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**KAKAMEGA COUNTY ACTS, 2017**

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**NAIROBI, 19th May, 2017**

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**KAKAMEGA COUNTY URBAN AREAS MANAGEMENT  
ACT, 2017**

**No. 4 of 2017**

*Date of Assent: 12th May, 2017*

*Date of Commencement: 19th May, 2017*

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AND TOWN COMMITTEE**

**KAKAMEGA COUNTY URBAN AREAS MANAGEMENT  
ACT, 2017**

**AN ACT of the County Assembly of Kakamega County to give effect to Article 184 of the Constitution as read with the Urban Areas and Cities Act; to provide for the governance and management of urban areas and participation of residents and for connected purposes.**

**ENACTED** by the County Assembly of Kakamega County as follows—

**PART I—PRELIMINARY**

**Short title and Commencement**

1. This Act may be cited as the Kakamega County Urban Areas Management Act, 2017 and shall come into operation upon publication.

**Interpretation**

2. In this Act unless the context otherwise requires—

“Board” means the board of a municipality constituted in accordance with section 7 of this Act;

“Citizen Fora” means citizens fora as defined in the Urban Areas and Cities Act no. 13 of 2011;

“Committee” means the Committee of a town constituted in accordance with Section 7 of this Act;

“County” means Kakamega County;

“Executive committee” means Kakamega County Executive Committee established in accordance with Article 179 of the Constitution;

“Executive Committee Member” means the Executive Committee Member responsible for urban areas;

“*Gazette*” means a *gazette* published by the authority of the county government or a supplement of such *gazette*;

“Governor” means the Governor of Kakamega County;

“Urban area” means a municipality or a town as defined in the Urban Areas and Cities Act no. 13 of 2011.

**Object and Purpose**

3. The object and purpose of this Act is to establish a legislative framework for—

- (a) establishment of urban areas as towns and municipalities;
- (b) governance and management of urban areas;

- (c) participation by the residents in the governance of urban areas;
- (d) other matters for the attainment of the object and purpose of this Act.

## PART II—ESTABLISHMENT OF URBAN AREAS

### Conferment of Municipal Status

4. (1) The town committee may, upon a resolution, apply to the Executive Committee for consideration for conferment of municipal status on a town.

(2) The Governor may on recommendation of a committee constituted by himself or upon resolution of the County Assembly confer the status of a town or a municipality on a town on any built up area within the County.

(3) Where the Executive Committee approves the application under subsection (1), the Governor shall constitute an *ad hoc* committee to consider the recommendation and advise as appropriate.

(4) The *ad hoc* committee shall comprise of relevant professionals in good standing nominated by the following institutions taking account of regional and gender diversity and persons with disability—

- (a) the Institute of surveyors of Kenya Kakamega Chapter;
- (b) the Kenya Institute of planners Kakamega Chapter;
- (c) the Architectural Association of Kenya Kakamega Chapter;
- (d) the Law Society of Kenya Kakamega Chapter;
- (e) Institute of Certified Public Accountants of Kenya Kakamega Chapter;
- (f) the business community in the County; and
- (g) the residents association.

(5) The Governor may on recommendation of the *ad hoc* committee declare any urban area that no longer meets the criteria set out in sections 9 and 10 of the Urban Areas and Cities Act, 2011 to cease to be a municipality or town;

- (6) The Governor may with the approval of the County Assembly—
  - (a) assign a name to a municipality or Township;
  - (b) define the boundaries of a municipality or township;
  - (c) alter the boundaries of a municipality or township, whether by adding or subtracting from its area or otherwise;
  - (d) alter the name of a municipality or township.

### **Gazettement of Urban Areas**

5. The Governor shall publish in the Gazette the creation of an urban area.

## **PART III—GOVERNANCE AND MANAGEMENT OF URBAN AREAS**

### **Principles of Governance and Management of Urban Areas**

6. The principles of governance and management of urban areas shall be based on the principles provided for in section 11 of the Urban Areas and Cities Act no. 13 of 2011.

### **Management of Urban Areas**

7. (1) The management of a town or municipality shall be vested in the county government and administered on its behalf by—

- (a) in case of a town, a committee appointed under section 20 (2) and an administrator appointed under section 31 of the Urban Areas and Cities Act 13 of 2011;
- (b) in case of a municipality, a board constituted in accordance with section 14 and a manager appointed under section 28 of Urban Areas and Cities Act No. 13 of 2011; and
- (c) such other staff or officers as the County Public Service Board or the Board, as the case may be, may determine.

