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**WEST POKOT COUNTY GAZETTE
SUPPLEMENT**

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WEST POKOT COUNTY URBAN PLANNING BILL, 2015

A Bill for

AN ACT of the County Assembly to give effect to Article 184 of the Constitution; to provide for the, classification, governance and management of urban areas; to provide for the criteria of establishing urban areas, to provide for the principle of governance and participation of residents and for connected purposes

ENACTED by the County Assembly of West Pokot, as follows—

PART I—PRELIMINARY

Short Title and Commencement

1. (1) This Act may be cited as the West Pokot County Urban Planning Act, 2015 and shall come into operation upon Gazettement.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“board” means the board of a town or municipality constituted in accordance with this Act;

“county Executive Member ” means the County Executive Member responsible for matters relating to urban areas;

“citizen Fora” means a forum for citizens organized for purposes of participating in the affairs of an urban area;

“urban area” means a municipality or a town.

Objects and Purposes of the Act

3. The objects and purposes of this Act are to establish a legislative framework for—

- (a) classification of areas as urban areas;
- (b) governance and management of urban areas;

- (c) participation by the residents in the governance of urban areas;
and
- (d) other matters for the attainment of the objects provided for in paragraphs (a) to (c).

PART II—CLASSIFICATION AND ESTABLISHMENT OF URBAN AREAS AND CITIES

General Classification of Urban Areas and Cities

4. An area may be classified as an urban area if it satisfies the criteria set out under this Act or any other written law.

Conferment of Municipal Status

5. (1) The county governor may, on the resolution of the county assembly, confer the status of a municipality on a town that meets the criteria set out in subsection (3), by grant of a charter in the prescribed form.

(2) The procedure set out under section 8 (1) to (4) shall apply with necessary modifications to the conferment of municipal status to a town, except that the conferment shall be done by the County Governor.

(3) A town is eligible for the conferment of municipal status under this Act if the town satisfies the following criteria—

- (a) has a population of at least fifty thousand residents according to the final gazetted results of the last population census carried out by an institution authorized under any written law, preceding the grant;
- (b) has an integrated development plan in accordance with this Act;
- (c) has demonstrable revenue collection or revenue collection potential;
- (d) has demonstrable capacity to generate sufficient revenue to sustain its operations;

- (e) has the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule;
- (f) has institutionalised active participation by its residents in the management of its affairs;
- (g) has sufficient space for expansion;
- (h) has infrastructural facilities, including but not limited to street lighting, markets and fire stations; and
- (i) has a capatown for functional and effective waste disposal.

Eligibility for Grant of a Town Status

6. (1) The county governor may, in consultation with the committee constituted under section 8(2), confer the status of a town on an area that meets the criteria set out in subsection (2).

(2) An area shall be eligible for the grant of the status of a town under this Act if it has—

- (a) a population of at least ten thousand residents according to the final gazetted results of the latest population census carried out by an institution authorized under any written law, preceding the grant;
- (b) demonstrable economic, functional and financial viability;
- (c) the existence of an integrated development plan in accordance with this Act;
- (d) the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule; and
- (e) sufficient space for expansion;
- (f) has infrastructural facilities, including but not limited to street lighting, markets and fire stations;
- (g) has a capacity for functional and effective waste disposal.

PART III—GOVERNANCE AND MANAGEMENT OF URBAN AREAS AND CITIES

Principles of Governance and Management

7. The governance and management of urban areas and cities shall be based on the following principles—

- (a) recognition and respect for the constitutional status of county governments;
- (b) recognition of the principal and agency relationship between the boards of urban areas and the County Government including—
 - (i) the carrying out by a board of such functions as may be delegated by the county government;
 - (ii) financial accountability to the County Government; and
 - (iii) the governance by each board for and on behalf of the county government.
- (c) promotion of accountability to the County Government and residents of the urban area;
- (d) institutionalised active participation by its residents in the management of the urban area affairs;
- (e) efficient and effective service delivery; and
- (f) clear assignment of functions.

Management of Municipalities

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

- (a) a board constituted in accordance with this Act;
- (b) an administrator appointed pursuant to this Act;

- (c) such other staff or officers as the county public service may determine.

(2) The board of an area granted the status of a municipality under this Act shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions in accordance with this Act or any other written law which may lawfully be done or performed by a body corporate.

(3) The governance and management of a town county shall be in accordance with the law relating to county governments.

