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THE EMBU COUNTY CULTURAL HERITAGE ACT, 2016

AN ACT of the County Assembly of Embu to promote and protect culture and cultural heritage in the County and for connected purposes

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 Cultural Heritage Act, 2016 and shall come to operation upon publication in *Gazette*.

Interpretation

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

"authorized officer" means an officer appointed under section 7;

"camping" means—

- (a) occupying land for picnic,
- (b) occupying land with a caravan or vehicle for sleeping or as a shelter or protection against the weather, or
- (c) erecting a tent for sleeping or as a shelter or protection against the weather;

"camping site" means land set aside by the County government as a public picnic, camping or caravan park site or a similar private facility on private land licensed by the Department;

"County Assembly" means the County Assembly of Embu;

"cultural activities, goods and services" means those activities, goods or services which at the time are considered as a specific attribute, their use or purpose embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activities may be an end in themselves or they may contribute to the production of goods and services;

"cultural content" means the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities;

"cultural diversity" means the manifold ways in which the cultures of groups and communities find expression which expressions are passed on within and among the groups and communities;

"cultural expressions" means those expressions that result from the creativity of individuals, groups and communities and have cultural

content;

“cultural heritage” includes cultural activities, articles and sites;

“cultural industries” means industries producing or distributing cultural articles;

“cultural site” means a place, owned or managed by the County government or private person or organization, which exhibits a cultural way of life or in which cultural activities are undertaken;

“Department” means the County government Department responsible for cultural heritage;

“Executive Committee Member” means the County Executive Committee Member responsible for cultural heritage;

“park” means any piece of land registered by the County as a park and maintained by it for the use by the public;

“protection” means the adoption of measures aimed at the preservation, safeguard and enhancement of the diversity of cultural expressions, and the word “protect” shall be construed accordingly.

Object and Purpose of Act

3. The object of this Act is to regulate, protect and promote the following activities and services for the interest and enjoyment of the community and persons visiting the County—

- (a) cultural sites;
- (b) cultural activities;
- (c) ensure respect for and safeguard the culture and cultural heritage of the communities, groups and individuals in the County;
- (d) create awareness of the culture and cultural heritage in the County through the promotion of cultural goods, services and activities;
- (e) protect and promote the diversity of culture and cultural heritage in the County;
- (f) encourage dialogue among persons of different . cultures and cultural heritage to promote inter- cultural respect and mutual benefits;
- (g) recognize, promote and protect the distinctive nature of the different cultures, cultural heritage and the distinctive activities, goods and services from them'
- (h) uphold the constitutional provisions to preserve the dignity of

individuals, groups and communities irrespective of their cultural beliefs; and

- (i) provide a framework under which communities and groups within the County will receive compensation, royalties or other benefits from the activities, goods, services and use of their culture and cultural heritage.

Application of this Act

4. The provisions of this Act shall apply to cultural activities and heritage in the County which are not—

- (a) declared or deemed to have been declared national heritage; or
- (b) under the National Museums of Kenya.

PART II — ADMINISTRATION, PROTECTION AND REGULATION OF CULTURAL ACTIVITIES AND HERITAGE

Administration of Cultural Heritage Responsibilities of the County Government

5. The County government shall, through the Department or other agency delegated by the County government—

- (a) hold in trust for the communities in the County, any cultural articles and cultural sites not owned by an individual or organization;
- (b) protect cultural sites and historical monuments in the County and promote tourism in relation thereto;
- (c) promote and facilitate research and recording of cultural history as well as the archiving of historical records and artefacts;
- (d) participate, promote, develop and encourage different communities, groups and individuals in the County to participate in cultural activities, whether taking place within or outside the County;
- (e) facilitate, support and oversee the co-ordination of cultural activities within the County; conduct and facilitate civic education and public discussion to stimulate awareness of pertinent issues relating to cultural articles, and activities;
- (f) where necessary determine activities which amount to cultural activities;
- (g) determine the compensation, royalties or other benefits to be received by communities or groups for their cultural goods, services, activities or other cultural heritage;

- (h) assist communities, groups and individuals to patent, copyright or otherwise protect items of their cultural activity or heritage;
- (i) promote cultural tourism; and
- (j) any such other things as may be incidental or conducive to the attainment of the objects of this Act.

Protection of individuals

6. The Department shall, in the discharge of the responsibilities under section 5, ensure that—

(a) no person is compelled to participate in a cultural activity or perform, observe or undergo any cultural practice or rite without that person's choice;

(b) the performance or enjoyment of any cultural activity by any individual or community does not prejudice the rights and fundamental freedoms of other residents of the County; and

(c) cultural activities, practices or rites which undermine human dignity are discouraged.

