

SPECIAL ISSUE

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NAIROBI, KENYA

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REPUBLIC OF KENYA

**MOMBASA COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2014

NAIROBI, 11th December, 2014

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THE MOMBASA COUNTY ROADS BILL, 2014

A Bill for

An Act of the County Assembly of Mombasa to provide for the construction, maintenance and management of public roads, motor ways, buses and protected roads, tolling of public roads and others matters incidental to the proper management of the County road network systems.

ENACTED by the County Assembly as follows—

PART I — PRELIMINARY

Short title.

1. This Act may be cited as the Mombasa County Roads Act, 2014.

Interpretation.

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

“abandon” means to relinquish the public's right of way in and use of the road;

“authorized person” means a person authorized in writing by the Directorate;

“city” means city as assigned to it by Urban Areas and Cities Act, 2011;

“consent” means acceptance in writing;

“contravention” includes failure to comply;

“County Government Act” means the County Government Act, 2012;

“county Government” Has meaning as assigned it by Constitution 2010;

“county road” means a public road or a proposed public road which is classified as a County road under *the Act*;

“cycle way” means a public road or proposed public road reserved for the exclusive use of pedal cyclists or pedal cyclists and pedestrians;

“default toll” means a toll charged and payable in accordance with regulations under section 61 in respect of a mechanically propelled vehicle where the toll initially charged and payable in respect of that vehicle for the use of a toll road has not been paid;

THE MOMBASA FERRIES AND HARBOURS BILL, 2014**A Bill for**

AN ACT of the County Assembly of Mombasa to make provision for the creation and implementation of policy as well as the management of Mombasa Ferries and Harbours and for connected purposes.

ENACTED by the County Assembly of Mombasa as follows—

PART I — PRELIMINARY**Short title and commencement**

1. The Act may be cited as the Mombasa County Ferries and Harbours Act, 2014 and shall come into operation on such a date as the Executive committee member may by notice in the gazette appoint.

PART II — MOVEMENT OF VESSELS IN HARBOURS**Vessel Permit**

2. No vessel shall carry passengers unless it holds a permit issued by the county department of transport.

Revocation of Permit

3. The permit may be revoked or suspended by the department and it may take such action as is deemed necessary in the interests of safety or for the good management or operation of a harbour or where the permit holder or his servants, or agents are in breach of or fail to comply with the terms of the operating agreement or where the permit holder or his servants or agents commit an offence under, or a breach of, this Act.

Report on arrival

4. The master or owner of a vessel, other than a fishing vessel, shall, when operating within a harbour and functional area or as soon as possible thereafter, report the arrival together with particulars as to tonnage and draft of the vessel to the Harbour Master who shall assign a berth to the vessel if such be available.

Control by the Harbor Master

5. Any vessel entering or leaving or being within a Harbour shall be in all respects under the control of the Harbour Master whose direction shall be obeyed by the Master of the vessel.

“protected road” means a public road or proposed public road specified to be a protected road in a protected road scheme approved by the County Executive Member;

“public road” means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road Directorate;

“Road” includes:

- (a) any street, lane, footpath, square, court, alley or passage,
- (b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,
- (c) any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gulley, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channels, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road, and
- (d) any other structure or thing forming part of the road and necessary for the safety, convenience;

“road undertaking” means, in relation to a toll road—

- (a) the Directorate, or
- (b) where the Directorate has entered into—
 - i. an agreement with another person under section 27 in relation to any of the matters referred to in paragraph (e) of that section, or
 - ii. an arrangement with a partner under the Act (Public Private Partnership Arrangements) Act 2013 in relation to any of the matters referred to in paragraph (a) of that subsection, that other person or partner;

“roadway” means that portion of a road which is provided primarily for the use of vehicles;

“road race” means a prescribed class of race, time trial or speed trial on a public road involving persons, vehicles or animals;

“Service area” means an area beside or in the proximity of a public road where services and facilities for users of the road as provided under a highway or service area scheme;

“Statutory undertaker” means a person or organisation mandated by the Constitution of Kenya, 2010 to carry out certain duties;

“Structure” has the meaning assigned to it by the roads Act, 2007;

“Substratum of land” means any subsoil or anything beneath the surface of land required:

(a) for the purposes of a tunnel or tunneling or anything connected therewith; or

(b) for any other purpose connected with a scheme;

“Superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death;

“Traffic sign” has the meaning assigned to it by Roads Act, 2007;

“Transition to Devolved Government Act” means the Transition to Devolved Government Act, 2012;

“toll” means a toll (including a default toll) chargeable under this Part;

“toll road” means a public road or proposed public road in respect of which a toll scheme is in force;

“toll scheme” means a scheme under this Act;

“urban area” meaning as assigned it by Urban Areas and Cities Act, 2011;

“vacate” means to terminate the existence of the Road by direct action of the court of law;

3. This Act shall come into operation on such day or days as may be fixed therefore by any order or orders of the County Executive Member, either generally or with

Commencement.

reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions of this Act.

4. (1) The Executive Member may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed or in relation to any matters referred to in this Act as the subject of regulations or for the purpose of giving full effect to this Act.

Regulations.

(2) Every regulation made under this Act shall be laid before the County Assembly as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such Assembly within the next subsequent twenty-one days on which that Assembly has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done there under.

(3) Where it is proposed to make regulations, a draft shall be laid before the County Assembly for approval by the County Assembly.

5. (1) The Executive Member may by order revoke or amend any order made by him under any provision of this Act, other than one under subsection (2) above.

Revocation and amendment of orders and directions.

(2) The County Executive Member or the Directorate may by direction revoke or amend any direction given by him or it under this Act.

(3) Where an order referred to in *subsection (1)* has been made, the road Directorate concerned shall, as soon as possible give notice thereof to its members.

6. (1) The County Executive Member may by order adapt any enactment or instrument by deleting any reference to, a county road, an urban road, or a link road and substituting therefore a reference to a national and county road.

References to road classifications in previous enactments.

(2) A reference in any enactment or instrument to a national road shall be deemed to be a reference to a national road as defined in this Act.

PART II— CLASSIFICATION OF ROADS AND ASSIGNMENT OF FUNCTIONS

7. (1) The County Executive Member may by order Classification of
County roads.
classify any County road;

- (a) A public road, other than a national road shall be a County road as defined in Schedule 4 of the Constitution of Kenya, 2010
- (b) Where a public road has been classified as a national road or a County road under this subsection and where that road has been realigned or a by-pass has been constructed on it, such realignment or by-pass shall, unless otherwise provided by order of the County Executive Member under this subsection, be a national road or a County road, as the case may be, and that section of the existing road which remains following the realignment or the construction of the by-pass shall be a County road.
- (c) Where a new section or a section of a national or County road is proposed or has been provided, the section is, unless provided by order of the County Executive Member under this subsection, a national or county road, as the case may be. Any section of the existing road which remains following the construction of the new section becomes a county road.

(2) The County Executive Member may make regulations;

- (a)
 - (i) prescribing classes of public roads in addition to or in substitution for the classes referred to in *subsection (1)*, and
 - (ii) making provision for the assignment of responsibility for the maintenance and construction of such classes of public roads and for the adaptation for that purpose of any of the provisions of *section 6*.

- (b) Regulations under this subsection may provide either generally or in a particular case that a reference in any enactment (including this Act) or instrument to a national road or a County road is to be construed as a reference to a public road of a class prescribed in such regulations.
- (3) The Executive Member may by order—
 - (a) designate particular roads for particular purposes taking it into account existing numbering system for both national and county roads;
 - (b) divide a particular class of roads into sub-classes.
- (4) (a) The Executive Member shall assign a number or other identifying mark to each national road and County road.
 - (b) The Directorate shall assign a number or other identifying mark to each County road in respect of which it has responsibility.
- (5) (a) The Directorate shall keep a schedule and map of all public roads in respect of which it has responsibility.
 - (b) The Directorate shall prepare the schedule and map as soon as practicable after the commencement of this act and shall take all reasonable measures to keep the schedule and map up to date.
 - (c) The schedule and map shall be kept at the offices of the Directorate and shall be available for inspection during office hours.
 - (d) The schedule and map may be kept otherwise than in a legible form provided that the information contained therein is capable of being reproduced in a legible form.
- (6) The Directorate shall, at the request of the Executive Member and in such manner as may be specified by him, carry out an inventory of all public roads, or of any class or subclass of public road, in respect of which it has responsibility.