Boards of Municipality

9. (1) A board of a municipality shall consist of not more than nine members, four of whom shall be appointed through a competitive process by the county executive committee, with the approval of the county assembly and five shall be elected in a prescribed manner.

(2) Of the members referred to in subsection (1), at least three shall be nominated either of the following—

- (a) an umbrella body representing professional associations in the area;
- (b) an association representing the private sector in the area;
- (c) a cluster representing registered associations of the informal sector in the area;

- (d) a cluster representing registered neighborhood associations in the area; and
- (e) an association of urban areas, and appointed by the county executive committee with the approval of the county assembly.

(3) The executive committee shall, while appointing members of the board, ensure gender equity, representation of persons with disability, youth and marginalized groups.

(4) A person shall not be appointed a member of the board unless that person—

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

Town Committees

10. The provisions of section 9 shall apply with respect to the board of a municipality except that such board shall comprise five members who shall be competitively sourced and appointed by the County Governor.

Term of Office

11. A member of a board or town committee shall hold office for a term of five years, on a part-time basis.

Vacation of Office

12. A member of a board shall cease to hold office if the member—

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared or becomes bankrupt or insolvent;

- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) resigns in writing to the county governor;
- (e) without reasonable cause, the member is absent from three consecutive meetings of the board or committee within one financial year;
- (f) is found guilty of professional misconduct by the relevant professional body;
- (g) is disqualified from holding a public office under the Constitution;
- (h) is convicted of an offence and is sentenced to imprisonment for a term of six months or more;
- (i) in any particular case, the member fails to declare his or her interest in any matter being considered or to be considered by the board or committee;
- (j) engages in any gross misconduct; or
- (k) dies.

Chairperson and Vice-Chairperson of the Board

13. (1) Subject to subsection (2), there shall be a chairperson and vice-chairperson for each board.

(2) The chairperson and the vice-chairperson shall be elected by the members of the board from among themselves during the first meeting of the board, and subsequently whenever a vacancy arises and shall be of opposite gender.

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

(5) The chairperson shall—

- (a) be the head of the board;
- (b) chair meetings of the board;
- (c) perform such duties as may be delegated by the County Executive.

(6) The vice-chairperson shall, in the absence of the chairperson, perform the functions of chairperson and shall perform such other functions as may be delegated by the chairperson or the board.

Removal from Office

14. (1) A person may be removed from the office of chairperson, vice-chairperson or a member of the board on any of the grounds provided under section 16 (a), (b), (c), (e), (f), (g), (h), (i) and (j).

(2) A person may be removed under subsection (1)—

- (a) by the County Governor;
- (b) by the board, supported by the vote of at least two-thirds of the members of the board; or
- (c) upon petition by the residents of a town or municipality.

(3) A resident of a town or municipality may file a writing petition with a board for the removal of a chairperson or vice-chairperson.

(4) The procedure for the removal or petition for removal of a chairperson or vice-chairperson under subsections (1) and (2) shall be provided by regulations.

Filling of Vacancy

15. A vacancy in the office of a chairperson, vice-chairperson or a member of the board shall, with necessary modification, be filled in accordance with section 13 or 17 of this Act as the case may be.

Functions of a Board of Town Committee

16. (1) Subject to the provisions of this Act a board of a town or municipality shall—

- (a) oversee the affairs of the town or municipality;
- (b) develop and adopt policies, plans, strategies and programmes, and may set targets for delivery of services;
- (c) formulate and implement an integrated development plan;
- (d) control land use, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centres, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the town or municipality as may be delegated by the county government;
- (e) as may be delegated by the county government, promote and undertake infrastructural development and services within the town or municipality;
- (f) develop and manage schemes, including site development in collaboration with the relevant national and county agencies;
- (g) maintain a comprehensive database and information system of the administration and provide public access thereto upon payment of a nominal fee to be determined by the board;
- (h) administer and regulate its internal affairs;
- (i) implement applicable national and county legislation;

- (j) enter into such contracts, partnerships or joint ventures as it may consider necessary for the discharge of its functions under this Act or other written law;
- (k) monitor and, where appropriate, regulate town and municipal services where those services are provided by service providers other than the board of the town or municipality;
- (l) prepare and submit its annual budget estimates to the relevant County Treasury for consideration and submission to the County Assembly for approval as part of the annual County Appropriation Bill;
- (m) as may be delegated by the county government, collect rates, taxes levies, duties, fees and surcharges on fees;
- (n) settle and implement tariff, rates and tax and debt collection policies as delegated by the county government;
- (o) monitor the impact and effectiveness of any services, policies, programmes or plans;
- (p) establish, implement and monitor performance management systems;
- (q) promote a safe and healthy environment;
- (r) facilitate and regulate public transport; and
- (s) perform such other functions as may be delegated to it by the county government or as may be provided for by any written law.

