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No. 9 of 2015

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Nairobi City County Persons with Disabilities

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**THE NAIROBI CITY COUNTY PERSONS WITH
DISABILITIES ACT, 2015**

AN ACT of Nairobi City County Assembly to provide for the rights and rehabilitation of persons with disabilities; to achieve equalization of opportunities for persons with disabilities; to establish the County Board for Persons with Disabilities; and for connected purposes

ENACTED by the Nairobi City County Assembly, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Nairobi County Persons with Disabilities Act, 2015. Short title.

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

“aged person” includes a person with a disability who has been forced into retirement from employment due to his disability;

“assistive devices and services” means implements, tools and specialized services (including the services of qualified interpreters for the deaf and qualified teachers for the blind) provided to persons with disabilities to assist them in education, employment or other activities;

“Board” means the Nairobi County Board for Persons with Disabilities established under section 4;

“county” means the Nairobi City County;

“county executive committee member” means the county executive committee member for the time being responsible for matters relating to persons with disabilities;

“county government” means the county government of the Nairobi City county;

“disability” includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day to day activities;

“discriminate” means to accord different treatment to different persons solely or mainly as a result of their

disabilities and includes using words, gestures or caricatures that demean, scandalize or embarrass a person with a disability;

“doctor” means a person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Act;

“organizations for persons with disabilities” means associations or societies formed for the purposes of rendering services to persons with disabilities;

“organizations of persons with disabilities” means associations or societies formed by persons with disabilities for their welfare and protection; and

“usual day-to-day activities” means the activities of daily living which an ordinary person would reasonably be expected to carry out.

3. The object and purpose of this Act is to ensure the realization of the rights of persons with disabilities in the County through—

Object and purpose of the Act.

- (a) the establishment of a Board for persons with disabilities;
- (b) setting out of the rights and privileges of persons with disabilities; and
- (c) generally protect persons with disabilities from any form of discrimination and promote their welfare.

PART II— ESTABLISHMENT OF THE BOARD

4. (1) There is established the Nairobi County Board for Persons with Disabilities.

Establishment of the Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued; and
- (b) acquiring, holding and disposing of movable and immovable property.

5. (1) The Board shall consist of the following members appointed by the County Executive Committee Member with approval of the County Assembly—

Membership of the Board

- (a) three persons nominated by organizations

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representing persons with various categories of disabilities within the County;

- (b) two members appointed from a panel of names submitted to the county executive committee member by organizations for persons with disabilities subject to approval by the County Assembly;
- (c) Chief Officers or representatives not below the level of Director representing the Departments responsible for the following—
 - (i) culture and social services;
 - (ii) education;
 - (iii) labour; and
- (d) such other members as may be co-opted by the Board subject to approval by the County Assembly.

(2) The membership of the Board shall not exceed eleven persons, out of whom at least half of the members shall be persons with disabilities.

(3) The Board shall elect a member under subsection 1(a) as the Chairperson.

(4) The Board shall elect a member under subsection 1(b) as the Vice-Chairperson.

(5) The chairperson and the vice-chairperson shall be of the opposite gender.

(6) In nominating or appointing persons as chairperson and members of the Board, the County Executive Committee member shall ensure that the process is carried out in an open and transparent manner and that—

- (a) the membership of the Board shall equitably represent the types of disabilities occurring in the county;
- (b) not more than two-thirds of the members are of the same gender;
- (c) the composition of the Board shall reflect the regional and ethnic diversity of the people of Kenya; and

- (d) the Board shall be put in place within 90 days after the enactment of the Act or upon expiry of the life of the Boards to be formed.

(7) The provisions of the Schedule shall apply to the Board.

6. The chairperson, vice-chairperson and members shall hold office for a period not exceeding three years and shall be eligible for re-appointment for a further term not exceeding two years.

Tenure of office.

7. (1) There shall be a chief executive officer of the Board.

Chief executive officer.