(2) The Board of a municipality shall be a body corporate whereas a town committee shall not be a body corporate.

### **Management of other Urban Centre**

8. The executive committee member responsible for urban areas shall appoint a responsible officer for each sub-county to be in-charge of other and upcoming urban centres within the county.

### **Composition of Board and Town Committee**

9. (1) A Board shall comprise nine members of whom four shall be appointed and five elected in accordance with section 13 of the Urban Area and Cities Act No.13 of 2011.

(2) A town committee shall consist of not more than nine members, four of whom shall be appointed by the governor with the approval of the County Assembly.

(3) Of the members referred to in subsection (2), five shall be nominated by—

- (a) the Institute of surveyors of Kenya Kakamega Chapter;
- (b) the Kenya Institute of planners Kakamega Chapter;

- (c) the Architectural Association of Kenya Kakamega Chapter;
- (d) the Law Society of Kenya Kakamega Chapter;
- (e) Institute of Certified Public Accountants of Kenya Kakamega Chapter.

(4) The Governor shall, while appointing members of the Board or town committee as the case may be ensure gender equity.

(5) A person shall not be appointed a member of the Board or town committee unless that person—

- (a) is a Kenyan citizen;
- (b) is ordinarily resident or has a permanent dwelling in the town or municipality;
- (c) carries on business in the municipality or town; or
- (d) has lived in the municipality or town for at least five years.

#### **Term of office of Board and Committee**

**10.** Members of the Board and town committee of a town shall hold office for a term of five years, on a part-time basis.

#### **Vacation of Office**

**11.** A member of a Board or a town committee shall cease to hold office if the member—

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared or becomes bankrupt or insolvent;
- (c) is convicted of a criminal offence to a term exceeding imprisonment of six months or more;
- (d) resigns in writing to the Governor;
- (e) without reasonable cause, the member is absent from three consecutive meetings of the Board or town committee within one financial year;
- (f) is found guilty of professional misconduct by the relevant professional body;
- (g) is disqualified from holding a public office under the Constitution;
- (h) in any particular case, the member fails to declare his or her interest in any matter being considered or to be considered by the Board or town committee;
- (i) engages in any gross misconduct; or
- (j) dies.

### **Chairperson and Vice-Chairperson of the Board or Town Committee**

**12.** (1) There shall be a chairperson and vice-chairperson for each Board or town committee.

(2) The chairperson and vice chairperson shall be elected by the members of the board or town committee as the case may be during the first meeting of the Board or town committee and subsequently whenever a vacancy arises and shall be of opposite gender.

(3) The chairperson and vice chairperson shall hold office for a term of five years.

### **Removal from office of chairperson or Vice Chairperson or Member**

**13.** (1) A person may be removed from the office of chairperson, vice chairperson or a member of a Board or town committee on any of the grounds provided for under section 11 as follows-

- (a) Upon a resolution of the town committee or the Board supported by the vote of at least two- thirds of the members of the town committee or Board;
- (b) by the Governor ; or
- (c) upon petition by residents of a municipality or town to the Executive committee member.

(2) A resident of a town or municipality may file in writing a petition with a Board or town committee for the removal of a chairperson or vice chairperson on any of the grounds listed in section 11.

### **Filling of Vacancy**

**14.** A vacancy in the office of a chairperson, vice chairperson or a member of the Board or town committee as the case may be shall, be filled in accordance with Sections 9.

### **Functions of a Board and Town Committee**

**15.** Subject to the provisions of this Act and any other written law a Board or a town committee shall—

- (a) oversee the affairs of the town or municipality;
- (b) develop and adopt policies, plans, strategies and programs, and may set targets for delivery of services;
- (c) formulate and implement an integrated development plan;
- (d) control land use, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment

centres, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the town or municipality as may be delegated by the County Government;

- (e) as may be delegated by the County Government promote and undertake infrastructural development and services within the town or municipality;
- (f) develop and manage schemes, including site development in collaboration with the relevant national and County agencies;
- (g) maintain a comprehensive database and information system of the administration and provide public access thereto upon payment of a nominal fee to be determined by the Board or town committee;
- (h) administer and regulate its internal affairs;
- (i) implement applicable national and county legislation;
- (j) in the case of a municipality enter into such contracts, partnerships or joint ventures as it may consider necessary for the discharge of its functions under this Act or other written law;
- (k) monitor and, where appropriate, regulate town or municipal services where those services are provided by service providers other than the Board or town committee;
- (l) prepare its budget for approval by the County Executive Committee and administer the budget as approved;
- (m) as may be delegated by the County Government, collect rates, taxes levies, duties, fees and surcharges on fees;
- (n) settle and implement tariff, rates and tax and debt collection policies as delegated by the County Government;
- (o) monitor the impact and effectiveness of any services, policies, programs or plans;
- (p) establish, implement management systems and monitor performance;
- (q) promote a safe and healthy environment;
- (r) facilitate and regulate public transport; and
- (s) perform such other functions as may be delegated to it by the Executive Committee Member.

