted to the County Management Committee before the end of the month of February in each year or such other month as may be determined by the Executive Committee member in order to ensure timely inclusion of the projects in the annual county government budget of a particular financial year.

Submission
deadline.

(2) Where the chairperson of the Ward Development Fund Committee fails to submit the list of ward based projects to the County Management Committee within the stipulated time in subsection (1), the list shall be deemed to have been submitted to the County Management Committee upon the lapse of the stipulated time.

21. (1) The list of projects shall be submitted on a Ward Projects Submission Form set out in the third schedule to this Act accompanied by minutes of the Ward Development Fund Committee approving the projects.

Submission Form.

(2) All projects proposed for every ward shall be listed in the form together with the cost estimates, amounts allocated and amounts disbursed to such projects.

22. For every project listed in the form, there shall be attached a project description Form set out in the second schedule.

Projects description Form.

23. (1) The list of projects received by the County Management Committee pursuant to section 19 shall be tabled for review at a meeting of the County Management Committee.

Approval of projects.

(2) The County Management Committee shall scrutinize and approve for funding those projects proposals that are consistent with this Act.

(3) Where the County Management Committee does not approve a proposal submitted to it under this section, it shall refer the matter to the Ward Development Fund Committee giving reasons for the failure to approve the proposal.

24. The allocation of funds to various projects in each ward is the responsibility of the Ward Development Fund Committee to be exercised at its own discretion within the provisions of this Act.

Discretion of Ward Development Fund Committee.

25. The projects listed for each Ward shall be numbered by the County Management Committee and the serial numbers of all projects in a ward shall bear the number of the Ward as delineated by the Independent Electoral and Boundaries Commission in order to ensure that a project retains the same serial number every year until its completion.

List to be serialized.

26. The monies in the Fund shall be divided equally among all the Wards.

Distribution of the Fund.

27. (1)The types of projects submitted for funding under this Act shall comply with the provisions of this Act.

Criteria for Projects.

(2) It shall be the responsibility of the Ward development Fund Committee to ensure that the list of projects submitted for funding comply with the provisions of the Act and their total does not exceed the allowable ceiling for the particular Ward.

(3) If the list of projects submitted for funding is in contravention of subsection (2), it shall be referred back to the Ward Development Fund Committee for amendment and re-submission.

(4) Whenever the amount for projects in a ward is less than the allowable ceiling for reasons of projects being deleted in accordance with sub-section (3), or for whatever reason, the shortfall shall be indicated as unallocated amount against that particular ward on the list to be forwarded to the Member of the County Executive Committee.

PART V—TYPES OF PROJECTS

28. (1) Projects under this Act shall be community based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.

Projects to be
community based.

(2) Any funding under this Act shall be for a complete project or a defined phase, of a project and may include the acquisition of land and buildings.

(3) All projects shall be projects as defined under this Act and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.

(4) Funds provided under this Act shall not be used for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.

(5) Notwithstanding the provisions of subsection (4), the Ward Development Fund Committee may identify a religious body or organization as an appropriate specialized agency for purposes of section 14 with regard to emergency support.

(6) A Ward Development Fund Committee office project shall be considered as a development project for purposes of the Act and may include appropriate furniture and equipment for the office.

(7) Each of the projects shall be listed on the Third Schedule including the emergency item under section 11 and, where applicable, the activities under subsection (8) of this section.

(8) The allocation may be used as follows—

- (a) fifteen percent of each Wards annual allocation may be used to support education programmes.

- (b) an amount not exceeding three per cent may be used as expenses for running the Ward which may include rent and utilities, staff salaries and Committees allowances;
- (c) two percent of each ward annual allocation may be used for sporting activities;
- (d) purchasing, running and maintenance of motor vehicles and equipment must not take more than three percent of the total annual allocation.

29. (1) The number of projects to be included in the Ward Projects Submission form specified in the Third schedule shall be a minimum of five and a maximum of twenty five for every ward in each financial year.