8. (1) The Directorate may, by order—

a) declare any road over which a public right of way exists to be a public road, and every such road shall be deemed to be a public road and responsibility for its maintenance shall lie on the Directorate.

b) Where the Directorate proposes to declare a road to be a public road it shall:

- i. satisfy itself that the road is of general public utility;
- ii. consider the financial implications for the Directorate of the proposed declaration;
- iii. publish in one or more newspapers circulating in the area where the road which it is proposed to declare to be a public road is located a notice indicating the times at which, the period (which shall be not less than one month) during which and the place where a map showing such road may be inspected and stating that objections or representations may be made in writing to the Directorate in relation to such declaration before a specified date (which shall be not less than two weeks after the end of the period for inspection); and
- iv. consider any objections or representations made to it under *paragraph(iii)*.

(2) The consideration of objections or representations and the making of an order under *subsection (1)* shall be reserved functions.

(3) The County Executive Member may prescribe criteria for the declaration of roads to be public roads and the Directorate shall comply with any such prescribed criteria when exercising its functions under this section.

(4) Every national road and County road, shall be a public road and it shall not be necessary for the Directorate to make an order under *subsection (1)* in relation to any such road.

(5) A certificate of the Directorate that a road is a public road shall be *prima facie* evidence thereof.

(6) Every road which, immediately before the coming into effect of this Act, was a public road shall be a public road.

(7) Any road constructed or otherwise provided by a road Directorate after the commencement of this section shall, unless otherwise decided by the Directorate, be a public road and it shall not be necessary for the Directorate to make an order under *subsection (1)* in relation to any such road.

9.(1) The County shall not abandon a public road except in accordance with the provisions of this Act.

Abandonment of
public roads.

(2) Where the Directorate proposes to abandon a public road it shall—

- (b) publish in one or more newspapers circulating in the area where the public road proposed to be abandoned is located a notice indicating the times at which, the period (which shall be not less than one month) during which and the place where a map showing such public road may be inspected and stating that objections or representations may be made in writing to the Directorate in relation to such proposal before a specified date (which shall be not less than two weeks after the end of the period for inspection) and stating that persons making such objections or representations may make a request in writing to state their case at an oral hearing conducted by a person appointed by the road Directorate for that purpose;
- (c) affix a copy of such notice in a prominent position at each end of the public road proposed to be abandoned and leave it in place for a period or periods which shall in aggregate be not less than fourteen days;
- (d) consider any objections or representations made to it under *paragraph (a)* and not withdrawn;
- (e) if it considers it appropriate, afford an opportunity to persons making objections or

representations and who so request in writing to state their case at an oral hearing conducted by a person appointed by the Directorate and consider the report and any recommendation of the person so appointed.

- (3) The Directorate—
 - (a) may make an order abandoning the public road specified in the notice published under *subsection (2) (a)*, or a part thereof.
 - (b) shall not make an order under *paragraph (a)* until it has complied with *subsection (2)*.
 - (4) (a) An order made under *subsection (3)* relating to a County road shall have no effect unless and until the Executive Member approves the order
 - (b) The Executive Member may, by order, approve the order with or without modifications or he may refuse to approve the order.
 - (c) The Executive Member shall consult with the Directorate before making an order under this subsection relating to a County road.
- (5) The Directorate shall no longer be responsible for the maintenance—
 - (a) of a County road from the date on which the order abandoning it is made by the Directorate;
 - (b) the abandonment of a public road shall not affect any public right of way over such road and the Directorate shall not do anything to interfere with such right of way save as is provided for in law.
- (6) The Directorate shall as soon as may be after a public road has been abandoned publish notice of such abandonment in the newspaper or newspapers in which notice of the proposed abandonment was published under *subsection (2) (a)* and shall notify in writing any person who made written objections or representations to it in relation to such abandonment.
- (7) The consideration of objections or representations and the report and any recommendations of a person appointed under *subsection (2)* and the making of an order under *subsection (3)* shall be reserved functions.

(8) A person who, without permission of the Directorate, removes, or who defaces or damages a notice erected under *subsection (2) (b)* shall be guilty of an offence.

(9) (a) The Executive Member may make regulations for the purposes of this section.

(b) Regulations under this subsection may, in particular and without prejudice to the generality of *paragraph (a)*, specify criteria for the abandonment of public roads and the Directorate shall comply with any such specified criteria when exercising its functions under this section.

10. (1) The maintenance and construction of all county roads shall be the function of the County Directorate and all city roads the function of the city save as provided for in subsection (2) herein below.

Responsibility of the Directorate for the maintenance and construction of public roads.

(2) It is the function of the Directorate to construct and maintain roads—

(a) in its administrative area, and

(b) other entities in its administrative area.

(3) The expenses of the Directorate in respect of its functions under subsection (2) shall be charged on the departmental vote.

(4) In the performance of its functions under this Act the Directorate shall consider the needs of all road users.

(5) (a) A person or group of persons may, with the consent of the Directorate, carry out maintenance works on a County road

(b) A consent under subsection a.) may be given by the Directorate subject to such conditions, restrictions and requirements as it thinks fit.

(c) Where the Directorate gives its consent under subsection (a) and the works have been carried out in a bona fide manner and in accordance with every condition, restriction or requirement specified under paragraph (b)—

- (i) the works shall be deemed to have been carried out by the Directorate, and
 - (ii) the person or group (and each member thereof) who carried out the works shall be indemnified by the Directorate against all actions and claims howsoever arising in respect of the works and the carrying out of works.
- (d) The Directorate may provide materials, plant, equipment and the services of its staff to a person or group carrying out works under this subsection.
- (6) The Directorate may do all such things as may arise out of or are consequential on or are necessary or expedient for the performance of its functions under this Act or otherwise in relation to public roads or are ancillary thereto.
- (7) Without prejudice to the generality of *subsection (6)* and save as otherwise provided by law, the Directorate may—
 - (a) provide any amenity, structure or thing for the safety or convenience of road users,
 - (b) undertake landscaping, planting or any similar activity,
- (8) Notwithstanding the definition of “road” in this act, nothing in this Act shall be construed as imposing on the Directorate any liability, duty or obligation to—
 - (a) construct or maintain fences or retaining walls adjoining a public road which are the responsibility of any other person and which do not form part of the road; or
 - (b) construct or maintain any bridges, tunnels, railway crossings or any other structure which by virtue of any enactment are the responsibility of a railway company or National government or other person.
- (9) (a) A person who, without approval of the Directorate or the consent of the Directorate—

- (i) defaces a public road by writing or by any other means,
 - (ii) damages a public road,
 - (iii) excavates a public road,
 - (iv) places or deposits any material or thing on a public road,
 - (v) permits dung or urine from an animal owned by him or any material or thing which falls from a vehicle owned or used by him, to be left on a public road, or
 - (vi) does any other thing, such that the material, thing, dung or urine or the doing of such other thing is a hazard or potential hazard to persons using a public road or obstructs or interferes with the safe use of a public road or the maintenance of a public road, shall be guilty of an offence.
- (b) A consent under *paragraph (a)* may be given by the Directorate subject to such conditions, restrictions or requirements as it thinks fit and any person who fails to comply with such conditions, restrictions or requirements shall be guilty of an offence.
- (c) Where a person does anything in contravention of *paragraph (a)*, the Directorate may remove any defacing and repair any damage, fill in any excavation, remove any material, thing, dung or urine or remove or reduce any hazard, potential hazard, obstruction or interference and may recover from such person, as a simple contract debt in any court of Law, any costs reasonably incurred by it.

11. (1) (a) Two or more road authorities may make arrangements for the joint discharge of any of their functions.

- (b) Whenever it appears to the Directorate that arrangements should be made by two or more road authorities for the joint discharge of any of their functions relating to national roads the

Agreements and arrangements between National Government and County road authorities.

Directorate may request the road authorities to enter into arrangements in accordance with such terms and conditions as the Directorate may specify.

- (c) An arrangement entered into under *paragraph (b)* shall not be revoked save with the consent of the Directorate.
- (d) The County Executive Member may direct that any such agreement shall contain such terms as he may specify and the authorities concerned shall comply with any direction given by the County Executive Member.

(2) (a) Whenever it appears to the County Executive Member that arrangements should be made by two or more county authorities for the joint discharge of any of their functions relating to public roads (other than national roads) he may, after affording an opportunity to the authorities concerned to make representations to him in writing and considering any representations made, recommend that they make such arrangements as he may specify.

(b) The County Executive Member may recommend that any such arrangements shall contain such terms as he may specify and the authorities concerned shall comply with recommendations given by the County Executive Member.

(c) Any arrangements entered into under this subsection shall not be revoked save with the consent of the County Executive Member.

(3) The Directorate shall carry out any agreement or arrangements to which this section relates and to which it is a party in accordance with the terms thereof.

(4) It shall be the duty of the Directorate which is a party to an agreement under the Act relating to public roads (including an existing agreement continued in force under *subsection (1)*) or arrangements under this section to furnish to the County Executive Member a copy of such agreement or arrangements.