### **Power of Board**

**16.** (1) Subject to the Constitution and any other written law, the Board, shall within its area of jurisdiction—

- (a) exercise executive authority as delegated by the County Executive;
- (b) ensure provision of services to its residents;
- (c) impose such fees, levies and charges as may be authorized by the County Government for delivery of services by the municipality ;
- (d) promote constitutional values and principles;
- (e) ensure the implementation and compliance with policies formulated by both the national and County Government;
- (f) make by-laws or make recommendations for issues to be included in by-laws;
- (g) ensure participation of the residents in decision making, its activities and programmes in accordance with the Second Schedule of the Urban Areas and Cities Act, 2011; and
- (h) exercise such other powers as may be delegated by the County Executive Committee.

(2) The powers exercised by a Board as prescribed under sub sections (1) shall be exercised by a town committee except for powers conferred a Board under sub section (1)(a) and (f)

### **Additional powers of Boards and Town Committees**

**17.** A Board or a town committee may subject to any other written law have power to—

- (a) prohibit or control peddling, hawking and street trading;
- (b) control trade and traders within towns and municipalities;
- (c) control or prohibit all businesses, factories and workshops which, by reason of smoke, fumes, chemicals, gases, dust, smell, noise, vibration or other cause, may be or become a source of danger, discomfort or annoyance to the neighbourhood, and to prescribe the conditions subject to which such businesses, factories and workshops shall be carried on;
- (d) prohibit or control the carrying on of the work or trade of cleaning, skin storing, dealers, rag and fish mongering, fish frying, leather dressing, tanning, glue making, charcoal burning, brick burning, stone crushing, manure making, manure storing,

or any other work or trade of an offensive nature such town or municipality may, with the sanction of the Executive Committee Member, declare to be an offensive trade;

- (e) Control and maintain waste management and other sanitary matters including sewerage services;
- (f) control and regulate urban transport;
- (g) control development structures ;
- (h) establish and maintain disinfecting and disinfestations services;
- (i) take or require the taking of such steps and measures as may be necessary or desirable for securing the prevention and destruction of locusts and other noxious insects and for preventing and abating agricultural pests, and supply poison and appliances.
- (j) subject to any law relating to the storage of explosives establish and maintain magazines for the storage of explosives and dangerous articles, whether within or without its area of jurisdiction;
- (k) require, enforce and regulate the fencing of plots, and prohibit or control the use of barbed wire for fencing;
- (l) obtain statistical information relating to inhabitants of its area and to any matters concerning the functions of the town or municipality;
- (m) (i) establish and maintain recreation grounds and facilities for recreation on land belonging to, and on parks, squares and open spaces vested in it; and
  - (ii) Establish and maintain boats and boating establishments;
  - (iii) establish, maintain and control any other amenities such as recreation ground or boating establishment as aforesaid, aquariums, pavilions, dressing-rooms, lavatories and such other buildings and conveniences of any nature and for any purpose as the Board or town committee may consider to be necessary or convenient; and
  - (iv) set apart any portion of any such recreation ground as may be determined by the town or municipality and described in a notice set up in some conspicuous place on such recreation ground for the purpose of any particular game or recreation, and exclude the public from the portion so set apart;

- (v) provide any apparatus for games or recreation in respect of any such recreation ground or boating establishment, and permit any person, club or body to provide any such apparatus on such terms as the town or municipality may decide;
- (vi) Establish, maintain and control refreshment rooms, cafes and restaurants in any such recreation ground or in connection with any such boating establishment; and
- (vii) let any such recreation ground with or without any building or apparatus established or provided in connection therewith to any person or club or other body of persons, and, by resolution of the town or municipality, authorize such person, club or body to make charges in connection therewith; and
- (viii) control boating establishments by whomsoever established, license boats, whether kept for hire or otherwise, and regulate the use of and fix the number of persons to be carried in such boats;
- (n)
  - (i) establish, maintain, let and manage public markets and market buildings;
  - (ii) control markets in its area by whomsoever established and, where a market has been established by the town or municipality, prohibit the establishment of any other market within its area without the permission of the town or municipality; and
  - (iii) Control public sales held on any public or open space or in any public building; and
  - (iv) control places used for the purpose of selling publicly, or exposing for sale, any cattle, horses, sheep, goats, pigs, poultry or other livestock; and
  - (v) where provision is made for any such sale in any market established by the town or municipality or at any place provided by the town or municipality for the purpose, prohibit such sales elsewhere than in or at such market or place and license persons to conduct such sales in or at such market or place and require the deposit of security by an applicant for such license; and
- (o) ensure that any building constructed in an urban area makes provision for CCTV cameras and security lights.