(2) The functions performed by the board of a town or municipality under this Act shall, in the case of a town, be performed by a committee appointed by the county governor and approved by the county assembly.

Powers of Boards of Towns and Municipalities

17. (1) Subject to the Constitution and any other written law, the board of a town or municipality shall, within its area of jurisdiction—

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

(2) Notwithstanding any other provision in this Act, the board of a town or municipality shall exercise such executive authority as may be delegated by the county executive committee for the necessary performance of its functions under this Act.

Citizen Fora

18. (1) Subject to the Second Schedule, residents of a town, municipality or town may—

- (a) deliberate and make proposals to the relevant bodies or institutions on—

- (i) the provision of services;
 - (ii) proposed issues for inclusion in county policies and county legislation;
 - (iii) proposed national policies and national legislation;
 - (iv) the proposed annual budget estimates of the county and of the national government;
 - (v) the proposed development plans of the county and of the national government; and
 - (vi) any other matter of concern to the citizens;
- (b) plan strategies for engaging the various levels and units of government on matters of concern to citizens;
- (c) monitor the activities of elected and appointed officials of the urban areas and cities, including members of the board of an urban area or town; and
- (d) receive representations, including feedback on issues raised by the county citizens, from elected and appointed officials.

(2) A board shall invite petitions and representations from the Citizen Fora with regard to the administration and management of the affairs within an urban area or town under its jurisdiction.

(3) A board shall make recommendations on the manner in which issues raised at the Citizen Fora, if any, may be addressed and shall accordingly pass the recommendations to the manager for implementation.

(4) The manager shall make a report on the decision made in respect of a petition or presentation made by a citizen fora and reasons for such decision.

Ordinary and Special Meetings of a Board

19. (1) A board shall hold its sittings to transact the business of the board once every three months.

(2) Notwithstanding subsection (1), the chairperson may, and upon request in writing by at least one-third of the members of the board shall, convene a special meeting to transaction any urgent business of the board.

Management of Information and Publicity

20. (1) A board shall publish and publicize important information within its mandate affecting the town or urban area.

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

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

(b) may be subject to confidentiality requirements of the board.

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

(a) the request is unreasonable in the circumstances;

(b) the information requested is at a deliberative stage by the board or committee;

(c) the applicant fails to pay the prescribed fee; or

(d) the applicant fails to satisfy any confidentiality requirements by the board or committee.

(4) The right of access to information under Article 35 of the Constitution shall be regulated in accordance with the nature and extent specified under this section.

(5) Every member and employee of the board or committee shall sign a confidentiality agreement.

(6) The board or committee shall, in such manner as it considers appropriate, publish a notice for public information specifying—

- (a) the location of all its offices; and
- (b) its address or addresses, telephone numbers and other means of communication or contact with the board or committee.

Remuneration of Members of a Board

21. The chairperson, vice-chairperson and members of a board or town committee shall not receive a salary from the board or town committee but shall be paid such allowances and benefits as the county executive committee shall, with the approval of the county assembly, and on the advice of the Salaries and Remuneration Commission, determine.

Committees of a Board

22. A board may—

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

Town Administrator or Municipal Manager

23. (1) There shall be a town or municipal manager for every town or municipality established under this Act, who shall implement the decisions and functions of the board and shall be answerable to the board; and

(2) Shall be the secretary and the accounting officer of the board or town committee.

Appointment of Town or Municipal Manager

24. A town or municipal manager shall be competitively recruited and appointed by an institution responsible for recruiting public servants in the county.

Qualifications for Appointment of Town or Municipal Manager

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

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

(2) In appointing a manager under subsection (1) the body responsible for county public service shall ensure—

- (a) gender equity;
- (b) the inclusion of minorities and marginalised communities; and
- (c) the person satisfies the requirements of Chapter six of the Constitution.

Governance and Management of Towns

26. (1) An area granted the status of a town under this Act shall not be a body corporate.

(2) There shall be an administrator for every town established under this Act.

(3) The administrator of a town shall perform such functions as the committee appointed under section 20 (2) may determine.