(2) The chief executive officer shall be appointed by the County Executive Member on recommendation of the Board and recruited through a competitive process.

(3) To qualify for appointment as a chief executive officer, a person shall—

- (a) be a holder of a degree in a relevant field from a recognized university;
- (b) have had experience in management for a period of not less than five years.

(4) The chief executive officer shall hold office for a period of three years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for a further and final term of three years.

(5) The chief executive officer shall be an ex officio member and secretary to the Board but shall have no right to vote at any meeting of the Board.

(6) The Chief Executive Officer shall—

- (a) subject to the direction of the Board, be responsible for day to day management of the affairs of the Board;
- (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the Board;
- (c) carry out any other function as may from time to

time be assigned by the Board.

- (d) be appointed within 60 days after the new Board has been put in place or at the expiry of the tenure of the serving Chief Executive Officer.

8. (1) The functions of the Board shall be to—

Functions of the
Board.

- (a) issue adjustment orders under the provisions of this Act;
- (b) formulate and develop measures and policies designed to—
 - (i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services;
 - (ii) co-operate with the National Government during the national census to ensure that accurate figures of persons with disabilities are obtained in the County, for purposes of planning;
 - (iii) advise the County Executive Committee Member on the provisions of any national legislation or agreement relating to the welfare or rehabilitation of persons with disabilities and its benefits to the county;
 - (iv) recommend measures to prevent discrimination against persons with disabilities;
 - (v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disabilities;
 - (vi) encourage and secure the rehabilitation of persons with disabilities within their own communities and social environment;
 - (vii) encourage and secure the establishment of vocational rehabilitation centres and other institutions and other services for the

- welfare, rehabilitation and employment of persons with disabilities;
- (viii) co-ordinate services provided in County for the welfare and rehabilitation of persons with disabilities and to implement programmes for vocational guidance and counselling; and
 - (ix) assist the persons with disabilities in accessing legal justice.
- (c) prepare regular reports for submission to the County Assembly on the execution of the functions of the Board.
 - (d) develop a five year strategic plan for implementation of the Act.
 - (e) register—
 - (i) persons with disabilities within Nairobi City County;
 - (ii) in liaison with National Council for Persons with Disabilities in keeping a register of all institutions, associations and organizations that provide services for the rehabilitation and welfare of persons with disabilities and accredit those providing services within Nairobi City County;
 - (iii) places at which services for the rehabilitation of persons with disabilities are provided; and
 - (iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services;
 - (f) provide, to the maximum extent possible—
 - (i) assistive devices, appliances and other equipment to persons with disabilities; and
 - (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with

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disabilities, including those controlled and managed by the County Government;

- (g) consult with the County Government in the formulation of suitable curricula for vocational rehabilitation centres and other training facilities for persons with disabilities;
 - (h) make provision for assistance to students with disabilities in the form of scholarships, loan programmes, fee subsidies and other similar forms of assistance in both public and private institutions;
 - (i) assess and report to the County Executive Committee Member on the welfare and rehabilitation of persons with disabilities and to advise on the relative priorities to be given to the implementation of those measures;
 - (j) consult with the County Government in the provision of suitable and affordable housing for persons with disabilities;
 - (k) generally to carry out measures for public information on the rights of persons with disabilities and the provisions of this Act;
 - (l) perform such other functions in relation to the welfare and rehabilitation of persons with disabilities as the Board may deem necessary; and
 - (m) perform such other functions as may be assigned to the Board under this or any other Act.
- (2) Without prejudice to the provisions of subsection (1), the Board shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and in particular—
- (a) to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities;
 - (b) to constitute committees consisting of its members, and where necessary to co-opt experts to serve on such committees with the approval of the county executive committee member;

- (c) to vest in or delegate to any committee constituted under paragraph (b) such of the functions of the Board as the Board may with the approval of the county executive committee member determine; and
- (d) with the approval of the County Executive Committee Member, to engage or make other arrangements with any other person to carry out research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disabilities.