- (p) exercise such other additional powers as may be prescribed under the Urban Areas and Cities Act, No. 13 of 2011 or as delegated by the county government.

### **Delegation of duties**

18. (1) A Board or town committee may in consultation with the Executive committee member responsible for urban areas and in writing delegate any power or assign any duty conferred on it under this Act.

(2) A delegation or assignment under this section shall not prevent a Board or town committee from exercising the power in question.

(3) A delegation under this section—

- (a) shall be subject to any conditions the Board or town committee may impose;
- (b) shall not divest the Board or town committee of the responsibility concerning the exercise of the powers or performance of the duty delegated; and
- (c) may be withdrawn and any decision by the person to whom the delegation is made withdrawn or amended by the Board or town committee.

### **Citizen Fora**

19. (1) Residents shall have the right to participate in the governance of towns and municipalities as provided for in the Urban Areas and Cities Act, No. 13 of 2011.

### **Management of Information and Publicity**

20. (1) A Board or town committee shall publish and publicize important information within its mandate affecting a town or municipality.

(2) A request for information in the public interest by a citizen—

- (a) shall be addressed to the municipal manager or town administrator or such other person as the board or committee may for that purpose designate, and may be subject to the payment of a reasonable fee in instances where the Board or town committee incurs an expense in providing the information; and

(b) may be subject to confidentiality requirements of the Board or town committee.

(3) Subject to Article 35 of the Constitution, the Board or town committee may decline to give information to an applicant where the—

- (a) request is unreasonable in the circumstances;
- (b) information requested is at a deliberative stage by the Board or town committee;

- (c) applicant fails to pay the prescribed fee; or
- (d) applicant fails to satisfy any confidentiality requirements by the Board or town committee.
- (4) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.
- (5) Every member and employee of the Board or town committee shall sign a confidentiality agreement.
- (6) The Board or town committee shall, in such manner as it considers appropriate, publish a notice for public information specifying—
  - (a) the location of all its offices; and
  - (b) its address or addresses, telephone numbers and other means of communication or contact with the board or committee.

#### **Remuneration of members of a Board and Town Committee**

**21.** The members of a Board, town committee or sub committees established thereunder shall not receive a salary from the Board or Town Committee but shall be paid such allowances and benefits as the Executive Committee Member shall determine in line with Salaries and Remuneration Commission guidelines.

#### **Committees of a Board and Sub-committees of the Town Committee**

- 22.** A Board or town committee may—
- (a) establish such committees or sub committees as the case may be for any general or special purpose which, in its opinion, would regulate or manage its affairs more efficiently and as may be necessary for the performance of its functions under this Act;
  - (b) delegate to such committee or subcommittee as the case may be such functions as are necessary for the efficient performance of its duties in respect to the whole or any part of the area under the jurisdiction of a Board or town committee; and
  - (c) co-opt persons who are not members of the Board or town committee in any committee or subcommittee.

#### **Municipal Manager and Town Administrator**

**23.** (1) There shall be a municipal manager for every municipality established under this Act or any other written law, who shall be answerable to and shall implement the decisions and functions of the Board.

(2) There shall be an administrator for every town who shall perform such functions as the town committee may determine.

**Appointment of Municipal Manager or Town Administrator**

**24.** A municipal manager and town administrator shall be competitively recruited and appointed by County Public Service Board.

**Qualifications for appointment of municipal manager or town administrator**

**25.** (1) Subject to Article 232 of the Constitution, a person shall qualify to be appointed as municipal manager or town administrator if the person—

- (a) is a Kenyan citizen;
- (b) holds a degree from a university recognized in Kenya or its equivalent; and
- (c) has proven experience of not less than five years in administration or management either in the public or private sector.

(2) In appointing a manager or administrator under subsection (1) the county public service board shall ensure—

- (a) gender equity; and
- (b) the person satisfies the requirements of Chapter six of the constitution.