(4) Section 29 and 30 of this Act shall apply to the appointment of an administrator.

PART IV—DELIVERY OF SERVICES

Service Delivery by a Board

27. (1) Subject to Article 187 (2) (a) of the Constitution, a board shall, on behalf of the county government, deliver such services as may be specified under this Act or any other national or county legislation.

(2) Subject to Article 176 (2) of the Constitution, a town or municipal board may, if it considers it necessary, establish operational sectors and service delivery entities, with the approval of the county executive committee, for the efficient carrying out of its functions and the delivery of the services within its area of jurisdiction.

(3) Subject to the provisions of this section, a county assembly may legislate on the set up and establishment of service delivery entities.

Partnership and Joint Ventures

28. (1) A board may, in consultation with the county governor and with the approval of the county assembly, enter into partnership with a utility company either within or outside the county or internationally for the provision of social infrastructural services.

(2) For efficient service delivery, cities and municipalities may jointly provide cross-town and cross-municipality services and may, in that regard jointly finance the services.

(3) A board may, where it is of the opinion that a private sector entity is best able to provide a service, and with the approval of the county assembly, contract a private entity for purposes of delivering the services within its area of jurisdiction.

(4) Where a board decides to contract a private entity for the delivery of services, it shall do so in accordance with the Public Procurement and Disposal Act, 2005 (No. 3 of 2005).

Service Delivery in Towns

29. The provisions of this Part shall, with necessary modifications, apply in the case of the delivery of services in towns by the town committee.

Objections by Residents

30. A resident may object to any partnership or joint venture under section 33 in accordance with the regulations made under this Act.

PART V—INTEGRATED DEVELOPMENT PLANNING

Objectives of Integrated Urban areas and Town Development Planning

31. (1) Every town and municipality established under this Act shall operate within the framework of integrated development planning which shall—

- (a) give effect to the development of urban areas and cities as required by this Act and any other written law;
- (b) strive to achieve the objects of devolved government as set out in Article 174 of the Constitution;
- (c) contribute to the protection and promotion of the fundamental rights and freedoms contained in Chapter Four of the Constitution and the progressive realization of the socio-economic rights;
- (d) be the basis for—
 - (i) the preparation of environmental management plans;
 - (ii) the preparation of valuation rolls for property taxation;
 - (iii) provision of physical and social infrastructure and transportation;
 - (iv) preparation of annual strategic plans for a town or municipality;
 - (v) disaster preparedness and response;

- (vi) overall delivery of service including provision of water, electricity, health, telecommunications and solid waste management; and
- (vii) the preparation of a geographic information system for a town or municipality;
- (e) nurture and promote development of informal commercial activities in an orderly and sustainable manner;
- (f) provide a framework for regulated urban agriculture; and
- (g) be the basis for development control.

(2) In addition to the objectives set out in subsection (1), an integrated urban or town development plan shall bind, guide and inform all planning development and decisions and ensure comprehensive inclusion of all functions.

(3) A county government shall initiate an urban planning process for every settlement with a population of at least two thousand residents.

Plan to Align to County Government Plans

32. (1) A town or urban area integrated development plan shall be aligned to the development plans and strategies of the county governments.

Preparation of integrated town or urban development plans

12 of 2012, Sch.

33. A town or urban area shall prepare an integrated town or urban area development plan in accordance with the Third Schedule to this Act.

Adoption of an Integrated Development Plan

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

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

(3) A town or urban area shall, within fourteen days of the adoption of its integrated development plan—

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

Contents of Integrated Town and Urban area Development Plan

35. An integrated urban area or town development plan shall reflect—

- (a) a board's or committee's vision for the long term development of the town or urban area with special emphasis on the board's or committee's most critical development needs;
- (b) an assessment of the existing level of development in the town or urban area, including an identification of communities which do not have access to basic services;
- (c) the determination of any affirmative action measures to be applied for inclusion of communities referred to under paragraph (b) to access funds from the equilization funds;
- (d) the board's development priorities and objectives during its term in office, including its economic development objectives, community needs and its determination on the affirmative action in relation to the marginalised groups access to services;

- (e) a board's development strategies which shall be aligned with any national or county sectoral plans and planning requirements binding the town or municipality;
- (f) a spatial development framework which shall include the provision of basic guidelines for land use management system for the town or municipality;
- (g) a board's operational strategies;
- (h) applicable disaster management plans;
- (i) a regulated town and municipal agricultural plan;
- (j) a financial plan, which shall include budget projection for at least the next three (3) years; and
- (k) the key performance indicators and performance targets.