Power of County
Executive member to
issue directions and
guidelines to
Directorate.

12. (1) The Executive member may give a direction in writing to a road Directorate in relation to any of the functions assigned to it by or under any enactment (including this Act) relating to the maintenance or construction of public roads and the road Directorate shall comply with such direction.

(2) The County Executive Member shall lay a copy of any direction given by him under *subsection (1)* before County Assembly.

(3) The County executive member may give policy or other guidelines to the Directorate in relation to any of the functions assigned to it by or under any enactment (including this Act) relating to the maintenance or construction of public roads and the Directorate shall have regard to the guidelines when performing such functions.

(4) The County executive member shall lay a copy of any guidelines given by him under *subsection (3)* before County Assembly.

PART III — HIGHWAYS, COUNTY ROADS AND PROTECTED ROADS

13. (1) Pedestrians and pedal cyclists shall use a county road at designed areas.

Use of highways and
county roads.

(2) Persons in charge of, or having control over, animals shall not permit them to be on a public road.

(3) A person who uses a public road in contravention of regulations under *sub-section (2) and (3)* shall be guilty of an offence.

14. (1) A protected road scheme approved by the County Executive Member may provide for the prohibition, closure, stopping up, removal, alteration, diversion or restriction of any specified or all means of direct access to the protected road from specified land or from specified land used for a specified purpose or to such land from the protected road.

Protected roads.

(a) A protected road scheme approved by the County Executive Member may prohibit or restrict the use of the protected road or a particular part thereof by:

- (i) specified types of traffic;
 - (ii) specified classes of vehicles, but shall not prohibit or restrict such use;
 - (iii) by ambulances or fire brigade vehicles;
 - (iv) Security agencies or the defense forces;
 - (v) for the purpose of maintaining such protected road.
- (b) A person who contravenes a prohibition or restriction under *paragraph (a)* shall be guilty of an offence.

15. (1) Notwithstanding anything contained in any other enactment, a planning Authority shall neither grant a planning permission, nor shall a decision by a planning authority to grant any planning permission be regarded as having been given under the Act :

Prohibition and
restriction of access
to highway, streets
and protected roads

- (a) for any development of land which would permit or involve direct access to or from a highway which would contravene the provisions of a protected road scheme approved by the County Executive Member under this Act relating to direct access to or from a protected road;
 - (b) for any development of land proposed to be compulsorily acquired under a scheme made by the Directorate under this Act;
 - (c) for any development of land where such development would affect materially the exercise by the Directorate of the rights proposed to be compulsorily acquired in relation to land under a scheme made by the Directorate under this Act;
 - (d) for any development of land which would contravene the provisions of a scheme made by a road Directorate under this Act.
- (2) (a) Where the County Executive Member, by order under *this Act*, refuses to approve a scheme, *subsection (1)* shall cease to apply in relation to such scheme with effect from the date of the making of such order.

- (b) Where the County Executive Member, by order under *this Act*, approves a scheme with modifications, *subsection (1)* shall, with effect from the date of the making of such order, apply only to such scheme as approved with modifications.

(3) Save as is provided for in this Act, no person shall undertake any development of land which would permit or involve direct access to or from a highway or which would contravene the provisions of an approved protected road scheme relating to direct access to or from a protected road.

(4) (a) Any person who constructs or provides or attempts to construct or provide a means of direct access to or from a highway in contravention of this Act shall be guilty of an offence.

(b) Any person who contravenes *subsection (4)* shall be guilty of an offence.

(c) Any person who constructs, provides or retains or attempts to construct, provide or retain a means of direct access which contravenes a protected road scheme approved by the County Executive Member under *this Act* shall be guilty of an offence.

(5) Any person (other than a road Directorate) who interferes with (otherwise than with the prior written consent of the road Directorate) or damages any fence or other boundary forming part of a motorway, or a protected road shall be guilty of an offence.

- 16.** (a) The Directorate shall prepare a statement of the likely effects on the environment ('environmental impact Assessment) of any proposed road development it proposes consisting of:

- (i) the construction of a highway;
- (ii) Construction of a service area;
- (iii) any prescribed type of proposed road development consisting of the construction of a proposed public road.

Environmental
impact Assessment.

- (b) Where the County Executive Member considers that any proposed road development (other than development to which *paragraph (a)* applies) consisting of the construction of a proposed public road or the improvement of an existing public road would be likely to have significant effects on the environment, he shall direct the road Directorate to prepare an environmental impact assessment in respect of such proposed road development and the Directorate shall comply with such direction.
- (c) Where the Directorate considers that any proposed road development (other than development to which *paragraph (a)* applies) consisting of the construction of a proposed public road or the improvement of an existing public road would be likely to have significant effects on the environment, it shall inform the County Executive Member in writing and where the County Executive Member concurs with the road Directorate he shall give a direction to the road Directorate under *paragraph (b)*.

17. (1) Whenever there is a need to construct a road according to approved county integrated development plan, the County Executive Member shall acquire the required land or rights in relation to land through compulsory acquisition.

Acquisition of land
and implementation
of Roads.

(2) Whenever the County Executive Member approves a road scheme (with or without modifications) the Directorate shall there upon be authorized to close, stop up, remove, alter, divert or restrict an existing means of direct access (including access from a public road) to a highway or a street or a protected road from any land as specified in the approved road scheme or from any land to a highway or a street or a protected road.

(3) In any case where the closing, stopping up, removing, altering, diverting or restricting of an existing means of direct access under *subsection (2)* results in the owner of any land being deprived of the only means of access from that land to any public road or to that land from a public road, the road Directorate shall not close, stop up,

remove, alter, divert or restrict such means of access until an alternative means of access to or from a public road has been provided.

(4) Whenever, by reason of the approval of a scheme (with or without modifications) by the County Executive Member, direct access from any land to a public road or to any land from a public road is prohibited, closed, stopped up, removed, altered, diverted or restricted, any person who has suffered damage in consequence thereof by the depreciation of any interest in the land to which he is entitled or by being disturbed in his enjoyment of that land, shall be entitled to recover from the road Directorate compensation in respect of that damage:

Provided that in assessing compensation regard shall be had to any new means of access provided by the the Directorate and where appropriate to any existing means of access (whether restricted or otherwise) which remains.

18. (1) (a) The powers conferred on the Directorate, statutory undertaker or under any enactment to carry out works along, adjoining, in, on, under or over any land shall not be exercised by that Directorate or undertaker in relation to any land comprised in highway, or protected road otherwise than with the consent of the Directorate (in the case of a county road) or the national road authority (in the case of a national road).
- (b) *Paragraph (a)* shall not apply to the carrying out by the Directorate of any functions assigned to it by or under any enactment (including this Act) relating to the construction or maintenance of public roads.
- (c) (i) The carrying out by the Directorate, or any statutory undertaker of emergency works necessary to eliminate or reduce danger or risk to persons or property or of maintenance works shall not require consent under *paragraph (a)*.
- (ii) In *subparagraph (i)* “maintenance works” includes the inspection, repair, renewal or removal of the works referred to in *paragraph (a)*, but does not include the relocation of those works.

Control of works by
a County
Government.

19. (1) A highway scheme may include provision for a service area.

Service
area
(highway schemes).

(2) Where a highway scheme approved includes provision for a service area or a service area provided is located on a highway, the national authority, in the case of a national road, or the Directorate in whose functional area the service area is to be provided or is located—

- (a) in the case of a national road, with the consent of the national roads authority, or
- (b) in the case of a county road, may—
 - (i) provide or operate in the service area facilities or services for persons and vehicles using the highway to which the scheme relates,
 - (ii) make an agreement with any person whereby that person, either by himself or herself or jointly with the Directorate provides or operates in the service area such facilities or services.

(3) The County Executive Member may make regulations providing for the application of moneys accruing to the Directorate in respect of the exercise of its functions under this section.

20. (1) The County may prepare a scheme for the establishment of a system of tolls in respect of the use of a public road.

Toll schemes.

(2) the Directorate shall give special consideration to the question of exempting from tolls under the scheme pedestrians, pedal cycles, invalid carriages, vehicles specially adapted for use by physically handicapped persons and vehicles providing public passenger transport services.

- (3) A scheme prepared under subsection (1) shall—
 - (a) specify the public road or proposed public road in respect of the use of which it is proposed to establish a system of tolls;
 - (b) indicate the classes of vehicles and road users for whose use the toll road is intended;

- (c) indicate the classes of vehicles which and road users who will be charged tolls in respect of such use;
- (d) include an estimate of the amounts of the tolls that it is proposed to charge in respect of the use of the toll road by such vehicles and road users;
- (e) specify the manner and method of the charging of and collection of tolls;
- (f) specify such other information as the road Directorate making the scheme considers appropriate or the County Executive Member prescribes by regulations.