**Protection against personal liability**

**26.** No act, matter or thing done or omitted to be done by—

- (a) the Board or town committee;
- (b) any member of staff or other person in the service of a town or municipality; or
- (c) any person acting under the direction of a Board or a town committee, shall, if that act, matter or thing was done or omitted to be done in good faith in the execution of a duty or under direction, render that member or person personally liable to any civil action, claim or demand.

**Liability for damages**

**27.** The provisions of section 26 shall not relieve the Board or town committee of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any function or power conferred by this Act or any other written law.

## **PART IV—DELIVERY OF SERVICES**

### **Service Delivery**

**28.** (1) Subject to Article 176 (2) of the Constitution, a Board or a town committee may, if it considers it necessary, establish operational sectors and service delivery entities, with the approval of the Executive Committee Member, for the efficient carrying out of its functions and the delivery of the services within its area of jurisdiction.

(2) Subject to subsection (1) the Executive Committee Member may make regulations on the set up and establishment of service delivery entities.

### **Partnership and Joint Ventures**

**29.** (1) A Board may, in consultation with the Executive Committee Member, enter into partnership with any entity either within or outside the County for the provision of socio- economic and infrastructural services.

(2) For efficient service delivery, a municipality in the county may jointly with another municipality provide cross-municipality services.

(3) A Board may, where it is of the opinion that a private sector entity is best able to provide a service, in consultation with the Executive Committee Member, contract the private entity for purposes of delivering the services.

(4) Where a Board decides to contract a private entity for the delivery of services, it shall do so in accordance with the Public Procurement and Asset Disposal Act, 2015.

### **Service delivery in towns**

**30.** The department responsible for urban areas may implement the provisions of sections 28 and 29 on behalf of a town committee.

## **PART V—INTEGRATED DEVELOPMENT PLANNING**

### **Objectives of Integrated Urban Areas Development Planning**

**31.** (1) Every town or municipality established under this Act shall operate within the framework of Integrated Development Plan which shall—

- (a) give effect to the development of urban areas and as provided for under this Act and any other written law;
- (b) undertake to achieve the objects of devolved government as set out in Article 174 of the Constitution;
- (c) contribute to the protection and promotion of the fundamental rights and freedoms of individuals;

- (d) Be the basis for—
  - (i) the preparation of environmental management plans;
  - (ii) the preparation of valuation rolls for property taxation;
  - (iii) provision of physical and social infrastructure and transportation;
  - (iv) preparation of annual strategic plans for urban areas;
  - (v) disaster preparedness and response;
  - (vi) overall delivery of service including provision of water, electricity, health; solid waste management; and
  - (vii) the preparation of a geographic information system for a town or municipality;
- (e) nurture and promote development of informal commercial activities in an orderly and sustainable manner;
- (f) provide a framework for regulated urban agriculture; and
- (g) be the basis for development control.

(2) An integrated urban development plan shall bind, guide and inform all planning development and decisions.

(3) The County Government shall initiate an urban planning process for every settlement with a population of at least two thousand residents.

#### **Plan to align to County Government Plans**

32. An urban area integrated development plan shall be aligned to the development plans and strategies of the County Government

#### **Preparation of Integrated Urban Development Plans**

33. A town committee or Board shall prepare an integrated urban area development plan in accordance with the Third Schedule of the Urban Areas and Cities Act, 2011.

#### **Adoption of an Integrated Development Plan**

34. (1) A Board or town committee shall, within the first year of its appointment, adopt a single, inclusive strategic plan for the development of the urban area for which it is responsible.

(2) An Integrated Development Plan adopted by a Board or town committee under subsection (1) may be reviewed and amended during the term of the Board or town committee and shall remain in force until a new integrated urban development plan is adopted by the succeeding Board or town committee, but the incoming Board or town committee shall ensure that the viable projects are continued or completed.

(3) A town committee or a Board shall, within fourteen days of the adoption of its integrated development plan—

- (a) give notice of adoption of the plan to the public in such manner as the Board or town committee may determine;
- (b) inform the public that copies of or extracts from the plan are available for public inspection at specified places; and
- (c) provide a summary of the plan.

