

THE URBAN AREAS AND CITIES BILL, 2011

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THE URBAN AREAS AND CITIES BILL, 2011

A Bill for

AN ACT of Parliament to give effect to Article 184 of the Constitution; to provide for the identification, classification, governance and management of urban areas and cities; to provide for the criteria of establishing urban areas and cities, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

- Short title. **1.** This Act may be cited as the Urban Areas and Cities Act, 2011.
- Interpretation. **2.** In this Act, unless the context otherwise requires—
- “Board” means the Urban Areas and Cities Advisory Board established under section 45; and
- “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to devolved government.
- Objects and purposes of the **3.** The objects and purposes of this Act are to

- Act. establish a legislative framework for—
- (a) classification of areas as urban areas or cities;
 - (b) governance and management of urban areas and cities;
 - (c) participation by the residents in the governance of urban areas and cities;
 - (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. In classifying an area as an urban area or city, the Board shall take into account the following factors—

- (a) Has integrated urban development plan in accordance with this Act;
- (b) the topographical and physical characteristics of the area concerned;
- (c) the distribution, size and density of the area concerned;
- (d) the existing boundaries of local authorities;
- (e) the revenue collection or potential of the area concerned;
- (f) the maximum expenditure the area is able to support;

- (g) the existing and potential land use, including industrial, business, commercial, residential and environmental planning;
- (h) the financial viability and ability to render services within the area concerned;
- (i) the development potential in relation to infrastructure, communication and transport facilities;
- (j) availability of sufficient land for further development according to the spatial needs of residents of the area concerned;
- (k) the integrated urban economy as dictated by commercial, industrial and residential dynamics of the area concerned;
- (l) the equitable distribution of national wealth and its impact on the area concerned;
- (m) the national and regional strategic importance of the area;
- (n) urban areas designated as county headquarters;
- (o) capacity to render services as prescribed under the second schedule;
- (p) the presence of national and international institutions; and

- (q) any other factor that the Board may, in its discretion, consider appropriate.

Classification
as city.

5. An area or large municipality shall be eligible for the status of a city status under this Act if the area or municipality meets the following criteria—

- (a) has a population of at least two hundred and fifty thousand residents according to the final gazetted results of the last population census preceding the grant;
- (b) has notable features of historical importance or has regional, national or international strategic significance;
- (c) makes positive contribution to the economic development of the country;
- (d) properly manages its financial resources;
- (e) delivers services to its residents in an effective and efficient manner;
- (f) has an effective programme for environmental management and conservation;
- (g) has institutionalised active participation by its residents in the management of its affairs;
- (h) has sufficient land for expansion for industrial, business, commercial, residential and environmental planning;

- (i) has infrastructural facilities, including but not limited to roads, street lighting, markets, and fire stations, and an adequate capacity for disaster management;
- (j) has a functional and effective waste disposal and sewerage system;
- (k) has demonstrable economic, functional and financial viability;
- (l) has infrastructure that provide national and regional connectivity; and
- (m) has demonstrable capacity to render services, including healthcare, education, waste management and environmental conservation

Criteria for
classification as
capital city

6. In addition to the criteria prescribed under section 5, a city shall be eligible for conferment of the status of a capital city if it meets the following criteria-

- (a) is a shared city for the purpose of consultation and service delivery;
- (b) is the seat of National Government;
- (c) is the official residence of the majority of the diplomatic corps;
- (d) has an elaborate transport network connecting to other cities, municipalities and rural areas;
- (e) is the hub for international airline connectivity;

- (f) is the major centre for commerce and industry;
- (g) is the headquarters for major corporations;
- (h) is the headquarters for cultural and humanitarian organizations;
- (i) is the centre for learning, research and development; and
- (j) has predictable finances.

Conferment of city status.

7. The President may, on the recommendation of the Board, by grant of a charter in the prescribed form, confer the status of a city on an urban area that meets the criteria set out in section 4 and section 5.

Application for conferment of city status.

8. (1) The municipal council responsible for an urban area may, upon resolution, apply to the Board in the prescribed manner for the conferment on the area of the status of a city.

(2) The Board shall consider the application and may, upon being satisfied that the requirements for conferment of city status under this Act have been met, recommend that the urban area the subject of the application be conferred with the status of a city.

(3) The Board shall reject an application made under subsection (1) if it is not satisfied that the requirements for conferment of city status on an area have been met.

Conferment of municipal status.

9. The county governor may, on the recommendation of the Board, by a charter in the prescribed form, confer the status of a municipality on an urban area that satisfies the criteria set out under this Act for the conferment of status of a large municipality.

Eligibility for grant of municipality status.

10. An urban area shall be eligible for the grant of the status of a municipality under this Act if it has a population of at least ten thousand residents according to the final gazetted results of the last population census preceding the grant.

Categories of municipalities.

11. A municipality may be categorised as—

- (a) subject to section 10, small, if it has a population of less than fifty thousand residents;
- (b) medium, if it has a population of at least fifty thousand, but less than two hundred and fifty thousand residents; or;
- (c) large, if it has a population of at least two hundred and fifty thousand residents or more,

according to the final gazetted results of the last population census preceding the categorisation.

City or large municipality to be a body corporate.

12. The council of an area granted the status of a city or large 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 under the Constitution and this Act or any other written law which may lawfully be done or performed by a body corporate.

Medium or Small municipality to be unincorporated body

13. The council of an area granted the status of a medium or small municipality under this Act shall be an unincorporated body and shall operate under the direct supervision of the County Executive Committee.

PART III—GOVERNANCE AND MANAGEMENT OF URBAN AREAS AND CITIES

Principles of governance and management.

14. 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) respect for the principle of semi-autonomy and recognition of the agency relationship between the councils of urban areas and cities and their respective county governments including—
 - (i) the carrying out by a council of such functions as maybe delegated by its county government;
 - (ii) the financial dependence upon the county government; and

(iii) the governance by each council for and on behalf of its county government;

(c) promotion of accountability to the county government and residents of the area or city;

(d) efficient and effective service delivery; and

(e) clear recognition of functions.