(4) Scheme under subsection (1) shall be accompanied by an explanatory statement outlining the provisions of the scheme and its purpose and effect and shall include (as appropriate)—

- (a) information in relation to the general arrangements for the construction, maintenance and operation of the toll road to which the scheme relates and for the payment of the cost of such construction, maintenance and operation;
- (b) estimates of the capital cost of the road (where appropriate) and of the capital and operating costs of tolling the road; and
- (c) estimates of the volume and kind of traffic that will use the road and the amounts of the tolls in respect of such traffic.

(5) The Directorate may prepare a scheme amending a toll scheme adopted by it under section 21.

(6) The making of scheme prepared under subsection (1) in relation to a County Road or a local road shall be a reserved function.

(7) (a) The County shall, before adopting, under section 21, a scheme prepared under subsection (1) in relation to a national road, send a copy of the scheme to the appropriate road Authority of national government under section 13 and serve a notice on the Road Directorate stating—

- (i) that a scheme under subsection (1) has been prepared, and
 - (ii) that representations may be made in writing to the Directorate in relation to the scheme before such date as is specified in the notice (being not less than 6 weeks from the date of service of the notice).
- (b) The Directorate shall consider any representations made to it pursuant to a notice under paragraph (a).
- (c) The making of representations by the Directorate under this subsection shall be a reserved function and shall be without prejudice to the right of that Directorate to make objections to the Directorate under section 21.

21. (1) The Directorate shall publish in one or more newspapers circulating in the area where the proposed toll road is located or is to be located a notice—

- (a) stating that a draft toll scheme has been prepared,
 - (b) indicating the times at which, the period (being a period of not less than one month from the first publication of the notice) during which, and the place at which a copy of the scheme prepared under section 20, any map referred to therein and the explanatory statement relating to the scheme may be inspected, and
 - (c) stating that objections to the draft toll scheme may be made in writing to the Directorate before such date as is specified in the notice (being not less than 2 weeks from the end of the period for inspection referred to in paragraph (b)).
- (2)
 - (a) Subject to paragraph (b), the Directorate may adopt a scheme prepared by it under subsection (1), with or without modifications and, subject to subsection (3), a scheme so adopted is hereafter in this Act referred to as a “toll scheme”.
 - (b) If an objection to a draft toll scheme is made to the Directorate and the objection is not withdrawn, the Directorate shall, before deciding

whether to adopt the draft toll scheme or not, cause an oral hearing to be held into the matters to which the objection relates, by a person appointed by the road Directorate, and shall consider the report of and any recommendation made by the person so appointed.

- (3) (a) A toll scheme adopted by the Directorate under this section shall come into force with the modifications, if any, therein made by the Directorate on such day as may be determined by the Directorate.
- (b) Notice of the day on which a toll scheme is to come into force shall be published by the Directorate at least one month before such day in one or more newspapers circulating in the area in which the toll road to which the scheme relates is located or will be located.

22. (1) Subject to the provisions of this Part, the Directorate may charge and collect tolls of such amounts as may be specified for the time being in regulations made by it under *section 24* in respect of the use of a toll road.

Power to charge tolls.

(2) The Directorate may provide and maintain such buildings, structures, works and apparatus as it considers necessary or expedient for or in connection with the charging and collection of tolls and the operation of toll roads.

(3) Where an agreement under *section 26* provides for the collection of tolls by a person specified in the agreement, that person and his servants and agents may collect the tolls to which the agreement relates.

(2) The Directorate may by order revoke a toll scheme adopted by it under *section 21*.

Revocation of toll scheme.

(3) Where the Directorate proposes to make an order under subsection (1) it shall, before so making the order, publish in one or more newspapers circulating in the area where the toll road is located a notice—

- (a) stating that it proposes to revoke the scheme,
- (b) indicating the times at which, the period (being not less than one month from the first publication

of the notice) during which, and the place at which, a copy of the proposal may be inspected,

- (c) stating that objections or representations may be made in writing to the Directorate in relation to the proposal before such date as is specified in the notice (being a date that falls not less than 2 weeks from the end of the period for inspection of the proposal).

(1) Before making an order under subsection (1), the Directorate shall consider any objections or representations made to it in accordance with a notice under subsection (2).

(2) The Directorate may at its discretion cause an oral hearing to be held into any matter to which objections or representations, made in accordance with a notice under subsection (2) and not withdrawn, relate, by a person appointed by the Directorate, and where the Directorate causes an oral hearing to be so held it shall, before revoking the toll scheme under subsection (3), consider the report of and any recommendation made by that person.

(3) The Directorate shall publish in one or more newspapers circulating in the area where the toll road is located notice of the making of any order under sub-section (1).

(4) The making of an order under this section in relation to a county road shall be a reserved function.

24. (1) The Directorate may, after consultation with the County Executive Member, make regulations as it considers expedient for the purposes of the operation and management of a toll road.

Toll regulations.

(2) The Directorate shall consult with the appropriate national road Directorate before making regulations in relation to a national road.

(3) Without prejudice to the generality of *subsection (1)*, regulations under this section may—

- (a) specify the amounts of the tolls that shall be charged, or the scales and other provisions by reference to which they shall be charged, in respect of the use of a toll road by vehicles and road users of each class specified in the Act and

may specify different such amounts by reference to such circumstances or combinations of circumstances (whether relating to classes of vehicles or road users, seasons of the year, days of the week, times of the day or otherwise) as the road Directorate may consider appropriate,

- (b) provide for the issue, inspection and collection of tickets, tokens, vouchers, permits, receipts and other forms of authorization or payment for the use of a toll road,
- (c) Subject to section 25 specify the persons who shall be liable to pay a toll,
- (d) provide that a person liable under the regulations to pay a toll shall not use, or cause or permit, any vehicle of which he is in charge to use the toll road concerned unless the toll has been paid or arrangements, to the satisfaction of the Directorate concerned or of a person authorised by it to operate and manage the toll road, for its payment have been made, and
- (e) specify the powers of the road Directorate and of any person authorised by it to operate and manage the toll road concerned in relation to users of a toll road and vehicles and the persons in charge of them.

(4) The making of toll regulations in relation to a county road shall be a reserved function.

(5) Before making regulations, the Directorate shall publish in one or more newspapers circulating in the area where the toll road to which the regulations relate is located or is to be located a notice—

- (a) indicating that it is proposed to make such regulations and stating the purpose of the regulations;
- (b) indicating the times at which, the period (being a period of not less than one month from the date of the first publication of the notice) during which, and the place at which, a copy of the draft regulations may be inspected;

(c) stating that objections or representations may be made in writing to the Directorate in relation to the draft regulations before such date as is specified in the notice (being a date that falls not less than 2 weeks from the end of the period for inspection of the draft regulations); and

(d) stating that a copy of the draft regulations may be purchased on payment of such fee as is specified in the notice not exceeding the reasonable cost incurred in the making of such copy;

(6) Before making regulations the Directorate shall consider any objections or representations which have been made to it in accordance with a notice under subsection (5) and not withdrawn.

(7) Regulations made by the Directorate under this section shall come into effect on such date as is specified in those regulations.

(8) The regulations shall, as soon as they have been made be published in *Kenya Gazette* and notice of their making, of the toll road to which they apply and of the place where copies of them may be purchased or inspected shall be published in one or more newspapers circulating in the area where the toll road to which the regulations relate is located or is to be located.

(9) A person who contravenes a bye-law made under this section commits an offence.

25. The following shall be exempt from the payment of tolls—

Exemption from tolls.

- (a) ambulances and fire brigade vehicles;
- (b) such other classes of vehicles or road users as the Executive Member may prescribe in relation to toll roads generally, specified classes of toll roads or specified toll roads.

26. (1) The County may enter into an agreement with another person(s) under which, upon such terms and conditions as may be specified in the agreement (including the payment to, or retention by, the person of all or part of the proceeds of tolls in respect of the toll road the subject of the scheme), the person agrees to do all or one or more of

Agreements for financing, maintenance, construction and operation of toll roads.

the following—

- (a) to pay some or all of the cost of the construction of the road;
 - (b) to pay some or all of the cost of the maintenance of the road;
 - (c) to construct or join or assist in the construction of the road for or with the Directorate;
 - (d) to maintain or join or assist in the maintenance of the road for or with the Directorate;
 - (e) to operate and manage (including provide, supervise and operate a system of tolls and their collection in respect of the use of the road) the road for or with the County;
 - (f) such other things connected with or incidental or ancillary to or consequential upon the foregoing as may be specified in the agreement.
- (2) The County may enter into different agreements with different persons in respect of anything referred to in subsection (1).
- (3) Without prejudice to the generality of *subsection (1)*, an agreement under this section may—
- (a) provide for the application of the proceeds of tolls, systems of accounting for tolls collected and the methods and times of payment of proceeds of tolls to the persons to whom they are to be paid under the terms of the agreement,
 - (b) specify the period for which the agreement shall have effect and provide for its termination or suspension and for matters connected with or incidental or ancillary to or consequent upon the expiration of the agreement or such termination or suspension, and
 - (c) provide for the giving of such security as may be specified therein:
 - (i) to the Directorate by any other party to the agreement, or
 - (ii) by the Directorate to any other party to the

agreement, in relation to the carrying out and observance by that party or Directorate of the terms and conditions of the agreement.