### **Contents of Integrated Urban Area Development Plan**

**35.** An integrated development plan shall reflect—

- (a) a Board's or town committee's vision for the long term development of urban area with special emphasis on the Board's or town committee's most critical development needs;
- (b) an assessment of the existing level of development in the urban area, including an identification of communities which do not have access to basic services;
- (c) the determination of any affirmative action measures to be applied for inclusion of communities referred to under paragraph (b);
- (d) the Board's or town committee's development priorities and objectives during its term in office, including its economic development objectives, community needs and its determination on the affirmative action in relation to the marginalized groups access to services;
- (e) a Board's or town committee's development strategies which shall be aligned with any national or county sectorial plans and planning requirements binding the town or municipality;
- (f) a spatial development framework which shall include the provision of basic guidelines for land use management system for the municipality;
- (g) a Board's or town committees operational strategies;
- (h) applicable disaster management plans;
- (i) a regulated municipal or town agricultural plan;
- (j) a financial plan, which shall include budget projection for at least the next three years; and
- (k) the key performance indicators and performance targets.

### **Submission of a Town or Municipal Integrated Development Plan**

**36.** (1) The municipal manager or town administrator as the case may be shall submit to the Executive Committee Member, a copy of the integrated development plan as adopted by the Board or town committee within twenty one days of the adoption or amendment.

(2) The copy of the integrated development plan submitted to the Executive Committee Member shall be accompanied by—

- (a) a summary of the process of its formulation plan provided under this Part; and
- (b) a statement that the process has been complied with, together with any explanations that may be necessary to clarify the statement.

(3) The Executive Committee shall, within thirty days of receipt of a copy of the plan—

- (a) consider the integrated development plan and make recommendations; and
- (b) submit the plan to the County Assembly for its approval.

### **Annual review of Integrated Development Plan**

**37.** A Board or a town committee shall review its integrated development plan annually to assess its performance in accordance with performance management tools set by it under this Part, and may amend the plan where it considers it necessary.

## **PART VI—FINANCIAL PROVISIONS**

### **Sources of funds**

**38.** (1) The sources of funds for the Board or town committee shall consist of—

- (a) Monies allocated by the County Assembly for the purposes of the management and service delivery of the Board or town committee;
- (b) Monies or assets that may accrue to the Board or town committee in the course of the exercise of its powers or the performance of its functions under this Act; and
- (c) all monies or grants from any other legitimate source provided or donated to the Board or town committee.

(2) Where a Board or town committee has a joint venture with another entity, the monies allocated for the joint venture shall be determined by a joint budget.

(3) No payment shall be made out of the funds of a Board or town committee unless it has been provided for in the approved annual or revised or supplementary estimates.

### **Financial year**

39. The financial year of a Board or town committee shall be the period of twelve months ending on the thirtieth June in each year.

### **Annual estimates**

40. (1) Three months before the commencement of each financial year, a Board or town committee shall cause to be prepared estimates of the revenue and expenditure of a Board or town committee for that year.

(2) The annual estimates shall make provision for all the estimated revenue and expenditure of the Board or town committee for the financial year to which it relates.

(3) The annual estimates shall be tabled before the Board or town committee for adoption and approval.

(4) The annual estimates approved by the Board or town committee under subsection (3) shall be submitted to the Executive Committee Member for submission to the County Assembly for its approval.

### **Accounts and audit**

41. (1) The Board or town committee shall cause to be kept all proper books and records of account of its income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, the Board or town committee shall submit to the Executive Committee Member its accounts for that year for transmission to the Auditor-General together with—

- (a) a statement of the income and expenditure of a Board or town committee for that year; and
- (b) a statement of the assets and liabilities of a Board or town committee on the last day of that financial year.

(3) The Auditor-General shall prepare a financial audit as required under the Public Audit Act, No. 34 of 2015 or its successor and shall forward a copy of the report to the relevant Board or town committee and the Executive Committee Member in respect of which the audit report is made.

**Audit report to be laid before Board or town committee**

**42.** (1) As soon as is practicable, and in any event not later than thirty days from the date of receipt of the audit report together with the annual statements and abstracts of accounts, the municipal manager or town administrator shall—

- (a) lay the documents before the Board or town committee for consideration; and
- (b) make them available to any resident of the area within the jurisdiction of the Board or town committee, upon application and payment of the prescribed fee.

(2) Where the municipal manager or the town administrator fails to table the report as required under this section, that report shall be laid by any other person authorized by the Executive Committee Member.

**Display of Audited Financial Statement**

**43.** The Board or the town committee shall cause its audited annual financial statement to be posted in full in a conspicuous place in the Board's or town committee's offices, or in two widely circulated newspapers and, on the Board's or town committee's website.

**PART VII—POWERS OF OFFICERS****Powers of Town Administrator and Municipal Manager**

**44.** (1) The town administrator or the municipal manager shall have the general responsibility of coordinating the whole of the work of the town or municipality.