Governance and management of cities and large municipality

15. (1) The governance of a city and large municipality shall be vested in a council constituted in accordance with section 17.

(2) The management of a city and large municipality shall be vested in—

(a) a manager appointed pursuant to section 31;

(b) such other staff or officers as a council may determine.

(2) The management of a city or large municipality under this section shall be vested in a council and shall be accountable to the county executive committee.

Governance and management of small and medium municipality.

16. (1) The governance of a small and medium municipality shall be vested in an oversight committee constituted in accordance with section 18.

(2) The management of a medium and small municipality shall be vested in—

- (a) an administrator appointed under section 35;
- (b) such other staff or officers as the oversight committee responsible for the area where the medium or small municipality is situated may determine

(2) The management of a medium or small municipality under this section shall be vested in the oversight committee which shall be responsible to the county executive committee.

Council.

17. (1) A council shall consist of not more than eleven members appointed through a competitive process by the county executive committee, with the approval of the county legislative assembly.

(2) Of the members referred to in subsection (1), at least five shall be appointed to represent—

- (a) professional associations in the area;
- (b) an association representing the private sector in the area;
- (c) a registered association representing the informal sector in the area;
- (d) registered neighbourhood associations in the area.

(3) A person shall not be appointed a member of the council unless that person is registered as a voter in the county within which the council has jurisdiction.

Oversight committee.

18. (1) An oversight committee shall consist of not more than eleven members appointed through a competitive process by the county executive committee, with

the approval of the county legislative assembly.

(2) Of the members referred to in subsection (1), at least five shall be appointed to represent—

- (a) professional associations in the area;
- (b) an association representing the private sector in the area;
- (c) a registered association representing the informal sector in the area;
- (d) registered neighbourhood associations in the area.

(3) A person shall not be appointed a member of the oversight committee unless that person is registered as a voter in the county within which the oversight committee has jurisdiction.

(4) There shall be a chairperson and a vice chairperson of the oversight committee and shall be elected by the members of the oversight committee during their first meeting and shall be of opposite gender and shall be appointed by the County Executive Committee.

Term of office.

19. The members of a Council and Oversight Committee shall hold office for a term of five years renewable for one further term.

Vacation of office.

20. (1) A member of a Council or Oversight Committee shall cease to hold office if he or she-

- (a) is unable to perform the functions of his 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 not less than six months;
- (d) resigns in writing to the county executive committee;
- (e) without reasonable cause, he is absent from three meetings of the council or committee within one financial year;
- (f) in any particular case, he fails to declare his interest in any matter being considered or to be considered by the council or committee; or
- (g) conducts himself in a manner as to amount to gross misbehaviour or misconduct.

(2) The removal of a member of the Council or Oversight Committee shall be conducted in the manner prescribed by regulations made by the county executive committee under this Act.

Mayor and
deputy-mayor.

20. (1) There shall be a mayor and deputy-mayor for each council of a city or large municipality.

(2) The mayor and the deputy mayor shall be elected by the members of the council during the first meeting of the council, and shall be of opposite gender.

(3) The mayor and deputy mayor shall respectively be the chairperson and deputy chairperson of a council.

(4) The mayor and deputy mayor shall hold office for a term of five years and may be re-elected for one further

and final term of five years.

(5) The Mayor shall—

- (a) be the head of a council for purposes of all ceremonial functions relating to the council;
- (b) chair meetings of the council;
- (c) present the needs of the city or municipality to a meeting of the council; and
- (d) perform such duties as may be delegated by the council.

(7) The Deputy Mayor shall—

- (a) be the principal deputy of the Mayor;
- (b) in the absence of the Mayor, attend or represent a council at all ceremonial functions where the presence of the Mayor is required;
- (c) in the absence of the Mayor, perform all tasks and duties as may be delegated to him or her by the Mayor;
- (d) at all times, perform all such duties, assignments and functions as may be delegated to him from time to time by the Mayor.

Eligibility for
election of
Mayor and
Deputy Mayor.

21. A person shall not be elected as a mayor unless that person is a member of a council.

Vacation of
office by
Mayor.

22. A person shall cease to hold office as a mayor
if the person—

- (a) is disqualified from holding a public office under the Constitution;
- (b) resigns from office in writing and delivers his or her resignation in person to the county governor;
- (c) suffers physical or mental incapacity that would render him or her incapable of performing his or her duties as a mayor;
- (d) dies;
- (e) is adjudged bankrupt or enters into composition with his or her creditors;
- (f) is convicted of an offence and is sentenced to imprisonment for a term of not less than six months; or
- (g) ceases to be a member of a council.

Removal from
office of a
Mayor.

23. (1) A person may be removed from office as a
Mayor before the expiry of his or her term—

- (a) by the county governor with the approval of the county executive committee;
- (b) by a council, supported by a vote of at least two-third of the members of the council;
- (c) upon petition by the residents of a city or municipality.

(2) A resident of a city or large municipality may file a petition with a council in writing for the removal of a mayor.

(3) The procedure for the removal or petition for removal of a mayor under subsection (1) and (2) shall be as is set out in regulations made by the Cabinet Secretary for the purpose.

Filling of
vacancy of
office of
Mayor.

24. A vacancy in the office of a mayor shall be filled through election conducted in accordance with section 19 of this Act.

Powers of city
and large
municipality
council.

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

- (a) exercise executive authority;
- (b) exercise limited legislative power;
- (c) provide services to its residents;
- (d) raise such funds as may be delegated by the county government for delivery of services by the municipality or the city;
- (e) promote democratic governance;
- (f) ensure the implementation and compliance with policies formulated by both the national and county government;
- (g) ensure participation of the residents in decision making, its activities and programmes; and

- (h) exercise such other function as may be delegated by the county government.

(2) Notwithstanding any other provision in this Act, the council of a city or large 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.

(3) The decentralisation of the functions of a city or large municipality to a lower unit shall not take effect unless—

- (a) the council of the city or large municipality and that of the lower unit are in agreement;
- (b) the necessary resources are made available for the exercise of those functions and powers, delivery of services and responsibilities at that lower unit; and
- (c) appropriate measures have been taken to notify and obtain the views of the residents about the proposed decentralisation, and the views expressed by residents have been considered.