Authorized Officer

7. The County Public Service Board, in consultation with the Executive Committee Member shall appoint such staff as may be necessary for the administration of this Act.

Establishment of Cultural Centres

8. The Department shall establish at least one cultural centre at each Sub-County the objects of which are to provide—

- (a) a theatre for the performance of music, dance and drama;
- (b) a place for the exhibition of works of art and craft, and cultural artefacts;
- (c) a stage for film shows of cultural, educational, developmental, hygienic or social importance to the community;
- (d) a place to hold meetings to discuss matters of literary, historical, scientific or educational interest or importance; and
- (e) such other use as the Department may approve.

Determination of Article of a Cultural Nature

9. (1) The Department may, where necessary, determine whether an article is an article of a cultural nature taking into consideration its usage, historical significance and any other relevant matter.

(2) If an article is determined to be an article of a cultural nature, the Department shall declare it to be an article protected under this Act.

Protection of Cultural Articles and Activities

10. The Department shall take measures that may be necessary to protect a cultural article or activity which may be endangered including—

- (a) the patenting, purchasing or registering of the article or activity;
- (b) licensing of persons or organisations producing or dealing with, the articles or activity;
- (c) suspension of trade in the endangered article, for a given period; or
- (d) the management of the production and maintenance of the article or activity for a given period.

Patent or Copyright of a Cultural Article

11. The Department or the recognized elders of a community in the County may patent or register a copyright of a cultural heritage article or activity.

Establishment of Cultural Industries

12. (1) The Department shall encourage the relevant communities to establish cultural industries of the patented or copyrighted articles or activities for the purpose of creating employment and other benefits for the community and where possible, provide financial support to ensure the establishment of the industry.

(2) The cultural articles produced by any industry established under subsection (1) shall be provided in the open market by the community.

Provisions Relating to Cultural Sites

Declaration of a Cultural Site

13. (1) The Executive Committee Member may, after consultation with the Department and after taking into consideration the usage, historical significance and other relevant matters relating to a site, declare any site to be a cultural site protected under this Act.

(2) The Executive Committee Member may enter into a written agreement with any person, State organ, local community or organisation—

- (a) to provide for the management and maintenance of a cultural site; and
- (b) to regulate and control human activities within a cultural site.

Protection of Cultural Sites

14. (1) The Department shall take measures that may be necessary to protect any cultural site which may be endangered including—

- (a) the patenting, purchasing or registering of the site;
- (b) licensing of persons or organisations dealing with the sites;
- (c) temporary closing of the endangered site for a given period; and
- (d) the management and maintenance of site for a given period.

(2) If the owner of a private cultural site desires to sell the site, the owner shall inform the Department and the Department shall have the first priority to purchase the site.

Private Cultural Sites

15. (1) A person on whose land a cultural spot or property is situated may request the Department to declare the spot or property to be a cultural site and shall apply for the management of the spot or property as a cultural site.

(2) The Department shall inspect the site and if satisfied that it meets the requirements of a cultural site declare it to be a private cultural site and issue a permit with or without conditions.

Admission to Cultural Sites

16. (1) The Department shall determine the times, dates and conditions under which a cultural site declared under section 13 is open to the public.

(2) The Department shall determine the activities that may or may not be undertaken in a cultural site.

(3) The Department may grant admission to any person or persons, during such hours and for a period that it may specify the exclusive use of a cultural site.

(4) The Department may for reasons of maintenance, development, security, public health, or any other relevant matter temporarily or permanently—

- (a) close a cultural site or a portion thereof; or
- (b) suspend all or any activities on the cultural site.

(5) Where a person in a cultural site commits an offence relating to this Part, an authorized officer may order that person to leave the cultural site, and a person ordered to leave must leave the premises by the shortest route available to the public.

(6) The Department may, depending on the size and nature of the cultural site, determine—

- (a) the maximum number of persons or vehicles that may be in or at a cultural site at any time; and
- (b) classes of vehicles that may be in or at a cultural site.

Notice Board at Site

17. (1) The Department shall erect a notice board at the entrance or within a reasonable distance from the entrance of a cultural site on which information shall be displayed for the public, indicating;

- (a) the dates, time and conditions of entry;
- (b) the activities that may be undertaken on the site;
- (c) the fees payable for entry; and
- (d) where it applies, information on closure of the site under section 16(4).

(2) No person, other than an authorised officer, may remove or alter the contents of a notice displayed on the notice board.