(2) In discharge of their functions, the town administrator or municipal manager shall have all the powers and duties conferred and imposed upon them as the case may be and be responsible for matters specified in line with functions specified under the First Schedule of the Urban Areas and Cities Act, No.13 of 2011.

(3) The town administrator or municipal manager, through the town committee or the Board, shall have power to establish pounds, and from time to time to make provision for all or any of the following—

- (a) the management of pounds and shall prescribe the circumstances in which any article or vehicle which is found abandoned or apparently abandoned, or any animal or bird, may be impounded;
- (b) fix the charges payable by the owner of any impounded article, vehicle, animal or bird;

- (c) prescribe the circumstances in which and the conditions under which any impounded article, vehicle, animal or bird may be sold ; and
- (d) dispose of the impounded article, vehicle, animal or bird in accordance with the provisions of the Disposal of Uncollected Goods Act ,CAP 38.

## **PART VIII—MISCELLANEOUS PROVISIONS**

### **Street Planning**

**45.** (1) Subject to this section, a Board or town committee may permanently close or divert or alter the line of any street or road vested in it under this Act.

(2) Before any such closure or diversion or alteration is carried out, the Board or town committee shall—

- (a) prepare a plan showing the nature thereof; and
- (b) not less than one month before the proposed commencement of the work, give notice in the Gazette and in one or more newspapers with wide circulation in its area, as well as by a sufficient number of placards posted on or near the street or road which it is proposed to close, divert or alter, of the proposed work and of a place where the said plan may be inspected at all reasonable hours; and
- (c) serve a copy of the said notice on the owners or reputed owners, lessees or reputed lessees, and occupiers of all property abutting upon the said street or road or appropriate part thereof and, where it is proposed to divert or alter the line of such street or road, of all property which will abut upon the street or road if diverted or altered as aforesaid, whose address can after reasonable inquiry be ascertained; and
- (d) if the proposed closure, diversion or alteration will affect land not vested in the Board or town committee, serve a copy of the said notice to interested parties; and
- (e) If the interested party in any property abutting on the street or road which it is proposed to close, divert or alter under this section, or any other person aggrieved by such proposed closure, diversion or alteration, shall at any time within the period of one month from publication of the notice in the Gazette and in one or more newspapers as aforesaid, serve written notice on the Board or town committee of any objection to such closure, diversion or alteration, then, unless such objection is withdrawn,

such closure, diversion or alteration shall not be carried out unless the matter is resolved under applicable law.

### **Powers to make by-laws**

**46.** (1) A Board or a town committee may from time to time make by-laws in respect of all such matters as are necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants of its area or any part thereof and for the good rule and governance of such area or any part thereof and for the prevention and suppression of nuisances therein and, more particularly, but without prejudice to the generality of the foregoing—

- (a) for controlling any of the things which it is empowered by or under this Act to do, establish, maintain or carry on; and
- (b) for controlling or regulating any of the things which, and any of the persons whom, it is empowered by or under this Act to control or regulate;
- (c) for prohibiting or preventing by prohibition any of the things which it is empowered by or under this Act to prohibit;
- (d) for requiring or compelling the doing of any of the things which it is empowered by or under this Act to require or compel.

(2) A town or municipality may, by by-law, prescribe all or any of the following penalties which may be imposed for breach of any by-law made by it under this Act—

- (a) a fine not exceeding Kenya shillings ten thousand in respect of a first offence and not exceeding fifty thousand shillings in respect of a second or subsequent offence, or imprisonment for a period not exceeding six months in respect of a first offence and not exceeding nine months in respect of a second or subsequent offence, or both such fines and such periods of imprisonment; and
- (b) in addition to the penalty provided in the preceding paragraph, in the case of continuing breach of any such by-law, a fine not exceeding Kenya shillings two thousand for every day during which the offence continues;

Provided that any by-law which under this paragraph prescribes a fine for each day during which an offence continues shall also provide that the aggregate of any such fines imposed shall not, in the case of any one continuing breach of the by-law in question, exceed Kenya shillings fifty thousand; and a Board or town committee may, by by-law, further prescribe that, in

addition to any such penalty as aforesaid, any expenses incurred by the Board or town committee in consequence of the breach of any by-law made by it under this Act or in the execution of any work directed by any such by-law to be executed by any person and not executed by him or her, shall be paid by the person committing such breach or failing to execute such work.