Submission of integrated cities and municipal development plan to the county governor

36. (1) The manager or administrator shall submit to the executive committee, a copy of the integrated development plan as adopted by the board or committee within twenty one days of the adoption or amendment.

(2) The copy of the integrated development plan submitted to the county executive committee shall be accompanied by—

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

(3) The county executive committee shall, within thirty days of receipt of a copy of the plan—

- (a) consider the integrated development plan and make recommendations; and

- (b) submit the plan to the county assembly for its approval.

Annual Review of Integrated Development Plan

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

PART VI—FINANCIAL PROVISIONS

Funds of a Board

12 of 2012, Sch.

38. (1) The funds of a board shall consist of—

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

(2) Where an urban area or town enters into a joint venture with another entity, the monies allocated for the joint venture shall be determined by a joint budget.

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

Financial Year

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

Annual Estimates

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

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

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

(4) The annual estimates approved by the board or town committee under subsection (3) shall be submitted to the county governor for submission to the county assembly for its approval.

Accounts and Audit

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

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

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

(3) The Auditor-General shall prepare a financial audit as required under the Public Audit Act, 2003 (No. 12 of 2003) or its successor and shall forward a copy of the report to the relevant board and the County Executive Committee in respect of which the audit report is made.

Audit Report to be laid Before Board or Town Committee

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

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

(2) Where the manager or the administrator of a board fails to table the report as required under this section, that report shall be laid by any other person authorised by the county governor.

Display of Audited Financial Statement

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

Pension Schemes

12 of 2012, Sch.

44. All officers of a board shall, on the commencement of this Act, subscribe to an existing pension scheme approved by the Retirement Benefits Authority.

PART VII—MISCELLANEOUS PROVISIONS

Disclosure of Personal Interest by Officers

45. If it comes to the knowledge of an officer employed by a board that a bargain, contract or arrangement in which he or she has any direct or indirect pecuniary interest (other than a bargain, contract or arrangement to which he or she is a party) has been or is proposed to be made or entered into by the

board, that officer shall as soon as practicable give notice in writing to the board disclosing the fact that he or she has interest therein.

Board to Furnish County Executive with Copies of Proceedings

46. Every board shall furnish the county executive committee and any other person as the county executive committee may designate, with certified copies of—

- (a) any proceedings or minutes of the board or its committees within twenty one days after the confirmation of the minutes;
- (b) records of any of its accounts; and
- (c) reports, statistics and documents as the county executive committee may require.

Protection against Personal Liability

12 of 2012, Sch.

47. (1) No act, matter or thing done or omitted to be done by—

- (a) the chairperson or vice-chairperson of the board of a town or municipality;
- (b) any member of a board or its management or committee;
- (c) any member of staff or other person in the service of town or municipal board; or
- (d) any person acting under the direction of a board;

shall, if that act, matter or thing was done or omitted to be done in good faith in the execution of a duty or under direction, render that member or person personally liable to any civil action, claim or demand.

(2) Notwithstanding the provisions of subsection (1), a person who misappropriates, or authorises the use of funds contrary to existing law or instructions shall be accountable for any loss arising from that use and shall

be required to make good the loss even if that person has ceased to hold office.

Regulations

48. (1) The County Executive Member may make regulations, for the better carrying out of the provisions of this Act, or for prescribing anything which is required to be prescribed under this Act.

(2) Regulations made under this section shall be tabled before the Senate for approval, and shall not take effect until such approval is obtained.

PART VIII—TRANSITIONAL PROVISIONS

Assessment and Classification of Existing Urban Areas and Cities

49. (1) During the transition period assessment shall be undertaken on the existing urban areas and cities in order to ascertain whether they meet the criteria for classification as urban areas or cities under this Act, and shall be classified accordingly.

Rights and Liabilities

50. All rights, assets and liabilities accrued in respect of the properties vested in the local authorities established under the Local Government Act (Cap. 265) which shall stand repealed after the first election under the Constitution shall be dealt with as provided by law.

Existing By-Laws and Orders of Local Authorities

51. All directions, resolutions, orders and authorizations given by by-laws made, and licenses or permits issued by the local authorities established, under the Local Government Act and subsisting or valid immediately before the commencement of this Act shall be deemed to have been given, issued or made by the boards established pursuant to this Act, as the case may be, until their expiry, amendment or repeal.