Functions of city and large municipality council.

26. (1) Subject to the provisions of this Act, the council of a city or large municipality shall—

- (a) develop and adopt policies, plans, strategies and programmes, and may set targets for delivery of service;
- (b) formulate and implement a master

- plan for the urban and physical planning, infrastructure development and provision of essential services including, but not limited to, provision of water, sanitation, healthcare, education, housing, transport, disaster management systems and facilities for safe environment;
- (c) exercise control over land use, land sub-division, land development and zoning by public and private sectors for any purpose, including agriculture, industry, commerce, markets, shopping and other employment centres, residential, recreation, parks, entertainment, passenger transport, freight and transit stations within the framework of the spatial and master plans for the city or municipality;
 - (d) ensure the integrated development planning for the area under its jurisdiction;
 - (e) promote and undertake infrastructural development and services within the city or municipality;
 - (f) administer and regulate its internal affairs;
 - (g) implement applicable national and county legislation;
 - (h) 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;

- (i) monitor and, where appropriate, regulate city and municipal services where those services are provided by service providers other than the city or municipality;
- (j) prepare its budget for approval by the county executive committee and administer the budget as approved;
- (k) collect rates, taxes levies, duties, fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies as delegated by the county government;
- (l) monitor the impact and effectiveness of any services, policies, programmes or plans;
- (m) establish, implement and monitor performance management systems;
- (n) promote a safe and healthy environment;
- (o) facilitate and regulate public transport;
- (p) 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) In the performance of its functions under this Act, the council of a city or large municipality shall—

- (a) develop annual and long term policies

and programmes and adopt policies, plans, strategies and programmes for purposes of development;

- (b) prepare spatial plans in collaboration with the relevant national and county planning agencies, including plans for land use, zoning and functions for which the city or municipality is responsible within the framework of the spatial or master plans;
- (c) maintain a comprehensive database and information system of the administration and provide public access upon payment of a nominal fee to be determined by a council;
- (d) promote development;
- (e) develop and manage schemes, including site development in collaboration with the relevant national and county agencies.

Functions of a council.

27. The functions of a city or large municipal council shall be to—

- (a) represent the public and take into account the well-being and interests of the city or large municipality;
- (b) approve strategic development plans taking into account the socio-economic and spatial development within the city or large municipality;
- (c) monitor and evaluate provision of services within the city or large

municipality for efficiency and effectiveness;

- (d) ensure the accountability and transparency of the operations of the city or large municipality;
- (e) uphold the financial integrity of the city or large municipality; and
- (f) undertake such other functions as may be conferred upon a council under this Act or any other written law.

Responsibilities and functions of medium and small municipalities

28. Subject to the Constitution and any other written law, a council of a medium and small municipality shall, within its area of jurisdiction, perform all functions assigned by the County Executive Committee.

Ordinary and special meetings of a council.

29. (1) A council shall hold its ordinary meetings at least once every month.

(2) Notwithstanding the provisions of subsection (1), the Mayor may, and upon requisition in writing by at least one-third of the members of a council shall, convene a special meeting of the council at any time for the transaction of the business of the council.

(3) The city or municipal manager shall give notice to the public of the time, date and venue of every ordinary or special meeting of a council.

Public meetings of a council.

30. (1) A council shall hold at least one public meeting in every three months on such a date as a council may determine.

(2) The council shall invite petitions and representations during public meetings from the residents of

the urban area within the jurisdiction of the council with regard to the administration and management of the affairs within that area.

(3) The council shall make recommendations within thirty days from the date of a meeting held under this section on the manner in which issues raised by the residents, if any, may be addressed.

(4) The council shall forward the recommendations made under subsection (3) to the city or municipal manager or administrator for consideration and implementation in such a manner that the manager or administrator may consider appropriate.

(5) The council shall prepare a report of a public meeting held under this section in the prescribed manner, and shall cause that report to be published in a conspicuous public place within its premises, and shall make available to the residents of its area of jurisdiction, a copy of the report at such reasonable fee as may be determined by the council.

Publication of information on operations, etc..

31. A council shall publish information relating to its operations and programmes through the mass media, internet or such other means as a council may determine.

Remuneration of members of a council.

32. The Mayor, Deputy Mayor and members of a council shall not be salaried employees of the council but shall be paid such allowances and benefits that the county government shall, on the advice of the Salaries and Remuneration Commission, determine.

Committees of a council.

33. A council may—

(a) appoint such committees for any general or special purpose which, in its opinion, would regulate or manage its affairs more efficiently and as are necessary for the performance of its

functions under this Act; and

- (b) delegate to such committee such functions as are necessary for the efficient performance of its duties in respect to the whole or part of the area under the jurisdiction of a council.

Special
committee.

34. (1) A council may appoint a special committee to represent interests which are peculiar to the area of jurisdiction of a council.

(2) Notwithstanding any other provision of this Act, a maximum of one half of the members of a special committee may, with the approval of the county governor, consist of persons who are not members of the council.

Governance
and
management of
capital cities.

35. (1) The provisions relating to the governance and management of cities shall apply *mutatis mutandis* to the governance and management of capital cities under this Act.

(2) There shall be an agreement between the National Government and the County Government where the capital city is situated for the performance of functions and delivery of services in the capital city.

(3) The agreement under sub-section (2) shall provide for-

- (a) an administrative structure;
- (b) funding of activities;
- (c) the joint projects to be undertaken;
- (d) dispute resolution; and
- (e) such other information as the National and County Government shall determine.

City and
municipal
manager and
administrator.

36. (1) There shall be a city or municipal manager for every city or large municipality established under this Act.

(2) There shall be an administrator for every medium and small municipality established under this Act who shall be competitively recruited by the County Public Service Commission on such terms and conditions as the Commission shall determine.