(4) The parties to an agreement under this section shall carry out the agreement in accordance with its terms and conditions and a road Directorate shall have all such powers as may be necessary for that purpose.

27. (1) Where a toll charged and payable in respect of a mechanically propelled vehicle using a toll road is unpaid for such period specified in regulations under section 24, a default toll, in accordance with the regulations, of not more than such amount specified in the regulations being greater than the amount of the toll initially charged, may be charged and be payable in respect of the vehicle.

Offences.

(2) Regulations made under section 24 may:

- (a) provide that the amount of a default toll be increased by such amount where it is not paid within such period as specified in the regulations;
- (b) take into account administrative costs in charging and collecting a default toll; or
- (c) specify different amounts in respect of different classes of toll roads and different classes of vehicles.

(3) The amount of any toll due and payable by a person under this Part and unpaid may be recovered from the person as a simple contract debt by the road undertaking concerned in any court of competent jurisdiction.

(4) (a) Notwithstanding section 41, notice of the charge of a toll may be served on a person by the road undertaking concerned by post:

- (i) at the place where the person ordinarily resides or carries on business, or
- (ii) if an address for the service of such a notice has been provided by the person, that address, or where arrangements have been made between the person and the road

undertaking by such means specified (such as electronic mail) to the place or address specified, in the arrangements.

- (b) In any proceedings for the recovery of a toll it shall be presumed, until the contrary is shown, that the defendant received the notice under this paragraph to which the proceedings relate and that payment of the toll has not been made.

(5) The Directorate may approve cameras or other apparatus and the location of them, to be set up and operated by the road undertaking having charge of the collection of tolls on a toll road, for the purposes of:

- (a) recording the date and time of a vehicle passing through the toll road and whether payment in respect of the vehicle for the use of the road has been discharged or incurred, and
- (b) taking photographic images of the vehicle and its identification mark.

(6) A person who is liable to pay a toll and who fails, neglects or refuses to pay the toll is guilty of an offence.

(7) A person who on a toll road, fails, neglects or refuses to obey a lawful instruction or direction of a person authorized by a road undertaking to provide, operate or manage a toll road or collect or charge tolls on the road is guilty of an offence.

(8) A person who by his or her actions does anything to avoid being charged or paying a toll while on a toll road is guilty of an offence.

(9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding KSh. 5,000 or to imprisonment for a term not exceeding 6 months or both.

28. (1) A road undertaking for the purposes of charging and collecting payment of tolls shall have access to and may inspect and examine licensing records and may take or be supplied with information or extracts from those records relating to the charging or payment of tolls on payment of such fee (if any) to cover the administrative costs in accessing such records.

Access to records.

(2) Where a road undertaking for the purposes of charging or collecting payment of a toll in respect of a vehicle using a toll road suspects that the vehicle on the occasion in question is the subject of an agreement and it is unable to ascertain from licensing records information regarding the person in possession of the vehicle under the agreement, it may require and be supplied with information from the registered owner of the vehicle regarding the person in possession of the vehicle under the agreement.

(3) Where a request is made under subsection (2), the registered owner of the vehicle the subject of the request shall, within 21 days, supply to the road undertaking making the request, where the vehicle is the subject of an agreement, the name and address of the person in possession of the vehicle under the agreement, on the occasion in question, to which the request relates.

(4) A person who in supplying information under subsection (3) gives false or misleading information is guilty of an offence.

(5) Where a registered owner fails or refuses to give information to a road undertaking for the purposes of this section the registered owner is presumed, until the contrary is shown, to have had possession of the vehicle on the occasion in question and is liable to pay the toll concerned.

(6) In this section 'agreement' means a hire-purchase agreement or a consumer- hire agreement, as the case may be.

29. (1) The County Executive member may, from time to time, issue policy directives to road authorities regarding the exercise of any of their functions under Part IV or any matter connected therewith and road authorities shall comply with any such directives.

Executive Member
policy directives on
road tolling.

(2) The county executive member may revoke or amend a policy directive issued under this section.

(3) The County Executive Member shall cause a copy of any policy directive issued under this section to be laid before the County assembly.

(4) The Department shall make available for inspection by members of the public any policy directive

issued to it under this section.

30. (1) It shall be the duty of a person using a public road to take reasonable care for his own safety and for that of any other person using the public road.

Road users' duty of care.

(2) It shall be the duty of a person using a public road to take all reasonable measures to avoid—

- (a) injury to himself or to any other person using the public road,
- (b) damage to property owned or used by him or by any other person using the public road.

31. (a) The Directorate may construct (or otherwise provide) and maintain a cycle way.

Cycle ways.

(b) Where the Directorate constructs or otherwise provides a cycle way it shall by order declare either—

- (i) that the cycle way is for the exclusive use of pedal cyclists, or
- (ii) that the cycle way is for the exclusive use of pedal cyclists and pedestrians.

(c) Any person who uses a cycle way in contravention of an order under *paragraph* shall be guilty of an offence.

32. (1) (a) Any person who without permission of the directorate erects, places or retains a temporary dwelling on a county road, street, access road or protected road shall be guilty of an offence.

Temporary dwellings on county roads.

(b) Any person who without authority or the consent of the Directorate erects, places or retains a temporary dwelling on any other prescribed road or prescribed class, subclass or type of road shall be guilty of an offence.

(c) A consent under *paragraph (b)* may be given by the Directorate subject to such conditions, restrictions or requirements as it thinks fit and any person who fails to comply with such conditions, restrictions or requirements shall be guilty of an offence.

(2) An authorised person may remove a temporary dwelling from a national road and county road or any other prescribed road or prescribed class, subclass or type of road.

(3) An authorised person may store, or procure the storage of, a temporary dwelling removed by him under *subsection (2)*.

(4) Where the name and address of the owner of a temporary dwelling removed and stored under this section can be ascertained by reasonable inquiry, the road Directorate concerned shall serve a notice upon the owner informing him of the removal and storage and of the address of the place where the temporary dwelling may be claimed and recovered, requiring him to claim and recover it within one month of the date of the service of the notice and informing him of the statutory consequences of his failure to do so.

(5) A temporary dwelling removed and stored under this section shall be given to a person claiming the temporary dwelling if, but only if, he makes a declaration in writing that he is the owner of the temporary dwelling or is authorised by its owner to claim it and, at the discretion of the road Directorate concerned,

(6) The Directorate concerned or the Governor may dispose, or procure the disposal, of a temporary dwelling removed and stored under this section if—

- (a) the owner of the temporary dwelling fails to claim it and remove it from the place where it is stored within one month of the date on which a notice under *subsection (4)* was served on him, or
- (b) the name and address of the owner of the temporary dwelling cannot be ascertained by reasonable inquiry.

(7) A temporary dwelling shall not be disposed of under this section within six weeks of the date of its removal under this section.

(8) The provisions of this section are without prejudice to the functions of a public authority under any other enactment.