Staff Officers, etc.

52. (1) Every person who, immediately before the commencement of this Act was an officer, agent or member of staff appointed, seconded or otherwise employed by a local authority shall, on the commencement of this Act be seconded or otherwise deployed as may be provided by law.

Existing Contracts, etc.

53. (1) Any act, matter or thing lawfully done by any local authority before the commencement of this Act and any contract, arrangement, agreement, settlement, trust, bequest, transfer, division, distribution or succession affecting any service delivery, trade of any form, sale or dealings on land or any other matter affecting assets, liabilities or property belonging to any local authority whether moveable, immoveable or intellectual property shall, unless and until affected by the operation of this Act, continue in force and be vested in a body established by law.

Pending actions and Proceedings

54. Any legal right accrued, cause of action commenced in any court of law or tribunal established under any written law in force, or any defence, appeal, or reference howsoever filed by or against any local authority shall continue to be sustained in the same manner in which they were prior to the commencement of this Act against a body established by law.

Municipalities of Mombasa and Kisumu

55. Notwithstanding any other provisions of this Act, the municipalities of Mombasa and Kisumu existing immediately before the commencement of this Act shall be deemed to be cities established under this Act.

SCHEDULES

FIRST SCHEDULE

(s. 5)

CLASSIFICATION OF CITIES AND TOWNS BY SERVICES

In classifying an area as a town, municipality or town, regard shall be had to the ability to provide the following services—

Town—(Population at least 500,000)

Planning and Development Control

Traffic Control and Parking

Water and Sanitation

Street Lighting

Outdoor Advertising

Cemeteries and Crematoria

Public Transport

Libraries

Storm Drainage

Ambulance Services

Heath Facilities

Fire Fighting and Disaster Management

Control of Drugs

Sports and Cultural Activities

Electritown and Gas Reticulation

Abattoirs

Refuse Collection

Solid waste management

Air pollution

Child Care Facilities

Pre-Primary Education

Local Distributor Roads

Conference Facilities

Community Centres

Five Star Hotel

Guest Houses

National Hospital

Referral hospital

County Hospital

University

Constituent University Campuses

Polytechnic

Training Institution

National School

County School

Stadium

National Stadium

International Airport

Airport

Airstrip

National Theatre

Theatre

Library Service

Administrative Seat

Financial Hub

Diplomatic Hub

Consulate

Museum

Historical Monument

Fire Station

Emergency Postal services

National TV station

National Radio Station

Regional Radio Station

Community Radio

Casinos

Funeral Parlour

Cemetery

Recreational Parks

Management of Markets

Marine Water front

Animal control and welfare

Religious Institution

Municipality—(Population at least 250,000)

Planning and Development Control

Traffic Control and Parking

Water and Sanitation

Street Lighting

Outdoor Advertising

Cemeteries and Crematoria

Public Transport

Libraries

Storm Drainage

Ambulance Services

Heath Facilities

Fire Fighting and Disaster Management

Control of Drugs

Sports and Cultural Activities

Electritown and Gas Reticulation

Abattoirs

Refuse Collection

Solid waste management

Air noise

Child Care Facilities

Pre-Primary Education

Local Distributor Roads

Conference Facilities

Community Centres

Hotel Homestays

Guest Houses

County Hospital

Constituent University Campuses

Polytechnic

Training Institution

National School

County School

Municipal Stadium

Stadium

Airport

Airstrip

National Theatre

Theatre

Library Service

Administrative Seat

Financial Hub

Museum

Historical Monument

Fire Station

Emergency Preparedness

Postal services

National TV station

National Radio Station

Regional Radio Station

Community Radio

Casinos

Funeral Parlour

Cemetery

Recreational Parks

Management of Markets

Marine Water front

Animal control and welfare

Religious Institution

Organised Public Transport

Town—(Population at least 10,000)

Street Lighting

Cemeteries and Crematoria

Libraries

Heath Facilities

Sports and Cultural Activities

Abattoirs

Refuse Collection

Solid waste management

Air noise

Child Care Facilities

Pre-Primary Education

Community Centres

Guest Houses

Homestays

Polytechnic
Training Institution
County School
Airstrip
Unclassified roads
Museum
Historical Monument
Postal services
Regional Radio Station
Community Radio
Funeral Parlour
Cemetery
Recreational Parks
Management of Markets
Marine Water front
Animal control and welfare
Religious Institution

SECOND SCHEDULE

(s. 22)

**RIGHTS OF, AND PARTICIPATION BY RESIDENTS IN AFFAIRS OF
THEIR TOWN OR URBAN AREA**

Rights and Duties of Residents

12 of 2012, Sch.

