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THE PUBLIC OFFICER ETHICS ACT
(No. 4 of 2003)

THE EMBU COUNTY ASSEMBLY SERVICE BOARD PROCEDURES FOR
ADMINISTRATION OF PART IV OF THE ACT

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THE PUBLIC OFFICER ETHICS ACT

(No. 4 of 2003)

IN EXERCISE of the powers conferred by section 33(1) of the Public Officer Ethics Act, 2003, the Embu County Assembly Service Board establishes the following administrative Procedures—

THE EMBU COUNTY ASSEMBLY SERVICE BOARD PROCEDURES FOR ADMINISTRATION OF PART IV OF THE ACT

PART I — PRELIMINARY

Citation

1. These Procedures may be cited as the Embu County Assembly Service Board Procedures for Administration of Part IV of the Act, 2018.

Interpretation

2. In these Procedures, unless the context otherwise requires—

“Act” means the Public Officer Ethics Act, 2003;

“Board” means the Embu County Assembly Service Board established in accordance with section 12 of the County Governments Act, 2012;

“Commission” means the Ethics and Anti-Corruption Commission established under section 3 of the Ethics and Anti-Corruption Commission Act, 2011;

“Declaration form” means the form set out in the Schedule to the Act in accordance with section 26(2) of the Act;

“Final declaration” means a declaration made in accordance with section 27(5) of the Act;

“Initial declaration” means a declaration made in accordance with section 27(3) of the Act;

“Public Officer” means

A member of the County Assembly of Embu; or

A member of staff of the Embu County Assembly Service Board;

“Regulations” means the Regulations made under the Act;

“Secretary” means the Clerk of the County Assembly or in absence of the Clerk, the person exercising the functions of the clerk in accordance with section 2 of the County Assembly Service Act, 2017;

“Two-year declaration” means a declaration made in accordance with section 26(1) of the Act.

Application

3. These Procedures shall apply to the administration of Part IV of the Act with respect to the public officers for whom the Board is the responsible commission.

PART II – PROCEDURE IN RELATION TO DECLARATIONS

Secretary to Administer Procedures

4. (1) The Secretary is the responsible officer for the purpose of application of these

Procedures.

(2) The Secretary may designate in writing officers from among the staff of the Board to assist in the administration of these Procedures.

Procedure in Submitting Declarations

5.(1) A public officer shall submit a declaration in the Form set out in the Schedule to the Act.

(2) The Board may use such measures as may be appropriate to facilitate a public officer to acquire the form referred to in sub-paragraph (1).

(3) The Board may publish the declaration form in a format that may permit the declaration form—

- (a) to be rendered in digital format on a website; or
- (b) to be downloaded from a website and printed out in paper format.

(4) Where a public officer is required to make a two-year declaration, the Secretary shall, on or before the 1st November of the year in which the two-year declaration is to be made, notify the public officer and issue the officer with the declaration form.

(5) Where a public officer is required to make an initial or a final declaration, the Secretary shall, at least thirty days before the due date of the declaration, notify the public officer and issue the officer with the declaration form.

(6) Failure to issue a notification or a declaration form under sub-paragraph (4) and (5) shall not be construed as a waiver of the responsibility of the public officer to submit a declaration under the Act.

Completion, Submission and Confidentiality of Declarations

6. (1) A public officer shall complete and submit the declaration form to the Secretary.

(2) The Board or any other person shall not disclose, access, acquire or publish the information in the declaration form except as may be provided in the Act, the Regulations, these Procedures, or any other written law.

Register of Declarations

7. (1) The Board shall maintain a register containing details of each public officer who is required to make a declaration in accordance with the Act including—

- (a) the name of the public officer;
- (b) the public officer's personal number;
- (c) the date the declaration was submitted by the public officer;
- (d) the signature of the person authorized to receive the declaration on behalf of the Board;
- (e) the designation, department or unit to which the public officer belongs;
- (f) the number of state officers and public officers for which the Board is the responsible commission;
- (g) the number of state officers and public officers who have submitted declarations; and

(h) any remarks relating to the declarations.

(2) In the case of initial and final declarations, a Secretary shall maintain separate registers in respect of initial, two year and final declarations.

(3) The Secretary shall submit to the Board a report containing the information set out in sub paragraphs (1) and (2).

Returns to the Commission

8.(1) The Board shall submit to the Commission, by the 31st January following the submission of two-year declarations, the following information—

- (a) the number of public officers for whom the Board is the responsible commission;
- (b) a certified copy of the register maintained in accordance with paragraph 7;
- (c) the total number of public officers who have submitted declarations within the prescribed time;
- (d) the total number of public officers who have failed to submit declarations within the prescribed time;
- (e) any action taken by the Board in relation to any public officer who has failed to comply with the Act, or the regulations or these procedures; and
- (f) any relevant remarks relating to the returns.

(2) In the case of initial and final declarations, the Board shall, by 31st of January each year, submit to the Commission the information required in subparagraph (1) in respect of the twelve month period between January 1st and December 31st of the preceding year.

PART III—PROCEDURE IN RELATION TO CLARIFICATIONS

Requests for Clarification

9. (1) A request for clarifications under section 28 of the Act shall be made in writing.

(2) The Board shall analyze the declarations to ascertain if—

- (a) the declaration is false or incomplete;
- (b) the declared assets are disproportionate to the public officer's known income; or
- (c) the income, assets or liabilities of the public officer raise concerns of impropriety or conflict of interest or any other breach of a code of conduct and ethics.