(3) A manager shall be a public officer and the chief executive officer of a city or large municipal council and, as such shall—

- (a) be the head of administration of the council and subject to the policy directions of a council;
- (b) be responsible and accountable for the formation and development of an economical, effective, efficient and accountable administration of a council;
- (c) direct and supervise the administration of all departments, offices and agencies of the city or large municipality except as otherwise provided by this Act or any other written law;
- (d) be responsible for the implementation of the city or municipality's integrated development plan;
- (e) the monitoring of progress of the implementation of the plan;
- (f) manage the provision of services to

- the residents of the city or large municipality in a sustainable and equitable manner;
- (g) facilitate appointment, management and effective utilisation and training of staff of the council;
 - (h) be responsible for the maintenance of discipline of staff;
 - (i) implement the decisions of the council and those of the county government which requires to be implemented by the council;
 - (j) facilitate participation by residents and develop and maintain a system of assessment of satisfaction of residents with delivery of services by the city or large municipality;
 - (k) ensure effective enforcement of county laws regarding delivery of service;
 - (l) prepare and accept items for inclusion in the official agenda of all council meetings and meetings of any committees;
 - (m) prepare the annual budget of a council for submission for approval by the council and once approved by the council, transmit it to the county governor for onward transmission to the county legislative assembly for approval;

- (n) prepare quarterly reports for the council on the social and economic conditions and future needs of the city or large municipality, and such other reports as the council may require, and make such recommendations concerning the affairs of the city or large municipality as a council deems necessary;
- (o) be responsible and accountable for—
 - (i) all income and expenditure of the council;
 - (ii) assets and the discharge of all liabilities of the council;
- (p) ensure compliance by the council of the law governing county financial management;
- (q) record proceedings of the meetings of a council and its committees and maintain a record thereof; and
- (r) perform such other functions as may be specified in this Act or any other written law.

(3) The provisions relating to the functions of the manager under sub-section (2) shall apply *mutatis mutandis* to the functions of an administrator under this Act.

(4) The manager shall be an *ex-officio* member of the council but shall have no right to vote at any meeting of the council.

(5) The administrator shall be an *ex officio* member of the oversight committee but shall have no right to vote at

any meeting of the oversight committee.

Appointment of
city or
municipal
manager or
Administrator.

37. (1) A city or municipal manager or administrator shall be competitively recruited and appointed in the manner set out in this section.

(2) Upon a vacancy arising in the office of the city or municipal manager, the body responsible for the county public service shall, by notice in the Gazette and in at least two newspapers of national circulation, invite applications from persons who qualify for appointment under this Act.

(3) The body responsible for county public service shall consider the applications received under subsection (2) to determine their compliance with the provisions of this Act, shortlist and interview the applicants, and forward to the county governor the names of three candidates who qualify for appointment after the interview, giving its recommendations.

(4) The county governor shall, within seven days of receipt of the names under subsection (3), nominate one person for appointment from the names submitted to him or her and shall forward the name of the nominee to the county legislative assembly for consideration and approval.

(5) Where the county legislative assembly approves a candidate nominated under subsection (4) for appointment, the Clerk of the Assembly shall, within seven days from the date of approval, notify the county governor in writing of the approval, and the county governor shall, within seven days from the date of notification by the Clerk, appoint the person so approved to be the city or municipal manager, and shall notify the appointment in the Gazette.

(6) Where the county legislative assembly does not approve a candidate nominated under subsection (4), the Clerk of the Assembly shall notify the county governor

accordingly in writing, within seven days from the date of the determination by the Assembly, and the county governor shall, within seven days of receipt of the notification from the Clerk, communicate the decision to the body responsible for the county public service, requiring that body to nominate other candidates for appointment, and the procedure set out in this section shall apply with respect to a new nomination.

Qualifications
for
appointment of
city or
municipal
manager

38. A person shall qualify to be appointed as city or municipal manager or administrator if the person—

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

Establishment
of departments

39. (1) A council may establish such departments as it may consider necessary for the efficient delivery of services within the city or municipality.

(2) The departments established under subsection (1) may include—

- (a) planning;
- (b) housing;
- (c) water and sanitation;
- (d) engineering and infrastructure;
- (e) trade and economic development;

- (f) social services and community affairs;
- (g) environmental management;
- (h) health;
- (i) education;
- (j) legal affairs;
- (k) finance.

Appointment of directors.

40. (1) Every department of a council shall be headed by a director and shall consist of such other staff competitively recruited by the body responsible for county public service as the council may determine.

(2) Notwithstanding subsection (1), a person shall not be eligible for appointment as a director or member of staff of a city or large municipal council if that person is a member of the council or has been a member of the council within the preceding twelve months.

(3) A director shall be paid such salary, emoluments and allowances as shall be determined by the county government on the advice of the Salaries and Remuneration Commission.

(4) The directors and staff appointed under subsection (1) shall be under the direction, supervision and control of the manager.

Qualifications of directors.

41. A person shall qualified for appointment as a director if the person—

- (a) holds a degree from a recognized university in the relevant field;
- (b) is qualified in accordance with the

Act governing the relevant profession to which the person belongs, where applicable;

- (c) is, where applicable, registered and qualified to practise in accordance with the Act governing the relevant profession to which the person belongs; and
- (d) has at least five years' experience in the relevant field.

PART IV—PROVISIONS ON DELIVERY OF SERVICES

Delivery of service by Council.

42. (1) A council shall, on behalf of the County Government, deliver such services as may be specified by or under this Act or any other national or county legislation.

(2) In the delivery of services under subsection (1), a council may enter into partnership or joint ventures with other service delivery organisations, or establish service boards in the manner provided for under this Part.

Partnerships with utility companies by city or large municipality

43. (1) A council may, in consultation with the county executive committee and with the approval of the county legislative assembly, enter into partnership with a utility company either operating within or outside the county for the provision of necessary services.

(2) Where a council is of the opinion that a service would be best provided by a utility company, it shall first invite applications for partnership from utility companies within the county.

(3) The council shall consider the applications,

prequalify the utility companies in accordance with the law relating to procurement of goods and services and submit the names of the service providers who meet the required pre-determined criteria for delivery of the service to the county governor for onward transmission to the county legislative assembly for approval.