PART III—RIGHTS AND PRIVILEGES OF PERSONS WITH DISABILITIES

Rights of Persons with Disabilities

9. The County Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities.

Realization of rights of persons with disabilities.

10. (1) A person shall not deny a person with a disability access to opportunities for suitable employment.

Right not to be discriminated in employment.

(2) A qualified employee with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees.

(3) The Board shall endeavour to secure the reservation of five percent of all casual, emergency and contractual positions in employment in the public and private sectors in the County for persons with disabilities.

(4) Subject to the provisions of the Employment Act, persons with disabilities shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are hired.

Cap. 226

11. (1) Subject to subsection (2), an employer shall not discriminate against a person with a disability in relation to—

Discrimination by employers prohibited.

- (a) the advertisement of employment;

- (b) the recruitment for employment;
- (c) the creation, classification or abolition of posts;
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits;
- (e) the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment;
- (f) the provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

(2) Notwithstanding subsection (1), an employer shall be deemed not to have discriminated against a person with a disability if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person;
- (b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned; or
- (c) special facilities or modifications, whether physical, administrative or otherwise, are required at the work place to accommodate the person with a disability, which the employer cannot reasonably be expected to provide.

(3) A complaint by a person with a disability that his employer has discriminated against him in a way which is contrary to this Act may be presented to the Industrial Court through the appropriate trade union.

(4) Any contract for employment or for provision of goods, facilities or services, or any other agreement, shall be void insofar as it purports to deny any person any rights or privileges conferred under this Act or in any other way to limit the operation of this Act.

(5) An employer shall provide such facilities and effect such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be

required to accommodate persons with disabilities.

12. The Board shall establish and maintain a record of persons with disabilities who are in possession of various levels of skills and training and shall update such records regularly.

Records for job placement.

13. (1) A person or learning institution shall not deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course.

Right not to be discriminated in an educational institution.

(2) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxilliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.

(3) The relevant County Executive Committee Member shall establish institutions to cater for the visually impaired, physically challenged persons, hearing and mentally challenged persons to cater for vocational education, skills development and self-reliance.

14. The Board shall work in consultation with the relevant agencies of the County Government to make provisions in all County administrative units for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment where possible of Braille and recorded libraries for persons with visual disabilities.

Special and non-formal education.

15. The Board shall ensure that the implementation of the County health programme puts measures in place for—

Health of persons with disabilities.

- (a) prevention of disability;
- (b) early identification of disability;
- (c) early rehabilitation of persons with disabilities;
- (d) enabling persons with disabilities to receive free rehabilitation and medical services in public and Nairobi City County Health facilities;
- (e) availing essential health services to persons with disabilities at an affordable cost;

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- (f) availing field medical personnel to local health institutions for the benefit of persons with disabilities; and
- (g) prompt attendance by medical personnel to persons with disabilities.

16. (1) Persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.

Right to accessibility and mobility.

(2) A proprietor of a public building or public service vehicle shall adapt it to suit persons with disabilities in such manner as may be specified by the Board.

(3) All proprietors of public buildings shall comply with subsection (2) within five years after this section comes into operation while operators of public service vehicles shall comply with subsection (2) within two years after this section comes into operation.

(4) Right to information relating to persons with disabilities.

17. (1) This section shall apply to—

Adjustment orders

- (a) any premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise; and
- (b) any services or amenities ordinarily provided to members of the public.

(2) Without prejudice to the provisions of section 19, if the Board considers that any premises, service or amenities are inaccessible to persons with disabilities by reason of any structural, physical, administrative or other impediment to such access, the Board may, subject to this section, serve upon the owner of the premises or the provider of the services or amenities and amenities concerned an adjustment order—

- (a) setting out—
 - (i) a full description of the premises, services or amenities concerned; and
 - (ii) the grounds upon which the Board considers that

the premises, services or amenities are inaccessible to persons with disabilities;

- (b) requiring the owner or provider concerned to undertake at his own expense such action as may be specified in order to secure reasonable access by persons with disabilities to the premises, services or amenities concerned; and
- (c) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed.