(3) Where it is ascertained that—

- (a) the declaration is false or incomplete;
- (b) the declared assets are disproportionate to the public officer's known income; or
- (c) the income, assets or liabilities of the public officer raise concerns of impropriety or conflict of interest or any other breach of a code of conduct and ethics;

- (d) The Board shall require public officer to make a clarification in accordance with section 28(1) of the Act.
- (4) Where, after a clarification by a public officer, the Board, still finds that—
 - (a) the declaration is false or incomplete;
 - (b) the declared assets are disproportionate to the public officer's known income; or
 - (c) the income, assets or liabilities of the public officer raise concerns of impropriety or conflict of interest or any other breach of a code of conduct and ethics.
- (5) The Board may take such disciplinary action as it may consider appropriate including referral to the Commission, the Director of Public Prosecutions, or any other competent authority.

Secretary to Inform Board where a Public Officer Fails to Comply

10. The Secretary shall inform the Board of any public officer who fails to comply with the provisions of the Act, the regulations or these procedures and the Board shall—

- (a) take appropriate administrative action; or
- (b) refer the matter to the Commission, the Director of Public Prosecutions or any other competent authority.

PART IV—PROCEDURE FOR THE DISCLOSURE, ACCESS, ACQUISITION OR PUBLICATION OF INFORMATION IN A DECLARATION

Disclosure and Publication of Information in a Declaration

11. (1) A person who wishes to gain access or to publish information in relation to a declaration under the Act shall—

- (a) apply to the Board in writing;
- (b) demonstrate to the Board that he or she has a legitimate interest in the information; and
- (c) demonstrate to the Board that the access to or publication of that information shall be in furtherance of the objectives of the Act.

(2) Where a person has made an application to the Board in accordance with this paragraph—

- (a) the Board shall issue the applicant with an acknowledgement slip in the form set out in the Schedule to the Public Officer Ethics (Management, Verification, and Access to Financial Declarations) Regulations;
- (b) the Board shall inform the concerned public officer of the application in writing;
- (c) the Board shall give the public officer an opportunity to make a representation in writing in relation to the application within 14 days; and
- (d) the Board shall take into consideration the representation by the public officer while determining the application.

(3) The Board shall determine an application made in accordance with this paragraph and communicate its decision in writing to the applicant within thirty days of

receipt of the application.

(4) For the avoidance of doubt, the Board shall not release or part with the original declaration made by any public officer in satisfying the requirement of this paragraph.

(5) The Board shall maintain a register of applications and decisions made under this paragraph setting out—

- (a) the name of each applicant;
- (b) the date each application was received;
- (c) the name and personal number of the public officer who is the subject of the application;
- (d) the department or other unit to which the public officer belongs;
- (e) a brief description of the information applied for; and
- (f) a brief description of the decision made in relation to the application.

Access to Information in a Declaration

12. The Board shall not give access to the information in a declaration to—

- (a) the public officer who made the declaration unless the public officer can verify his or her identity; or
- (b) a representative of the public officer who made the declaration unless that representative—
 - (i) provides proof of his or her authority to act as a representative of the public officer; and
 - (ii) provides proof that shall verify the identity of the public officer.

Board to Decline Application

13. The Board may decline an application for access to a declaration if it is of the opinion that such disclosure would be a violation of any written law.

Decisions to be Final

14. (1) Except as provided under the Act, Regulations and these Procedures, the decisions of the Board in relation to a declaration by a public officer shall be final.

(2) Any person dissatisfied with the decision may appeal in accordance with the procedures set out in the Public Officer Ethics (Management, Verification, and Access to Financial Declarations) Regulations.

The Regulations to Apply to this Part

15. This part shall be read and construed together with the Public Officer Ethics (Management, Verification, and Access to Financial Declarations) Regulations).

PART V— PROCEDURE IN RELATION TO STORAGE AND RETENTION OF DECLARATION FORMS

Mechanisms for Retention and Storage

16. (1) The Board shall ensure that appropriate mechanisms are put in place for the safe and secure storage of the declarations forms;

(2) The storage mechanisms established under sub-section (1) shall allow easy access and retrieval of declaration forms;

(3) The Storage mechanisms may include manual, electronic form, microfilm or any other form as the Board may consider appropriate.

Cessation of Retention of Information

17. (1) Where the period for retaining information obtained in accordance with Part IV of the Act has lapsed, the Board shall determine the action to be taken in relation to that information.

(2) The Secretary may make a written proposal to the Board in relation to the action to be taken by the Board in accordance with sub-paragraph (1).

PART VI—GENERAL PROVISIONS

Powers of the Board

18. Notwithstanding delegation of any function or power by the Board for the purposes of these Procedures, the Board may—

- (a) exercise the delegated power or perform the delegated function; or
- (b) on its own motion, revise a decision of the Secretary made for the purposes of these Procedures.

Review

19. The Board may from time to time review the operational procedures put in place by the secretary in the application of these procedures.

Matters not covered by these Procedures

20. The Board may issue written instructions in relation to any matter that has not been provided for in these procedures.

Representations to the Board

21. The Board may consider representations from any person in the application of these Procedures.

Established on 28th December, 2018.

JOSIAH MURIITHI THIRIKU,
Chairperson Embu County Assembly Service Board.