Number of
Projects

(2) Wards with unspent funds at the end of the financial year shall submit new proposals to the County Management Committee for approval in accordance with section 12 (5) of this Act.

(3) Project activities of a similar nature in a particular ward may be combined and considered as one project for purposes of subsection(1) provided that the sub projects are listed in the second schedule.

(4) Wards may pool resources for joint projects provided that the decision for such joint projects shall first be approved by the Ward Development Fund Committee of each of the participating ward and shall be reflected on the projects listed for each of the participating ward.

(5) Where wards have joint projects, the County Management Committee shall co-ordinate such projects.

30. (1)The Ward Development Fund Committee may make appropriate consultations with the relevant government departments to ensure that cost estimates for the projects are as realistic as possible.

Cost estimate to
be realistic

(2) The Ward Development Fund Committee shall rank the projects in order of priority and whenever, in the opinion of the County Management Committee, the total cost of the projects listed exceed the ceiling for a particular ward, then the order in which they are listed shall be taken as the order of priority for purposes of allocation of funds, provided that on-going projects shall take precedence over all other projects.

31. A project or any part thereof which involves personal awards to any person in cash or in kind, shall be excluded from the list of projects submitted in accordance with section 14 of this Act.

Personal awards to be excluded.

32. For the purposes of this Act, the County Management Committee may consider part funding of a project financed from sources other than the Fund on condition that—

Counter-part funding to be permitted.

- (a) there is no objection by other project partners; and
- (b) the part funding for the project availed pursuant to this Act shall go to a defined unit or any part thereof or phase of the project in order to ensure that the particular portion defined in the allocation is completed with the funds allocated under this Act.

PART VI—THE WARD DEVELOPMENT FUND COMMITTEE AND THE COUNTY ASSEMBLY SELECT COMMITTEE

33. There shall be a Ward Development Fund Committee for every Ward which shall be constituted by the elected Member of the County Assembly within the first thirty days of a new assembly.

Establishment of Ward Development Committee.

34. (1) The membership of the Ward Development Fund Committee shall comprise—

Composition of the Ward Development Committee.

- (a) a chairperson nominated by the members of the Ward Development Fund Committee;
 - (b) two persons representing men in the Ward one of whom shall be a youth;
 - (c) two persons representing women in the Ward one of whom shall be a youth;
 - (d) one representative of Community based Organization;;
 - (e) a representative of special interests groups; and
 - (f) the Ward Administrator who shall be the secretary;
- (2) The seven persons referred to in subsection (1) (b),

(c), (d) and (e) shall be nominated through the following procedure—

- (a) within 45 days of swearing in of a new Member of a County Assembly for a particular Ward, the County Ward Development Fund Management Committee through the Officer Administering the Fund shall convene open public meetings of registered voters in each elective ward;
- (b) each ward shall elect seven persons referred to in subsection (1) (a), (b), (c), (d), and (e);
- (c) upon conclusion of the election of the seven persons referred to in subsection (1) (a), (b), (c), (d), and (e) in the manner stipulated in paragraph (a), the officer of the Ward Development Fund Committee shall forward the names of the members of the Ward Development Fund Committee to the Officer Administering the Fund for onward transmission to the Member of the County Executive Committee for gazette.
- (d) the member of the County Assembly for the Ward shall be an ex-officio member of the Committee.

(3) The Executive Committee member shall cause the names of persons appointed as members of the Wards Development Fund Committee, pursuant to sub-section (2) to be published in the County gazette.

(4) The first meeting of the Ward Development Fund Committee shall be convened within the first sixty days of a new County Assembly or a by-election, by the county government official at the Ward or in his or her absence, by an officer of the Ward Development Fund Committee seconded to the Ward, on such day as may be designated by the member of the County Executive Committee.

(5) The chairperson of the Ward Development Fund Committee in consultation with the member of the County Assembly for the Ward, the sub county administrator for every ward shall, within the first year of a new County Assembly and at least once every two years thereafter, convene public meetings at every Ward to deliberate on development matters in the ward.