(4) The council shall publish the names of the utility companies pre-qualified under subsection (3) in a public place within its premises and in a newspaper of wide circulation within the county.

(5) Where a council is of the opinion that none of the applicants meets the pre-determined criteria, it may, with the approval of the county executive committee, invite applications from utility companies from outside the county by placing an advertisement in a newspaper of wide national circulation and on its website.

Partnership on provision of infrastructural services by city or large municipality

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

(2) The social infrastructural services referred to in subsection (1) may include—

- (a) construction of roads;
- (b) environmental conservation and preservation;
- (c) protection of cultural sites and historical monuments;
- (d) promotion of tourism and cultural events;

- (e) construction of health centres; and
- (f) provision of emergency health services.

(3) Where a council is of the opinion that an infrastructural service would best be delivered by an agency, it shall invite applications from utility agencies from within its county.

(4) The provisions relating to the pre-qualification of utility companies under section 42 shall with necessary modifications apply to the pre-qualification of agencies in this section.

National
service
providers.

45. (1) Where a national entity is established for the provision of a particular service, a city or large municipal council may, if it considers it necessary, establish a service board for the efficient delivery of the services within its area of jurisdiction.

(2) A service board under subsection (1) shall co-operate with the national entity in ensuring that services are delivered efficiently within its area of jurisdiction.

Joint delivery
of services.

46. For efficient service delivery, cities and large municipalities may undertake joint or cross-county services and may, in this regard establish joint authorities, boards or committees in such manner as may be prescribed by law.

Joint ventures
by city or large
municipalities

47. (1) Subject to subsection (2), a council may, where it is of the opinion that a private sector entity is best able to provide a service, enter into a joint venture with the entity for purposes of delivering the services within its area of jurisdiction.

(2) The provisions relating to pre-qualifications under section 42 shall, with necessary modifications, apply to the pre-qualification of private entities under this section.

Service
delivery by
County
Executive
Committee in
medium and
small
municipalities
Objections.

48. The provisions of this part shall, with necessary modifications, apply in the case of the delivery of services in medium and small municipalities by the County Executive Committee.

49. A resident may object to a council's partnership with a service provider or supplier under this Part but such objection shall be registered with a council within the period prescribed for submission of tenders and such objections shall be disposed before the prequalification of providers or suppliers.

PART V—URBAN AREAS AND CITIES ADVISORY BOARD

Establishment
of the Board.

50. (1) There is established a board to be known as the Urban Areas and Cities Advisory Board.

(2) The Board is a body unincorporate.

Composition of
the Board.

51. (1) The Board shall consist of—

- (a) a chairperson appointed by the President with the approval of the Senate;
- (b) two persons one a woman and one man elected by the association representing county governments;
- (c) two persons one a woman and one man elected by the association of cities and municipalities;
- (d) four persons, of whom two shall be women, respectively nominated by—

- (i) the Institution of Surveyors of Kenya;
- (ii) the Law Society of Kenya;
- (iii) the Institute of Planners of Kenya;
- (iv) the Institute of Certified Public Accountants of Kenya;
- (e) the Principal Secretary of the Ministry for the time being responsible for matters relating to devolved government or his or her representative duly appointed in writing;
- (f) the Principal Secretary of the Ministry for the time being responsible for finance or his or her representative duly appointed in writing;
- (g) the Principal Secretary of the Ministry for the time being responsible for matters relating to land or his or her representative duly appointed in writing;
- (h) the Principal Secretary of the Ministry for the time being responsible for matters relating to planning or his or her representative duly appointed in writing;
- (i) the Attorney-General or his or her representative duly appointed in writing;

- (j) two persons one a woman and one a man nominated by the political parties represented in the National Assembly according to their proportion of members in the Assembly;
- (k) two persons one a woman and one a man nominated by the political parties represented in the Senate according to their proportion of members in the Senate.

(2) The members of the Board under subsection (1) (d) shall be persons of high integrity with at least ten years' experience in community or corporate affairs management, not being public officers.

(3) The members appointed under subsection (1) (j) and (k) shall not be members of either the National Assembly or the Senate.

(4) The appointment of a person under subsection (1), other than an *ex-officio* member, shall be subject to the prior approval of the Senate.

(5) Not more than two-thirds of the members of the Board shall be from one gender.

(6) The Principal Secretary of the Ministry for the time being responsible for matters relating to devolved government shall be the secretary to the Board.

(7) In selecting, nominating or appointing the chairperson and members of the Board, the President and the nominating bodies shall ensure that the Board reflects the regional and other diversity of the people of Kenya.

Term of office.

52. The members of the Board, other than *ex officio* members, shall serve for a term of five years, which

may be renewed for a further and final term of five years.

Vacation of
office.

53. (1) The office of a member of the Board shall become vacant if the member—

- (a) at any time resigns from office by notice in writing to the Cabinet Secretary;
- (b) is removed from office, in the case of the chairperson, by the President, and in any other case, by the Cabinet Secretary, if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) misbehaves or engages in a conduct unbecoming of a member of the Board;
 - (iii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iv) is convicted of an offence involving dishonesty or fraud or an offence under the Anti-corruption and Economic Crimes Act, 2003 or any other written law;
 - (v) is adjudged bankrupt or enters into a composition scheme or

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arrangement with his creditors;

(vi) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Board;

(c) ceases to be a member of the nominating body; or

(d) dies.

(2) The Cabinet Secretary shall notify every resignation, vacancy or removal from office in the Gazette within seven days of its occurrence.

(3) After notification of the vacancy in the Gazette under subsection (2), the appointing or nominating authority shall appoint or nominate another person to fill the vacancy within thirty days from the date of notification of vacancy.

(4) A member appointed to fill a vacancy under this section shall serve for the unexpired term of the member in respect of whom the vacancy arose.

Functions of
the Board.