33. (1) (a) The owner or occupier of any structure and the owner or occupier of any land on which a structure is situated shall take all reasonable steps to ensure that the structure or the use of the structure is not a hazard or potential hazard to persons using a public road and that it does not obstruct or interfere with the safe use of a public road or the maintenance of a public road.
- (b) Where a structure or the use of a structure is a hazard or potential hazard to persons using a public road or where it obstructs or interferes with the safe use of a public road or with the maintenance of a public road, a road Directorate may serve a notice in writing on the owner or occupier of the structure or on the owner or occupier of any land on which the structure is situated to remove, modify or carry out specified works in relation to the structure within the period stated in the notice.
- (2) (a) The owner or occupier of land shall take all reasonable steps to ensure that a tree, shrub, hedge or other vegetation on the land is not a hazard or potential hazard to persons using a public road and that it does not obstruct or interfere with the safe use of a public road or the maintenance of a public road.
- (b) Where a tree, shrub, hedge or other vegetation is a hazard or potential hazard to persons using a public road or where it obstructs or interferes with the safe use of a public road or with the maintenance of a public road, a road Directorate may serve a notice in writing on the owner or occupier of the land on which such tree, shrub, hedge or other vegetation is situated requiring the preservation, felling, cutting, lopping, trimming or removal of such tree, shrub, hedge or other vegetation within the period stated in the notice.
- (3) (a) A person on whom a notice under *subsection (1) or (2)* has been served may, within fourteen days from the date of service, appeal against the notice to the Court of Law on any one or more of

the following grounds:

- (i) that he is not the owner or occupier of the structure;
 - (ii) that he is not the owner or occupier of the land on which the structure, tree, shrub, hedge or other vegetation is situated;
 - (iii) that the structure (or the use of such structure), tree, shrub, hedge or other vegetation, as the case may be, is not a hazard or potential hazard to persons using a public road or;
 - (iv) that compliance with the requirements of the notice would involve unreasonable expense;
 - (v) that the notice specified an unreasonably short time for complying with its requirements or any of them.
- (b) Notice of the appeal shall be given to the road Directorate and that Directorate shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.
- (4) (a) On the hearing of the appeal the Court may, either—
- (i) confirm the notice unconditionally, or
 - (ii) confirm the notice subject to such modifications, alterations or additions, or
 - (iii) annul the notice.
- (b) Where the Court confirms the notice, subject to modifications, alterations or additions, the notice shall have effect subject to such modifications, alterations or additions.
- (5) An owner or occupier who fails to comply with a notice under this section shall be guilty of an offence.
- (6) Where an owner or occupier fails to comply with a notice under this section, the road Directorate may take the action specified in the notice or such other action as it thinks fit.

(7) Where the Directorate considers that a structure (or the use of such structure), tree, shrub, hedge or other vegetation presents an immediate and serious hazard to persons using a public road it may, notwithstanding the provisions of *subsections (1) to (4)*, take immediate action to reduce or remove the hazard.

(8) Where the Directorate takes action under *subsection (7)* it may recover any reasonable costs incurred by it from the owner or occupier as a simple contract debt in any court of competent jurisdiction.

(9) Where the Directorate has entered or proposes to enter on any land under *subsection (7)*, it shall as soon as may be serve on the owner or the occupier of the land, a notice stating that it has entered or proposes to enter on the land and specifying the action that it has taken or proposes to take thereon.

(10) (a) Where a person takes action—

- (i) to remove, modify or carry out specified works in relation to a structure, or
- (ii) to preserve, fell, cut, lop, trim or remove any tree, shrub, hedge or other vegetation to which this section relates, he shall take all reasonable measures to ensure as far as is reasonably practicable the safety of persons using a public road.

(b) A person who contravenes this subsection shall be guilty of an offence.

34. (a) Any person who, without lawful authority or the consent of the Directorate—

- (i) erects, places or retains a sign on a public road, or
- (ii) erects, places or retains on a public road any caravan, vehicle or other structure or thing (whether on wheels or not) used for the purposes of advertising, the sale of goods, the provision of services or other similar purpose, shall be guilty of an offence.

Unauthorized signs,
caravans, vehicles,
etc. on public roads.

- (b) A consent under *paragraph (a)* may be given by the road Directorate subject to such conditions, restrictions or requirements as it thinks fit and any person who fails to comply with such conditions, restrictions or requirements shall be guilty of an offence.

(2) Without prejudice to the liability of any person under *subsection (1)*, where there is a contravention of that subsection in the case of any sign or advertisement, the person on whose behalf the sign or advertisement is exhibited shall be deemed also to have contravened that subsection.

(3) Notwithstanding any other enactment, an authorised person may remove a sign, caravan, vehicle or other structure or thing to which *subsection (1)* applies.

(4) An authorised person may store, or procure the storage of, a sign, caravan, vehicle or other structure or thing removed by him under *subsection (3)*.

(5) Where the name and address of the owner of a sign, caravan, vehicle or other structure or thing removed and stored under this section can be ascertained by reasonable inquiry, the road Directorate shall serve a notice upon the owner informing him of its removal and storage and of the address of the place where it may be claimed and recovered, requiring him to claim and recover it within one month of the date of the service of the notice and informing him of the statutory consequences of his failure to do so.

(6) A sign, caravan, vehicle or other structure or thing removed and stored under this section shall be given to a person claiming it if, but only if, he makes a declaration in writing that he is the owner of the sign, caravan, vehicle or other structure or thing or is authorised by its owner to claim it and, at the discretion of the road Directorate concerned or , pays the amount of the expenditure reasonably incurred in removing and storing it.

(7) The Directorate concerned or the Governor may dispose, or procure the disposal, of a sign, caravan, vehicle or other structure or thing removed and stored under this section if—

- (a) the owner of the sign, caravan, vehicle or other

structure or thing fails to claim it and remove it from the place where it is stored within one month of the date on which a notice under *subsection (5)* was served on him, or

- (b) the name and address of the owner of the sign, caravan, vehicle or other structure or thing cannot be ascertained by reasonable inquiry.

(8) A sign, caravan, vehicle or other structure shall be disposed off under this section within six weeks of the date of its removal.

35. (1) Where the directorate proposes to extinguish a public right of way it shall—

Extinguishment of
public rights of way.

- (a) publish in one or more newspapers circulating in the area where the public right of way proposed to be extinguished is located a notice indicating the times at which, the period (which shall be not less than one month) during which and the place where a map showing such public right of way may be inspected and stating that objections or representations may be made in writing to the local Directorate in relation to such proposal before a specified date (which shall be not less than two weeks after the end of the period for inspection) and stating that persons making such objections or representations may make a request in writing to state their case at an oral hearing conducted by a person appointed by the local Directorate for that purpose;
- (b) affix a copy of such notice in a prominent position at each end of the public right of way proposed to be extinguished and leave it in place for a period or periods which shall in aggregate be not less than fourteen days;
- (c) consider any objections or presentations made to it under *paragraph (a)* and not withdrawn;
- (d) if it considers it appropriate, afford an opportunity to persons making objections or representations and who so request in writing to state their case at an oral hearing conducted by a person appointed by the Directorate and consider

the report and any recommendation of the person so appointed.

- (2) (a) The County may make an order extinguishing the right of way specified in the notice published under *subsection (1) (a)*, or part thereof.
- (b) The Directorate shall not make an order under *paragraph (a)* until it has complied with *subsection (1)*.
- (3) (a) An order under *subsection (2)* relating to a national road or a county road shall have no effect unless and until the County Executive Member approves the order.
- (b) The Executive Member may, by order, approve the order with or without modifications (or conditions) or he may refuse to approve the order.
- (c) The Executive Member shall consult with the national authority before making an order under this subsection relating to a national road.
- (4) (a) An order made under *subsection (2)* may —
 - (i) specify a date on which the extinguishment shall come into effect,
 - (ii) specify conditions (including conditions relating to the recovery of the costs referred to in *subsection (12)*) which shall be complied with before the extinguishment comes into effect.
- (5) Where an order extinguishing a public right of way made by a local Directorate or an order approved by the County Executive Member with or without modifications or conditions does not specify when the extinguishment shall come into effect, the extinguishment shall come into effect —
 - (i) in the case of a local road, from the date on which the order is made by the local Directorate,
 - (ii) in the case of a national road or a regional

road, from the date on which the order approving the extinguishment, with or without modifications or conditions, is made by the County Executive Member.

(5) Notwithstanding any other enactment, where a public right of way over a public road or a part thereof is extinguished under this section, the road Directorate shall no longer be responsible for the maintenance of such road or part thereof with effect from the date on which the extinguishment of the public right of way comes into effect in accordance with *subsection (4)*.

(6) The Directorate shall, without prejudice to any existing private right of way, ensure the carrying out of any works necessary —

- (a) to effect the extinguishment of a public right of way under this section,
- (b) for the safety of road users arising from the extinguishment of a public right of way,
- (c) to ensure as far as reasonably practicable that the land over which a public right of way has been extinguished does not become an eyesore.

(7) The Directorate shall, as soon as may be after the date on which a public right of way has been extinguished, publish notice of the extinguishment in the newspaper or newspapers in which notice of the proposed extinguishment was published under *subsection (1) (a)* and shall notify in writing any person who made written objections or representations to it in relation to such extinguishment.

(8) The consideration of objections or representations and the report and any recommendation of a person appointed under *subsection (1)* and the making of an order under *subsection (2)* shall be reserved functions.

(9) A person who, without lawful authority, removes, or damages or defaces a notice erected in accordance with *subsection (1) (b)* shall be guilty of an offence.

(10) A person who obstructs, impedes or otherwise interferes with a public right of way or who destroys or damages a public right of way save as is provided for in

law shall be guilty of an offence.

(11) It shall be a function of the Directorate to protect the right of the public to use public rights of way in its administrative area.