(3) Before serving an order under sub-section (2), the Board shall serve notice upon the person concerned—

- (a) specifying the ground upon which the adjustment order is to be issued and the nature of the action which the Board considers necessary to rectify the situation which has given rise to the proposed order;
- (b) stipulating the maximum period that the board considers reasonable for the implementation of the action it proposes to order; and
- (c) calling upon the person concerned, if he wishes to do so, to make representations to the Board within thirty days from the date of the service of the notice.

(4) After considering any representations described in sub-section (3) (c), the Board may issue, or refrain from or defer the issuing of, an adjustment order.

(5) Within thirty days after an adjustment order is confirmed or issued under sub-section (4), the person concerned may appeal against the confirmation or issue to the High Court in the prescribed manner on any grounds including on the grounds that—

- (a) he or she cannot reasonably be expected to bear the whole or any part of the expense required in implementing the adjustment order;
- (b) the period stipulated for implementing the adjustment order is unreasonable;
- (c) the nature of the action required to be taken in terms of the adjustment order is, in the

circumstances of the case, unreasonable; or

- (d) adequate access to the premises, services or amenities concerned may be secured without recourse to the action required by the adjustment order

(6) Upon hearing an appeal upon sub-section(5) the court may—

- (a) confirm, vary or set aside the adjustment order appealed against; and
- (b) make such order as to costs of the appeal as it finds necessary.

18. (1) A person shall not, on the ground of disability alone, deny a person with a disability—

Denial of admission into premises, etc.

- (a) admission into any premises to which members of the public are ordinarily admitted; or
- (b) the provision of any services or amenities to which members of the public are entitled, unless such denial is motivated by a genuine concern for the safety of such person.

(2) The proprietor of premises referred to in subsection (1) (a) shall not have the right, on the ground of a person's disability alone, to reserve the right of admission to his premises against such a person.

(3) A person with a disability who is denied admission into any premises or the provision of any service or amenity contrary to subsection (1) shall be deemed to have suffered an injury and shall have the right to recover damages in any court of competent jurisdiction.

(4) Without prejudice to subsection (3), damages awarded under that subsection shall be recoverable summarily as a civil debt.

19. (1) The Board shall not serve an adjustment order upon—

Prohibition of adjustment orders against government institutions.

- (a) any hospital, nursing home or clinic controlled or managed by the County Government or registered under the Public Health Act except with the consent of the County Executive Committee Member responsible for health; or
- (b) any school or educational or training institution controlled or managed by the county government or registered under the Education Act except with the consent of the County Executive Committee Member responsible for the administration of the institution or Act concerned.

Cap. 242

(2) Within sixty days after being requested to consent under subsection (1), the County Executive Committee Member shall either give or refuse his or her consent and if he or she fails to do so within that period, the Board may proceed to serve the adjustment order as though the county executive committee member had consented.

20. (1) All persons with disabilities shall be entitled, free of charge, to the use of recreational or sports facilities owned or operated by the County Government during social, sporting or recreational activities.

Right to sports and recreation.

(2) Persons with disabilities shall be entitled to participate in all national and international sports events.

(3) For the purpose of subsection (2) the County Executive Committee Member responsible for sports shall, in consultation with the Board, provide the necessary suitable environment including—

- (a) architectural infrastructure;
- (b) apparatus and equipment;
- (c) training and medical personnel; and
- (d) transportation facilities for the participants.

(4) Section (1) shall not apply in cases where there is exclusive private hire of such facilities.

21. (1) The Board shall register all organizations of or for persons with disabilities.

Registration of organizations.