54. (1) The functions of the Board shall be to—

(a) review, assess and determine urban areas that meet the criteria to be classified as municipalities or cities;

(b) define, designate, delineate and demarcate boundaries for urban areas classified as cities or municipalities;

(c) recommend the assignment or alteration of names of cities or municipalities;

- (d) determine the criteria for amalgamating or splitting cities and municipalities within the county;
- (e) recommend the transfer of any part of the urban area to another urban area within the county.

(2) In undertaking its functions under subsection (1), the Board shall ensure that the interests of employees and the property of the affected councils are sufficiently protected.

(3) In the discharge of its functions under subsection (1), the Board may make such proposals as it shall deem necessary on any of the matters specified in subsection (1), but such proposals shall not have effect unless approved by the Senate.

Public consultations.

55. (1) The Board shall, in carrying out its functions under this Act, conduct public hearings, receive written or oral submissions and consult with experts, the counties, cities and municipalities concerned and such other relevant persons as it may consider appropriate.

(2) A person may make submissions to the Board in relation to its functions under this Act.

Proposals by the Board.

56. When the Board makes any proposals under this Act, it shall cause to be published in the Gazette, a notice stating—

- (a) the place at which the public may inspect—
 - (i) the proposals,
 - (ii) a summary, in respect of each proposal, of the reasons for the

proposal; and

- (b) the last date on which the Board may receive written objections to the proposals, and such date shall not be less than fifteen days from the date of publication of the notice.

(2) The proposals by the Board shall be defined by use of such words, maps, and graphic means as are sufficient to describe them accurately.

(3) Where objections are received under subsection (1) (b), the Board shall publish in the Gazette, a notice—

- (a) containing a summary of the objections;
- (b) stating the place at which the objections are available for public inspection; and
- (c) stating the last day on which the Board may receive written counter-objections to those objections which shall not be less than seven days from the date of the publication of the notice in the Gazette.

(4) The Board shall, before making a final determination on any proposal, duly consider any objection lodged under subsection (1) (b) and counter-objections lodged under subsection (3) (c).

(5) A final determination made by the Board under this section shall be published in the Gazette.

Conduct of
affairs and
business of the

57. (1) The Board shall be as provided for in the Schedule.

Board.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

Committees of the Board.

58. (1) The Board may, from time to time, establish such committees as may be necessary for the effective discharge of its functions under this Act.

(2) The Board may co-opt into the membership of the committee established pursuant to subsection (1) persons whose knowledge and skills are considered necessary in the discharge of the functions of the Board.

PART VI—INTEGRATED URBAN DEVELOPMENT PLANNING

Principles of integrated urban development planning.

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

- (a) give effect to the development duties 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) nurture and promote development of informal commercial activities in an orderly and sustainable manner;
- (d) contribute to the progressive

realization of the fundamental rights and freedoms contained in Chapter Four of the Constitution;

- (e) 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 city 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 city or municipality.

(2) In addition to the principles set out in subsection (1) an integrated urban development plan shall be binding and shall be the principal strategic planning instrument which shall guide and inform all planning, development and decisions regarding planning, management and development

in the city or municipality.

Plan to complement national and county government plans.

60. (1) A city or municipality integrated development plan shall complement and be aligned with the development plans and strategies of the national and county governments.

(2) A city or municipal plan shall—

- (a) comply with the national legislation relating to national development and planning; and
- (b) be incorporated in the county integrated development plan for submission to the national planning body.

Preparation of integrated urban development plans

61. (1) A city or municipality shall prepare an integrated urban development plan.

(2) In the preparation of the integrated urban development plan a city or municipality shall provide for—

- (a) an assessment of the current social, 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 key goals; and
- (j) performance management tools to measure impact and performance and make appropriate course corrections.
- (k) linkage, integration and coordination of sector plans

Adoption of integrated urban development plan.

62. (1) A council shall, within the first year of its election, adopt a single, inclusive strategic plan for the development of the city or municipality.

(2) An integrated urban development plan adopted by a council under subsection (1) may be amended during the term of the council and shall remain in force until an integrated urban development plan is adopted by the succeeding council.

(3) A city or municipality 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 council may determine;
- (b) inform the public that copies of or extracts from the plan are available for public inspection at specified places; and
- (c) provide a summary of the plan.

Contents of
integrated
urban
development
plan.

63. An integrated urban development plan shall reflect—

- (a) a council's vision for the long term development of the city or municipality with special emphasis on a council's most critical development and needs;
- (b) an assessment of the existing level of development in the city or municipality, which shall include an identification of communities which do not have access to basic services;
- (c) a council's development priorities and objectives during its term in office, including its economic development aims and needs;
- (d) a council's development strategies which shall be aligned with any national or county sectoral plans and planning requirements binding the municipality or city;
- (e) a spatial development framework

which shall include the provision of basic guidelines for a land use management system for the city or municipality;

- (f) a council's operational strategies;
- (g) applicable disaster management plans;
- (h) a financial plan, which shall include a budget projection for at least the next three years; and
- (i) the key performance indicators and performance targets.

Formulation of integrated urban development plan.

64. (1) The city or municipality manager shall manage the formulation of the city or municipality's integrated urban development plan and may assign responsibilities in this regard to the city or municipal departmental head in charge of planning.

(2) In managing the formulation of a plan under sub section (1), the city or municipal manager shall take into account the views of the residents of the urban area.

(2) The city or municipal manager shall submit the draft urban development plan to the city or municipal council for adoption.

Submission of integrated urban development plan to the governor.

65. (1) The city or municipal manager shall submit to the governor, a copy of the integrated development plan as adopted by a council 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;
- (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 urban development plan submitted to it under subsection (2) and make recommendations; and
- (b) submit the plan to the speaker of the county assembly.

(4) The speaker shall refer the plan together with the recommendations of the county executive committee to the relevant committee of the county assembly for deliberations and tabling before the county assembly which shall consider and either approve or reject the plans.