1. (1) Subject to paragraph (2), residents of a town or urban area have the right to—

- (a) contribute to the decision-making processes of the town or urban area by submitting written or oral presentations or complaints to a board or town committee through the town or municipal manager or town administrator;
- (b) prompt responses to their written or oral communications;
- (c) be informed of decisions of a board or town committee, affecting their rights, property and reasonable expectations;
- (d) regular disclosure of the state of affairs of the town or urban area, including its finances;
- (e) demand that the proceedings of a board or town committee or committee and its committees or sub-committees be—
 - (i) conducted impartially and without prejudice; and
 - (ii) untainted by personal self-interest;
- (f) the use and enjoyment of public facilities; and
- (g) have access to services which the town or urban area provides.

Participation by Residents

2. (1) A town or urban area shall develop a system of governance that encourages participation by residents in its affairs, and shall for that purpose—

- (a) create appropriate conditions for participation in—
 - (i) the preparation, implementation and review of the integrated development plan;
 - (ii) the establishment, implementation and review of its performance management system;
 - (iii) the monitoring and review of its performance, including the outcomes and impact of its performance;
 - (iv) the preparation of its budget; and
 - (v) making of strategic decisions relating to delivery of service;
- (b) contribute to building the capatown of—
 - (i) the residents to enable them participate in the affairs of the town or urban area; and
 - (ii) members of the board or town committee and staff to foster community participation;
- (c) apply its resources, and allocate funds annually as may be appropriate for the implementation of paragraphs (a) and (b); and
- (d) establish appropriate mechanisms, processes and procedures for—
 - (i) the receipt, processing and consideration of petitions and complaints lodged by residents;
 - (ii) petitions and public comments procedures, when appropriate;
 - (iii) notification of public meetings and hearings organised by a board or town committee;
 - (iv) consultative sessions with locally recognized resident organisations; and

(v) reporting to the residents.

(2) The provisions of paragraph (1) shall not be construed as permitting interference with a board's or town committee's right to govern and exercise its functions.

(3) When establishing mechanisms, processes and procedures under subsection (1), the town or urban area shall take into account the special needs of—

- (a) people who cannot read or write;
- (b) people with disabilities;
- (c) youth;
- (d) gender equity; and
- (e) minority and marginalised groups.

THIRD SCHEDULE (s. 38)

PREPARATION OF AN INTERGRATED PLAN

In the preparation of the integrated urban area or town development plan a town or urban area shall provide for—

- (a) an assessment of the current social, cultural, economic and environmental situation in its area of jurisdiction;
- (b) a determination of community needs and aligning them to the requirements of the Constitution;
- (c) protection and promotion of the interests and rights of minorities and marginalized groups and communities;
- (d) a shared vision for its development and that of the county as a whole;
- (e) an audit of available resources, skills and capacities;

- (f) prioritization of the identified needs in order of urgency and long-term importance;
- (g) integrated frameworks and goals to meet the identified needs;
- (h) strategies to achieve the goals within specific time frames;
- (i) specific implementation programmes and projects to achieve Intended goals;
- (j) performance management tools to measure impact and performance and make appropriate corrections;
- (k) linkage, integration and coordination of sector plans;
- (l) development control; and
- (m) any other necessary matter.

MEMORANDUM AND OBJECTS OF REASONS

PART I

Section 1 provides a short title to the Act while section 2 defines terminologies used in the Act. Generally the purpose of the Act as captured in section 3 is to classify areas as urban areas, provide a forum for public participation by residents in the management of urban areas, governance and management of towns and other matters related to town managements.

PART II

It provides for classification of urban areas and the conferment of municipal status as well as eligibility for grant of a town status.

PART III

It sets out the principle of management of urban areas and personnel responsibilities for such management .It spells out the powers of board of municipalities and towns committees.

PART IV

Provides for the manner in which boards and town committees shall provide service delivery and partnership with other stakeholders.

PART V

This part generally provides for the management of towns through the consideration of the integrated development planning.

PART VI

This part provides for financial provisions and accounting for funds set for Urban areas planning.

JAMES KAPELION LIMANYANG,
Chairperson, Sectoral Committee on Finance, Planning and Housing.