(3) A notice displayed on the notice board may contain a graphic representation to convey the required meaning.

(4) A person who defaces or alters a notice displayed on the notice board or otherwise contravenes any of the provisions of this section, commits an offence.

Conditions of Entry

18. No person shall, while in or at a cultural site—

- (a) break, damage, destroy, tamper with, remove, misuse, disfigure or use anything or fail to observe any instruction issued by the Department;
- (b) unless authorised to do so, pull out, pick, cut, damage or have possession any flora growing in the cultural site;
- (c) write, paint, draw pictures or a symbol, emblem or the like on a structure or path in the site;
- (d) excavate soil, sand or stone or remove organic or inorganic objects unless one is in possession of a permit issued in relation thereto;
- (e) deface or disfigure anything within the site by pasting or affixing in any way any bills, papers, placards, notices or

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anything else;

- (f) wash, polish or repair a vehicle in the site, except emergency repairs;
- (g) burn refuse, litter or dump any refuse, garden refuse or building materials;
- (h) dispose of any burning or smouldering object contrary to the manner provided on the notice board ; and
- (i) enter or leave a cultural site other than by way of the official entry and exit or without having paid the entrance fees;

(2) A person who contravenes a provision of subsection (1) commits an offence.

PART III — FINANCIAL PROVISION

Funds of the Department

19. The funds of the Department shall consist of—

- (a) monies appropriated by the County Assembly for the purposes of promoting and protecting culture and cultural heritage in the County;
- (b) monies appropriated by the county assembly for the purposes of compensation, payment of royalties or other benefits from the activities, goods and services and use of their culture and cultural heritage; and
- (c) any grant, credits, gifts, donation and other endowments provided to the Department,

Annual Estimates

20. (1) Before the commencement of each financial year, the Department shall cause to be prepared estimates of the revenue and expenditure of the Department for that year in accordance with provisions of Public Finance Management Act, 2012.

(2) The annual estimates shall make provision for all the estimated expenditure of the Department for the financial year concerned.

Quarterly Report

21. The Department shall prepare a report for each quarter of the financial year in respect of the Department in accordance with the provisions of Public Finance Management Act, 2012.

Annual Report

22. (1) The Department shall, at the end of each financial year cause

an annual report to be prepared

(2) The Department shall submit the annual report to the County Executive Committee Member for finance who shall act on the report in accordance with provisions of Public Finance Management Act, 2012

(3) The financial year of the Department shall be the period of twelve months ending on the thirtieth day of June in each year.

PART IV — MISCELLANEOUS PROVISIONS

Register of cultural articles and sites

23. The Department shall keep a register of all articles of a cultural nature and cultural sites declared under this Act and shall include in the register the type of article or site, the community to which it relates and any other information of interest relating to the article or site.

Offences

24. A person who—

- (a) is wrongfully in possession of a cultural article;
- (b) aids or abets another person to steal a cultural article;
- (c) sells or attempts to sell an endangered cultural article without authority;
- (d) destroys or attempts to destroy a cultural article, site or activity;
- (e) forges or defrauds with intent to have an item declared-a cultural article; or
- (f) removes or attempts to remove a cultural article from its lawful custody, without authority to do so commits an offence.

(2) A person who commits an offence under subsection (1) is liable, on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding two hundred thousand shillings or to both.

General Penalty

25. A person who commits an offence under this Act for which no other penalty has been given shall, upon conviction, be liable to a term of imprisonment not exceeding six months or to a fine not exceeding Kenya Shillings fifty thousand or to both.

Power to Issue Permit.

26. The Department shall issue permits relating to the management of cultural centres, sites or institution and the use flora or fauna of cultural importance in accordance with the provisions of this Act and any relevant

national legislation.

Declaration of National Cultural Article, Activity or Site

27. A cultural article, activity or site may be declared a national cultural article, activity or site after discussions and negotiations between the County government and the relevant national authority.

Protection from Personal Liability

28. No action or omission by a public officer shall, if the act was done in good faith for the purpose of carrying out the provisions of this Act or any other law, subject the person to any liability, action, claim or demand.

Regulations

29. The Executive Committee Member may make regulations for the better carrying into effect of the provisions of this Act and without prejudice to the generality of the foregoing may prescribe-

- (a) the fees to be charged in respect of any license or permit in accordance with the relevant Act;
- (b) the form of applications for the licence or permit; (c) the form of records to be kept;
- (d) hours during which cultural sites may be open to the public;
- (e) conditions subject to issue permits for entertainment, public cultural sites; and
- (f) any matter that the Executive Committee Member considers necessary for the administration of this Act.