Role of county executive committee

- 66.** A county executive committee shall—
- (a) monitor the process of planning, formulation and adoption of the integrated development plan by a city or municipality under this Part;
 - (b) assist a city or municipality with the planning, formulation, adoption and review of its integrated development plan;
 - (c) facilitate the co-ordination and

alignment of integrated development plans of different cities or municipalities within the county;

- (d) facilitate the co-ordination and alignment of the integrated development plan of a city or municipality with the plans, strategies and programmes of national and county governments;
- (e) take any appropriate steps to resolve any disputes or differences in connection with the planning, formulation, adoption or review of an integrated development plan.

Dissatisfaction with a plan.

67. (1) A resident of a city or municipality who considers that—

- (a) the integrated urban development plan required under this Part has not been prepared; or
- (b) the integrated development plan that has been prepared does not meet the requirements of this Part,

may serve an appropriate notice in writing to the city or municipal council indicating the anomaly and requiring a council to rectify it.

(2) The council shall respond to the notice served on it under subsection (1) within twenty one days of receipt of the notice, indicating the manner and time within which it seeks to rectify the situation, failing which the resident may lodge a petition in writing with the county executive committee.

(3) The county assembly committee in charge of

planning shall facilitate public participation in the discussion and consideration of the plans.

Annual review of integrated development plan.

68. A city or municipal council shall review its integrated urban 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 VII—FINANCIAL PROVISIONS

Funds of a council.

- 69.** (1) The funds of a council shall consist of—
- (a) monies allocated by County Assembly for the purposes of the management of a council;
 - (b) monies or assets that may accrue to a council 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 council.

(2) Where a joint board, authority or committee is established for the provision of services within an urban area, the monies allocated to the joint board, authority or committee shall be determined by the councils constituting the joint board, authority or committee.

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

Financial year.

70. The financial year of a council shall be the period of twelve months ending on the thirtieth June in each

year.

Annual
estimates.

71. (1) Before the commencement of each financial year, the manager shall cause to be prepared estimates of the revenue and expenditure of a council for that year.

(2) The annual estimates shall make provision for all the estimated revenue and expenditure of the council for the financial year concerned.

(3) The annual estimates shall be tabled before the council for adoption and approval.

Accounts and
audit.

72. (1) The council shall cause to be kept all proper books and records of account of its income, expenditure, assets and liabilities.

(2) The accounts of the council shall be kept in such manner so as to secure the monies raised by the council or otherwise, or monies received by the council that are not applied for purposes to which such monies are not properly applicable, or monies raised or received for specific purpose, that are not applied for such specific purposes.

(3) Every council shall cause its accounts to be kept in such manner as to show in respect of the financial year to which the accounts relate—

- (a) all receipts and payments of the council during the year; and
- (b) any moneys due but not paid to or by the council in that year.

(4) The accounts required to be kept by the council shall be balanced for every financial year not later than three months from the end of the financial year to which they relate, and an annual financial statement thereof shall be

prepared.

(5) An annual financial statement prepared under subsection (4), or an abstract of accounts, shall be prepared in such form and shall contain such particulars as the county executive committee may by rules prescribe.

(6) Within a period of three months after the end of each financial year, the council shall submit to the Auditor-General the accounts of the council in respect of that year together with—

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

No. 12 of 2003. (7) The Auditor-General shall prepare a financial report as required under the Public Audit Act, 2003 and shall forward a copy of the report to the relevant council in respect of which the audit report is made.

Financial report
to be laid
before council.
No. 12 of 2003.

73. (1) As soon as is practicable, and in any event not later than thirty days from the date of receipt by a council, a financial report prepared under the Public Audit Act, 2003 in respect of the accounts of the council, together with copies of the annual statement or abstract of accounts prepared under this Part relating to the financial year to which such report relates shall—

- (a) be laid by the manager before the council for consideration; and
- (b) be available to any resident of the area within the jurisdiction of the council, upon application and payment of the

prescribed fee by the resident.

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

Display of audited financial statement.

74. The council shall cause its audited annual financial statement to be posted in full in a conspicuous place in a council's offices and on a council's website.

Securing accounting of money or property.

75. (1) Where a council considers it necessary, it may require a person employed by it, who is likely to be entrusted with the custody and control of money or property belonging to the council, to give such security to secure the accounting for the money or property entrusted to that person as the council may determine.

(2) A council may, in the case of a person not employed by it but who is likely to be entrusted with the control of money or property belonging to the council, take such security as it deems sufficient for the accounting for the money or property entrusted to that person.

Delivery of account by officer.

76. (1) Every officer employed by a council under this Act or any other written law shall at such times during the continuance of the office or within three months of that officer ceasing to hold office and in such manner as the council may direct, make and deliver to the council a true record of accounts in writing, of all money and property committed to that officer's charge and of receipts and payments, with vouchers and other documents and records supporting the entries therein and a list of persons from whom or to whom money is due in connection with that office, showing the amount due from or to each.

(2) The officer referred to under subsection (1) shall pay all monies due from him or her to the council.

(3) If the officer—

- (a) refuses or wilfully neglects to make any payments which he or she is required by this section to make; or
- (b) refuses or wilfully neglects to make out or deliver to the council any account, voucher, record or other document which the officer is required by this section to make or deliver, after being given a three weeks' notice in writing, signed by the city or municipal manager,

the officer commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or both.

(4) Notwithstanding subsection (3), a council may recover any sum due to it from any officer through the due process of law.

Establishment
of pension
schemes.

77. Every council shall establish for the benefit of its officers or members such schemes for the management of its pension, benevolent fund, including the payment of annuities, gratuity or any other retirement benefits in accordance with any written law for the time being in force.

PART VIII—MISCELLANEOUS PROVISIONS

Disclosure of
personal
interest by
officers.

78. If it comes to the knowledge of an officer employed by a council 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 council, that officer shall as soon as practicable give notice in writing to the council disclosing the fact that he or she has interest therein.

Official website of a council.

79. Each city or municipal council shall establish and maintain its own official website and the city or municipal manager shall ensure regular update of the website.

Reports.

80. (1) Every council shall render to the county executive committee, not later than the thirty first day of March in each year, a report of its work and of the affairs of its area for the preceding financial year.

(2) A report shall be in such form as prescribed by the county executive committee and shall be accompanied by such other documents or information as may be required.

