

SPECIAL ISSUE

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MACHAKOS COUNTY ACTS, 2022

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CONTENT

Act—	PAGE
The Machakos County Tax Waivers Administration Act, 2022.....	1

**THE MACHAKOS COUNTY TAX WAIVERS ADMINISTRATION
ACT, 2022**

No. 3 of 2022

Date of Assent: 5th May, 2022

Date of Commencement: 11th May, 2022

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Object and purpose.

**PART II—AUTHORITY TO WAIVE TAX AND
ADMINISTRATION OF TAX WAIVERS**

- 4—Applicable law.
- 5—Power to waive taxes.
- 6—Conditions for waiver of taxes.
- 7—Publication.
- 8—No waiver for public officers.

PART III—MISCELLANEOUS PROVISIONS

- 9—Transitional provisions.
- 10—Regulations.

**MACHAKOS COUNTY TAX WAIVERS ADMINISTRATION ACT,
2022**

AN ACT of the County Assembly of Machakos to provide for the regulation and administration of tax waivers; to give further effect to Article 210 of the Constitution and section 159 of the Public Finance Management Act; and for connected purposes

ENACTED by the County Assembly of Machakos, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Machakos County Tax Waivers Administration Act, 2022.

Interpretation

2. In this Act except where the context otherwise requires—

“County” means Machakos County;

“County Assembly” means the County Assembly of Machakos;

“Executive Committee Member” means the Executive Committee Member responsible for matters relating to Finance;

“tax” includes a tax, charge or rates or a penalty imposed on such tax, charge or rates imposed by any revenue raising law or licensing fee payable by any person to the County Government; and

“Tax waiver” includes the forbearance of tax collection, partial or full remission, spreading out a payment in respect of tax already accrued and any variation of the amount due or interest or penalty due on any amount owing to the county government.

Object and purpose

3. The object and purpose of this Act is to—

- (a) give further effect to Article 210 of the Constitution as regards tax waivers and their administration;
- (b) ensure transparency and accountability in the administration and waiving of taxes and other revenue; and
- (c) provide for the requirements and procedure for tax waivers.

**PART II—AUTHORITY TO WAIVE TAX AND
ADMINISTRATION OF TAX WAIVERS**

Applicable law

4. Waiving of taxes shall be done only in accordance with this Act, any other Act of the County Assembly of Machakos or an Act of Parliament.

Power to waive taxes

5. (1) Subject to subsection (2), the Executive Committee Member may waive or vary the payment of any tax, fees or other charges due to the County Government.

(2) The Executive Committee Member may waive taxes in respect of any transaction according to the criteria prescribed herein but, in any case, where—

- (a) the waiver is for purposes of encouraging defaulting tax payers to pay such amount as may enable the County Government recover part of the amount owing from the defaulting payer; and
- (b) in the opinion of the Executive Committee Member, there exists such compelling circumstances that make it equitable, expedient and in the interest of the financial advantage to the county that the waiver be made.

(3) The Executive Committee member shall present the proposal for waiver to the Assembly for approval at least thirty (30) days before the intended waiver.

(4) Subject to such conditions as may be contained in Regulations, any person may apply to the Executive Committee member for a tax waiver granted only upon approval by the County Assembly.

(5) The Executive Committee Member shall process an application for tax waiver made under subsection (4) in accordance with section 7.

(6) The Executive Committee Member may extend the period for a tax waiver for a period of not more than thirty (30) days and shall report such extension of the waiver period to the Assembly within fifteen (15) days of such extension.

(7) For the avoidance of doubt the term “person” as used in this section includes both natural and juridical persons.

Conditions for waiver of taxes

6. Pursuant to Article 210 of the Constitution and section 159 of the Public Finance Management Act, the Executive Committee Member may waive a tax or charge provided that—

- (a) the County Treasury maintains a public record of each waiver together with the reason for the waiver;
- (b) report on each waiver in accordance with Section 164 of the Public Finance Management Act; and
- (c) such waiver or variation has been authorised by an Act of Parliament or the County Assembly.

Public participation in tax waiver

7. (1) Before presenting a proposal for the waiver of taxes to the Assembly, the Executive Committee Member shall conduct public participation on the intended tax waiver by undertaking the following—

- (a) publishing the intention to waive tax in the Gazette not less than fourteen days before presenting the proposal for tax waiver to the Assembly;
- (b) indicate in the notice referred paragraph (a), the reasons for the intended waiver;
- (c) indicate in the notice referred paragraph (a), the period of the intended waiver;
- (d) publicise the intended waiver as widely as possible by putting a notice in a newspaper of national circulation, in social media, radios, public announcements and by the use of any other media;
- (e) invite comments from members of the public on the intended waiver; and
- (f) take into consideration the views of the public in publishing the tax waiver.

(2) The Executive Committee Member shall submit the proposal of tax waiver, the evidence of public participation and the analysis of the consideration of the views of members of the public to the Assembly for approval.

(3) Where the Assembly approves a tax waiver, the Executive Committee Member shall publish and publicise the tax waiver.

No waiver for public officers

8. The Executive Committee Member shall not waive tax or fees or authorise the exclusion of a State officer or public officer from payment of tax or fees by reason of the office held by that State officer or public officer or the nature of the work of the State officer or public officer.

PART III—MISCELLANEOUS PROVISIONS**Transitional provisions**

9. Any tax waiver existing immediately before the coming into effect of this Act stands cancelled and the holder of such waiver shall apply afresh for the waiver.

Regulations

10. (1) The Executive Committee Member shall make Regulations generally for the better carrying out of the provisions of this Act.

(2) Notwithstanding the generality of sub section (1), the Regulations may provide for—

- (a) categories of tax waivers;
- (b) the procedure of application for tax waivers;
- (c) criteria for waiving of taxes;
- (d) where any payment of tax is due, the time within which waivers may be applied for;
- (e) prescribed forms;
- (f) the period of tax waivers;
- (g) any other thing that may be required to be prescribed under this Act.