(12) Where the Directorate extinguishes a public right of way solely or partly to facilitate the development of land, the Directorate—

- (a) shall be entitled to recover from the person developing, or proposing to develop, the land all or a reasonable portion of the costs incurred by it in extinguishing such right of way.
- (b) may, by notice in writing, require the person developing, or proposing to develop, the land to carry out such works as it considers necessary to give effect to *subsection (6)*,
- (c) may, where a person fails to comply with a notice under *paragraph (b)*, carry out the works specified in the notice or such other works as it considers necessary to give effect to *subsection (6)* and shall be entitled to recover any reasonable costs incurred by it in carrying out such works from the person on whom the notice was served as a simple contract debt in any court of competent jurisdiction.

36. (1) A person who intends to hold, organise or promote a road race shall give at least one month's notice (or such other period of notice as may be prescribed by the County Executive Member) in writing to the Directorate and to the Kenya Police service within whose jurisdiction the road race is to be held.

Road races.

- (2) (a) The Directorate may by notice in writing served on a person who intends to hold, organise or promote a road race or, where the name of that person cannot be ascertained by reasonable inquiry, by notice published in one or more newspapers circulating in the area in which the road race is to be held—
 - (i) prohibit the holding of the road race,
 - (ii) prohibit the holding of the road race unless

specified conditions, restrictions or requirements are complied with,

- (iii) impose specified conditions, restrictions or requirements in relation to the holding of the road race which must be complied with.

- (b) The conditions under *paragraph (a)* may include the giving of security or the provision of an indemnity.

(3) Any person who contravenes *subsection (2)* or a notice under *subsection (3)* shall be guilty of an offence.

(4) The Directorate may recover from a person who holds, organises or promotes a road race, as a simple contract debt in any court of competent jurisdiction, any costs reasonably incurred by it—

- (a) to facilitate the holding of the road race,
- (b) to repair damage to or remove waste generated from the public road arising from the holding of the road race.

(5) The County Executive Member may make regulations for the purposes of this section and such regulations may in particular make provision for—

- (a) requirements in relation to the making and consideration of objections,
- (b) requirements in relation to the giving of security or the provision of an indemnity.

37. (1) The Directorate may by order—

Temporary closing
of roads.

- (a) for the purpose of facilitating a road race, within the meaning of *section 37*, or any other event,
 - (b) for the purpose of facilitating the carrying out of works, or
 - (c) for any other purpose, close a public road to traffic for such specified period and subject to such specified conditions (including the giving of security or the provision of an indemnity) as it thinks fit.
- (2) (a) A person who uses a public road in contravention of an order made under *subsection*

(1) shall, unless he is authorised in writing by the Directorate to do so, be guilty of an offence.

- (c) A person who obstructs or interferes with the holding of a road race or any other event or with the carrying out of works or any activity in respect of which an order under *subsection (1)* is in force shall be guilty of an offence.
- (d) A person who holds, organises or promotes a road race or other event or who carries out works or any other activity in respect of which an order under *subsection (1)* is in force and who contravenes any condition specified in that order shall be guilty of an offence.
- (e) A person who without lawful authority closes a public road shall be guilty of an offence.

(3) The Directorate may recover from a person who holds, organises or promotes a road race or other event or who carries out works or any other activity in respect of which an order under *subsection (1)* is in force, as a simple contract debt in any court of competent jurisdiction, any costs reasonably incurred by it—

- (a) to facilitate the holding of the road race or other event or the carrying out of works or any other activity,
- (b) to repair damage to or remove waste from the public road arising from the holding of the road race or other event or the carrying out of works or any other activity.

(4) The County Executive Member may make regulations for the purposes of this section and such regulations may in particular make provision for all or any of the following matters—

- (a) requirements as to notice,
- (b) requirements in relation to the making and consideration of objections,
- (c) requirements in relation to the giving of security or the provision of an indemnity.

38. (1) The Directorate may —

- (a) construct and maintain drains in, on, under, through or to any land for the purpose of draining water from, or preventing water flowing onto, a public road,
- (b) use any land for the temporary storage or the preparation of any gravel, stone, sand, earth or other material required for the construction or maintenance of a public road.

(2) Before entering on any land to perform a function under *subsection (1)*, a road Directorate shall —

- (a) at least one month before the date upon which it proposes to enter on the land, serve a notice on the owner or occupier of the land —
 - (i) stating that it proposes to enter on the land,
 - (ii) specifying the function that it proposes to perform thereon,
 - (iii) stating that objections or representations may be made in writing to the road Directorate in relation to the proposed performance of the function before a specified date (which shall be not less than two weeks from the date of service of the notice), and
 - (iv) informing him of his right to apply for compensation under *subsection(4)*,
 - (b) consider any objections or representations made to it under *paragraph (a)* and not withdrawn.
- (3) (a) Where as a result of flooding, landslide, subsidence or other emergency there is an immediate and serious hazard to persons using a public road or serious damage has been, is being or will be caused to a public road, a road Directorate may take immediate action to remove or reduce the hazard or prevent or reduce the damage or any further damage.
- (b) In the exercise of its functions under *paragraph (a)*, a the Directorate may enter on any land and

carry out any works or do anything which it considers necessary for the purposes of *paragraph (a)*.

- (4) (a) The owner or occupier of any land who suffers damage in consequence of the exercise by the Directorate of its functions under *subsection (2) or (3)* shall be entitled to recover from the Directorate compensation in respect of that damage:

Provided that in assessing compensation regard shall not be had to any existing damage caused by water draining into, onto, under, through or to the land from an existing public road but only to any additional damage resulting from the exercise by the Directorate of its functions under *subsection (1) or (3)*.

- (b) A claim for compensation under *paragraph (a)* shall be made not later than six months after the date on which the activity, in respect of which the claim is made, was completed and shall, in default of agreement, be determined by arbitration under the Lands Clauses Acts but subject to the proviso that the arbitrator shall have jurisdiction to make a nil award.

(5) The owner or occupier of any land adjacent to a public road shall take all reasonable steps to ensure that—

- (a) water is not prevented, obstructed or impeded from draining into, onto, under, through or to his land from a public road,
- (b) water, soil or other material is prevented from flowing or falling onto a public road from his land.

(6) The Directorate may serve a notice in writing on the owner or occupier of any land adjacent to a public road requiring him to carry out specified works or take specified measures—

- (a) to ensure that water is not prevented, obstructed or impeded from draining into, onto, under, through or to his land from a public road,

- (b) to prevent water, soil or other material from flowing or falling onto a public road from his land.
- (7) (a) A person on whom a notice under *subsection (6)* has been served may, within fourteen days from the date of service, appeal against the notice to Court on any one or more of the following grounds—
 - (i) that he is not the owner or occupier of the land,
 - (ii) that water was not and is not prevented, obstructed or impeded from draining into, onto, under, through or to his land from a public road,
 - (iii) that water, soil or other material was not and is not flowing or falling onto a public road from his land,
 - (iv) that compliance with the requirements of the notice would involve unreasonable expense,
 - (v) that the notice specified an unreasonably short time for complying with its requirements or any of them.
- (b) Notice of the appeal shall be given to the road Directorate and that Directorate shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.
- (8) (a) On the hearing of the appeal the Court may, as it thinks proper, either—
 - (i) confirm the notice unconditionally, or
 - (ii) confirm the notice subject to such modifications, alterations or additions as the Court thinks reasonable, or
 - (iii) annul the notice.
- (b) Where the Court confirms the notice, subject to modifications, alterations or additions, the notice shall have effect subject to such modifications,

alterations or additions.

(9) A notice under *subsection (6)* shall not have effect until—

- (a) the expiration of fourteen days from the date of service of the notice, or
- (b) if an appeal is taken and the notice is confirmed, with or without modifications, the date upon which the decision of the Court is pronounced or the date upon which the order of the Court is expressed to take effect, whichever is the later.

(10) An owner or occupier who fails to comply with a notice under this section shall be guilty of an offence.

(11) Where an owner or occupier fails to comply with a notice under this section, the road Directorate may take the action specified in the notice or such other action as it thinks fit.

(12) Where the Directorate considers that—

- (a) water prevented, obstructed or impeded from draining into, onto, under, through or to any land from a public road, or
- (b) water, soil or other material flowing or falling onto a public road from any land, presents an immediate and serious hazard to persons using a public road or has caused, is causing or will cause serious damage to a public road it may, notwithstanding the provisions of *subsections (6) to (12)*, take immediate action to remove or reduce the hazard or prevent or reduce the damage or any further damage.

(13) Where the Directorate takes action under *subsection (12)* or *(13)* it may recover any reasonable costs incurred by it from the owner or occupier as a simple contract debt in any court of competent jurisdiction.