(2) All existing organizations of or for persons with

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disabilities shall, within twelve months after this section comes into operation, apply in the prescribed manner to the Board for registration.

22. The rights set out under this part are in addition to, and do not derogate in any way with the rights set out under Article 54 of the Constitution.

Non-derogation

PART VI—MISCELLANEOUS PROVISIONS

23. (1) A person commits an offence if the person—

Failure to obey an adjustment order and discrimination.

- (a) fails to comply with an adjustment order issued under this Act;
- (b) discriminates against a person with disability contrary to this Act; or
- (c) on the ground of any ethnic, communal, cultural or religious custom or practice, discriminates against a person with a disability.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(3) A person convicted of an offence under this section may in addition to the penalty imposed by the court be ordered to pay the person injured by the offence such sums of money in compensation as the court may deem appropriate.

24. (1) No parent, guardian or next of kin shall conceal any person with a disability in such a manner as to deny such a person the rights set out under this Act or any other law.

Concealment of persons with disabilities.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

25. (1) Any person who, being a doctor or other medical practitioner, negligently causes a disability to a patient is guilty of an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both

Negligence by doctor

such fine and imprisonment.

(2) The court may order a doctor convicted under this section to pay to the patient such sums of money in compensation as it may deem appropriate.

26. A person commits an offence if the person knowingly gives false information to the Board for the purpose of being registered or for the purpose of acquiring any privilege or right due to persons so registered.

Giving false information to get registered.

27. A person convicted of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

General penalty.

28. (1) The Board may cause to be taken appropriate legal action if the Board believes that—

Enforcement.

- (a) a person or group of persons is engaged in a practice which is discriminatory under this Act; and
- (b) the discrimination is a significant and substantial infringement of the rights of persons with disabilities and raises issues of public interest.

29. The County Executive Committee Member may make regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, may make regulations—

Regulations

- (a) prescribing the procedures, forms and fees applicable under this Act;
- (b) specifying and describing the nature of acts of discrimination against persons with disabilities; and
- (c) prescribing the procedure and forms for persons entitled to subsidized medical care under this Act.

SCHEDULE

(s. 5(7))

PROVISIONS ON THE BOARD

1. A member of the Board may—

- a. resign his office by notice in writing to the County Executive Committee Member; or
- b. be removed by the County Executive Committee Member by notice in writing if he or she—
 - (i) is subject to a vote calling for his removal by a two-thirds majority of all members of the Board;
 - (ii) has been absent from five consecutive meetings of the Board without permission of the chairperson;
 - (iii) is so incapacitated by prolonged physical or mental illness as to be unable to attend to and perform his duties;
 - (iv) is an undischarged bankrupt;
 - (v) is convicted by a Court of an offence punishable by a term of imprisonment; or
 - (vi) is otherwise unable or unfit to discharge his functions.

2. Where the office of a member becomes vacant the vacancy may with the approval of the county executive committee member be filled through the majority vote of the members for the remainder of the term.

3. The Board shall pay to its members such remuneration as the county executive committee member may approve.

4. The Board shall meet not less than four times in every year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

5. A meeting of the Board shall be held on such date and at such time as the Board shall decide, or in the absence of such a decision if the chairperson decides that a meeting is necessary, on a date and at a time determined by the chairperson.

6. Unless otherwise decided by a two-thirds majority of the members of the Board, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

7. The quorum of a meeting of the Board shall be fifteen members.

8. The chairperson, or in his absence, the vice-chairperson, shall preside at every meeting of the Board, and in the absence of both the chairperson and vice-chairperson, the members present may choose one of their number to preside at the meeting.

9. A decision of the majority of members of the Board present at any meeting of the Board shall be deemed to be the decision of the Board and if upon any question the voting shall be equal, the chairperson, vice-chairperson or other person presiding shall have a second and casting vote.

10. No act, decision or proceedings of the Board shall be invalid on account of a vacancy in the membership thereof or on account of the appointment of a member of the Board being defective.