(3) Any by-law made by a Board or town committee under this Act may—

- (a) require acts or things to be performed or done to the satisfaction of a specified person, and may empower a specified person to issue orders to any person requiring acts or things to be performed or done, imposing conditions and prescribing periods and dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled; and
- (b) confer on the officers of such Board or town committee such powers of inspection, inquiry and execution of works as may be reasonably necessary for the proper carrying out or enforcement thereof.

(4) Where a Board or town committee is empowered to make by-laws controlling the doing of any act, and such by-laws require any person to obtain a license from a specified authority before the doing of such act, such by-laws may require the deposit of such sum or the execution of a bond with or without sureties, as may be prescribed in such by-laws, in addition to any fee which may be prescribed, such sum to be refunded or such bond to be void, as the case may be, if the person to whom such license is granted complies with all the conditions of such license.

(5) By-laws which affect any cultural or natural heritage declared or deemed to have been declared as such by the Executive Committee may only be made after consultation with the National Museums of Kenya.

#### **Publication of by-law**

47. (1) The Executive Committee Member shall publish the by-law in the Gazette after approval.

(2) Subject to any other written law every by-law shall have the full force of law within the area to which it applies on the date of publication.

#### **By-law to be admissible as evidence**

48. A copy of every by-law which has been gazetted shall be kept by the town administrator or the municipal manager and shall be admissible in evidence without further proof.

### **Liability for defiance of orders or notices served upon a resident or other person**

**49.** Unless otherwise provided for by any other written law, a person who defies an order or notice served upon him or her by an authorised officer commits an offence and is liable on conviction to a fine not exceeding Kenya shillings one hundred thousand or to imprisonment for a term not exceeding six months or to both such, fine and imprisonment.

### **Disclosure of personal interest by officers**

**50.** If it comes to the knowledge of an a employed by a Board or town committee that a bargain, contract or arrangement in which he or she has direct or indirect pecuniary interest has been or is proposed to be made or entered into by the Board or town committee that officer shall as soon as practicable give notice in writing to the Board or town committee disclosing the fact that he or she has interest therein.

### **Board or committee to furnish copy of proceedings**

**51.** (1) The First Schedule shall apply with respect to the conduct of the business and affairs of the Board or town committee.

(2) Every Board or town committee shall furnish the Executive Committee Member with certified copies of—

- (a) any proceedings or minutes of the Board or town committee within twenty one days after the confirmation of minutes or proceedings;
- (b) records of any of its accounts; and
- (c) reports, statistics and documents as the Executive Committee Member may require

### **Regulations**

**52.** The Executive Committee Member may make regulations for the better carrying out of the provisions of this Act or for prescribing anything which is required to be prescribed under this Act.

### **Existing by-laws and orders**

**53.** All directions, resolutions, orders and authorisations given by bylaws made and licenses or permits issued by local authorities within the county under the Local Governments Act (now repealed) and subsisting or valid immediately before the commencement of this Act shall be deemed to have been given, issued or made by the Board or town committee established under this Act as the case may be until there expiry amendment or repeal.

**FIRST SCHEDULE****(s. 50 (1))****PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND  
AFFAIRS OF THE BOARD AND TOWN COMMITTEE**

1. A Board or town committee shall hold its meetings to transact ordinary business of the Board or town committee once in every three months.
2. The chairperson may, upon request in writing by at least one-third of the members of the Board or town committee and with approval of executive committee member in writing, convene a special meeting to transact any urgent matter of the Board or town committee.
3. The chairperson shall preside at every meeting of the Board or town committee at which he or she is present, but in the absence of the chairperson the vice chairperson shall preside.
4. The quorum for a meeting of the Board or town committee shall be five members.
5. Unless a unanimous decision is reached, a decision on any matter before the Board or town committee shall be by a majority of the members present, and in the case of an equality of votes the chairperson or vice chairperson if presiding shall have a casting vote.
6. A member who has a direct or indirect interest in a matter being considered or to be considered by the Board or town committee shall, as soon as the relevant facts regarding the matter come to the knowledge of the member, disclose the nature of such interest, and shall not be present during any deliberations on the matter.
7. The Board or town committee shall cause the minutes of all proceedings of its meetings to be recorded and kept, and shall be signed by the chairperson or the vice chairperson presiding as chairperson at the meeting.
8. The municipal manager or town administrator as the case may be or an officer instructed by him or her in that behalf, present at a meeting of the Board or a town committee thereof, shall have the right to require his or her opinion to be recorded in the minutes if the Board or the town committee, as the case may be, passes a resolution, which in the opinion of the municipal manager or town administrator or officer, is contrary to his advice or contrary to law.
9. Save as provided in this Schedule the Board or town committee may regulate its own procedure.