(14) (a) A person who, without the consent of the Directorate—

- (i) within 5 metres of a public road (measured from its nearest edge) scours, deepens, widens or fills in any existing drain or

excavates any new drain,

- (ii) interferes with, or carries out any works which interfere with, a bridge, culvert, retaining wall, embankment or other structure providing lateral or other support for a public road, shall be guilty of an offence.
- (b) A consent under *paragraph (a)* may be given by the road Directorate subject to such conditions, restrictions or requirements as it thinks fit and any person who fails to comply with such conditions, restrictions or requirements shall be guilty of an offence.
- (i) Where the Directorate considers that the carrying out, with or without its consent, of an activity referred to in *paragraph (a)* has damaged, is damaging or will damage a public road, it may serve a notice in writing on the person carrying out such activity or on the owner or occupier of the land on which such activity is being carried out requiring that the activity cease forthwith and a person who fails to comply with a notice served on him shall be guilty of an offence.
 - (ii) The Directorate may repair any damage and take measures to prevent or reduce any damage relating to an activity under *paragraph (a)* and may, where it has not given its consent under that paragraph, recover from the person carrying out the activity or the owner or occupier of the land, as a simple contract debt in any court of competent jurisdiction, any costs reasonably incurred by it.
- (15) Where the Directorate—
- (a) proposes to enter on any land under *subsection (12)*,
 - (b) has entered or proposes to enter on any land under *subsection (3), (13) or (15)*, it shall as soon

as may be serve on the owner or occupier of the land, a notice stating that it proposes to enter or has entered on the land and specifying the action that it proposes to take or has taken thereon.

(16) In this section, “drain” includes—

- (a) a ditch, channel, gutter, pipe, tunnel, culvert, soak pit, percolation area or percolation trench,
- (b) a barrier to divert water into a drain.

39. (1) In this section “authorized person” means a person authorized for the purposes of this section by the County Executive Member or the Directorate or a road authority.

Powers
inspection. of

(2) Any authorized person shall be entitled to enter at all reasonable times (subject to his producing, if so required, his/ her authority in writing or identification as such person) and inspect any land or anything on, in or under any land for the purposes of any enactment (including this Act) relating to the construction or maintenance of public roads or for any purpose incidental thereto.

(3) An authorized person shall be entitled in the performance of his functions under this section to take with him on to land such persons and equipment as he considers necessary to assist him and to carry out such surveys, investigations, excavations, borings or tests, to take samples or to do any other thing which he considers necessary for the purposes referred to in *subsection (2)*.

(4) Where an authorized person is refused entry to land in the exercise of his functions under this section the Executive member, or the Directorate, as the case may be, may apply to the Court for a warrant authorizing such entry.

- (5) (a) If, on a claim made to the County Executive Member, the Directorate or any road authority, as the case may be, it is shown that, as a result of the exercise of any function under this section, any person has suffered damage, that person shall be entitled to be paid by the County Executive Member, the Directorate or the road authority, as

the case may be, compensation in respect of the damage and the amount of the damage may, in default of agreement, be determined by any court of competent jurisdiction.

- (b) A claim under this section shall be made within (but not after)
 - (i) six months after the damage is suffered, or
 - (ii) such longer period as the court may allow if it appears to the court that there are reasonable grounds for requiring a longer period and that it would be just and reasonable to extend the period.

40. (1) Whenever the county executive member is satisfied in relation to a notice required to be served under this Act that:

Service of notices.

- (b) reasonable grounds exist for dispensing with the service of the notice, and (b) the dispensing with the service of the notice will not cause injury or damage to any person, he may dispense with the service of the notice and every such dispensation shall have effect according to the terms thereof.

(2) Where a notice is required or authorised by or under this Act to be served on a person, it shall be addressed to him and shall be served on or given to him in some one of the following ways:

- (a) where it is addressed to him by name, by delivering it to him;
- (b) by leaving it at the address at which he ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter, or by any other form of recorded delivery service prescribed by the county executive member, addressed to him at the address at which he ordinarily resides or, in a case in which an address for service has been furnished, at that address;

(d) where the address at which he ordinarily resides cannot be ascertained by reasonable inquiry and the notice is so required or authorised to be served in respect of any land, premises or structure, by delivering it to some person over Eighteen years of age resident or employed on such land or premises or by affixing it in a conspicuous position on or near such land, premises or structure.

(3) Where a notice is required by or under this Act to be served on an owner or occupier of any land, premises or structure and the name of the owner or of the occupier, as the case may be, cannot be ascertained by reasonable inquiry, it may be addressed to “the owner” or “the occupier”, as the case may require, without naming him.

(4) A person who, at any time during the period of three months after a notice is affixed under *subsection (2) (d)*, removes, damages or defaces the notice without lawful authority shall be guilty of an offence.

(5) For the purposes of this section, a company within the meaning of the Companies Acts, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

41. A person who obstructs or impedes or assists a person to obstruct or impede the Directorate or an authorized person within the meaning of *section 40 and 41* in the performance of any of their functions under any enactment (including this Act) relating to the construction or maintenance of public roads shall be guilty of an offence.

Offence
obstruction. of

42. (a) person guilty of an offence under section 43 (6) is liable—

Prosecution
penalties. and

- (i) on summary conviction to a fine not exceeding Ksh. 100,000, or
- (ii) on conviction on indictment, to a fine not exceeding KSh. 500,000.

- (b) A person guilty of an offence under this Act or the provisions mentioned in paragraphs (a) and (c) is guilty of an offence and is liable on summary conviction to a fine not exceeding Kshs 100,000.
- (c) A person guilty of an offence under section 13, 14(3), 31 or 41(4) is liable on summary conviction to a fine not exceeding Ksh. 50,000

(2) Where an offence under this Act which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person (or any person acting on his behalf) being a director, manager, or secretary of such body, that person or the person so acting, as the case may be, shall also be guilty of that offence.

- (3) (a) Save as is provided for in *paragraphs (b), (c) and (d)* of this subsection, a summary offence under any provision of this Act may be prosecuted by the Directorate.
- (b) An offence under *section 35* may be prosecuted by the Directorate as defined for the purposes of that section.
- (c) An offence under *section 42* may be prosecuted by the County Executive Member or the Directorate.

(4) Notwithstanding any section of the act, summary proceedings for an offence to which any provision of this Act relates may be instituted within twenty four months from the date of the offence.

(5) Any costs of a the Directorate under this Act incurred in or in connection with the prosecution of a person for an offence under this Act for which the person is convicted may be recovered by the Directorate, or the County Executive Member, as the case may be, as a debt due and payable to the Directorate, or the County Executive Member, as the case may be, by the convicted person.

43. The county executive member may, subject to such conditions as he sees fit, in each financial year make

Grants to road
authorities.

grants, of such amounts as may be sanctioned by the County Executive Member for Finance out of moneys provided by the county assembly to the Directorate in respect of any or all of their functions under this Act or otherwise in relation to public roads.

44. Moneys accruing to the Directorate under this Act shall be applied in accordance with regulations made by the County Executive Member.

Application of
moneys.

45. Where the Directorate or road authority will become entitled to dispose or procure the disposal of anything removed from a public road under this Act, the Directorate shall be entitled to sell the thing for the best price reasonably obtainable.

Disposal of proceeds
of sale.

46. The expenses incurred by the directorate in the administration of this Act shall, to such extent as may be sanctioned by the county executive member for Finance, be paid out of moneys provided by the County Government

Expenses of County
Executive Member.

MEMORANDUM ON THE PROPOSED MOMBASA ROADS BILL, 2014

1. PURPOSE

The purpose of this Memorandum is to request the County Assembly's consideration and approval of the Mombasa Roads Bill, 2014 and its direction that the Bill be published for introduction in the County Assembly.

2. BACKGROUND

The Fourth Schedule part 2, paragraph 5 (a) of the Constitution of Kenya, 2010 devolves county roads. County Assembly of Mombasa therefore has the mandate to pass a Bill on County Roads for better management of the same.

3. OUTLINE OF THE BILL

Part I—This Part names the proposed Act, defines words and expressions used in the Bill. It also gives the Executive Member powers to draft regulations, revoke and amend the orders and directions.

Part II—This Part classifies roads and assignment of functions to the Executive member and Directorate.

Part III—This Part expounds on highways, county roads and protected roads.

Part IV—This Part deals with toll roads. It also provides for the powers to charge tolls and toll regulations.

Part V—This Part provides for miscellaneous aspect which gives provisions on road users, activities done on the roads and service of notices. Further, it provides for offences and penalties in this Act.

4. RECOMMENDATIONS

The Assembly is requested to:

- (a) note the contents of this Memorandum;
- (b) approve the Mombasa County Road Bill, 2014 annexed to this Memorandum; and
- (c) authorise the Speaker to publish the Bill and present it to the County Assembly for debate and enactment.

HON AMUR MURFAD,
Chairperson-Public Works and Transport Committee.

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