Councils to furnish county governor with copies of proceedings.

81. (1) Every council shall furnish the county executive committee and any other person as the county executive committee may designate, with certified copies of any proceedings or minutes of the council or its committees, and of records of any of its accounts or such reports, statistics and documents as the county executive committee may from time to time require.

(2) Minutes of the proceedings of each meeting of a council or of any committee thereof which are required to be furnished to the county executive committee as aforesaid shall be forwarded within twenty one days after the minutes have been confirmed as required by or under this Act.

Freedom of speech and immunity of council members.

82. (1) There shall be freedom of speech and discussion in the proceedings of a city or municipal council.

(2) Subject to the provisions of this section, no civil

or criminal proceedings may be instituted in any court or tribunal against a member of a council by reason of anything said in any discussion, petition, motion or other proceedings in the council.

Protection
against
personal
liability.

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

- (a) the mayor or deputy mayor of a city or municipality;
- (b) any member of a council or its management or committee;
- (c) any member of staff or other person in the service of city or municipal council; or
- (d) any person acting under the direction of a council,

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.

Rights and
duties of
residents.

84. (1) Subject to subsection (2), residents of a city or municipality have the right to—

- (a) contribute to the decision-making processes of the city or municipality by submitting written or oral recommendations, representations or

- complaints to a council through the city or municipal manager or administrator;
 - (b) prompt responses to their written or oral communications;
 - (c) be informed of decisions of a council, affecting their rights, property and reasonable expectations;
 - (d) regular disclosure of the state of affairs of the city or municipality, including its finances;
 - (e) demand that the proceedings of a council and its 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 city or municipality provides.
- (2) Residents of a city or municipality have the duty—
- (a) when exercising their rights, to observe the mechanisms, processes and procedures of the city or municipality;
 - (b) to promptly pay the required service

fees, surcharges on fees, rates on property and other taxes, levies and duties imposed by the city or municipality;

- (c) to respect the rights of other residents;
- (d) to allow officers and employees of the city or municipality reasonable access to their property in the performance of their official duties; and
- (e) to comply with all the relevant laws applicable to them.

Participation by residents.

85. (1) A city or municipality 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 capacity of—
 - (i) the residents to enable them participate in the affairs of the city or municipality; and
 - (ii) members of a council 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) notification and public comment procedures, when appropriate;
 - (iii) notification of public meetings and hearings organised by a council;
 - (iv) consultative sessions with locally recognized resident organisations; and

(v) report-back to the residents.

(2) The provisions of subsection (1) shall not be construed as permitting interference with a council's right to govern and exercise its functions.

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

- (a) people who cannot read or write;
- (b) people with disabilities;
- (c) gender; and
- (d) other disadvantaged groups.

Dispute
resolution.

86. Disputes arising between a county government and a city or municipal council shall, in the first instance, be resolved amicably between a council and the county government within the framework set out in the law relating to intergovernmental relations.

Intervention by
county
executive
committee

87. (1) The county executive committee may by, giving notice thereof in the Gazette, intervene in such manner as it shall consider appropriate in the management of a council if the council—

- (a) fails to carry out its functions in accordance with this Act or any other written law;
- (b) fails to formulate its integrated urban development plan; or
- (c) does not operate financial management systems that comply

with any written law relating to financial management.

(2) During the period of intervention, the county executive committee shall suspend any transfer of resources to the council.

Dissolution of a council.

88. (1) The county executive committee may, by notice published in the Gazette, dissolve a council where, in the case of a city council, a petition signed by not less than ten thousand residents and, in the case of a municipal council, a petition signed by not less than five thousand residents, is submitted to the county executive committee and the committee is satisfied on recommendation of a commission of inquiry constituted for the purpose, that the members of a council have failed or refused to discharge their mandate or are incapable of delivering on the tasks for which they were constituted.

(2) Upon dissolution of a council under this section, the county executive committee shall appoint one or more administrators to carry out the functions of the council until a new council is constituted.

(5) The county executive committee shall, within ninety days of the dissolution of a council reconstitute a new council for the city or municipality affected.

Regulations.

89. The Cabinet Secretary may, in consultation with the association of county governors established by law make regulations for the better carrying into effect of the provisions of this Act, or for prescribing anything which is required to be prescribed under this Act.

Repeal.
Cap. 265.

90. The Local Government Act is repealed.

PART IX—TRANSITIONAL PROVISIONS

Saving of existing cities and municipalities.

91. A city or municipality existing at the commencement of this Act shall continue to exist as a city or municipality with its functions, rights and powers until the Board, after a review and re-assessment of the city or municipality, recommends otherwise.

Rights and liabilities.

Cap. 265.

92. All rights, assets and liabilities accrued in respect of the properties vested in the local authorities established under the Local Government Act (now repealed) shall, by virtue of this section, be transferred, vested in, imposed or be enforceable against the councils established under this Act as the case may be, and as shall be determined by the body established by law to deal with transitional matters of the county governments.

Existing by-laws and orders of local authorities.

93. 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 (now repealed), and subsisting or valid immediately before the commencement of this Act shall be deemed to have been given, issued or made by the councils established pursuant to this Act, as the case may be, until their expiry, amendment or repeal.

Staff, officers, etc.

94. (1) Any local authority established before the commencement of this Act, any office created in any local authority, and any member of a local authority duly elected or nominated as councillor, any elected or appointed Chairperson, Vice- Chairperson, Mayor or Deputy Mayor of any local authority, committee, sub-committee or other organ of any local authority shall continue in existence, or to hold office in similar capacity until the expiry of the term of office or until new councils are established after the general elections.

(2) Every person who, immediately before the commencement of this Act was an officer, agent or member of staff duly appointed, seconded or otherwise employed by a local authority shall, on the commencement of this Act and

subject to sub-section (3), become an officer or staff of the councils as may be determined by the transition body established by law to deal with transitional matters of the county governments.

(3) The body established by law to deal with transitional matters of the county governments shall—

- (a) provide for the transfer of officers or members of staff from the local authorities to the councils; and
- (b) make provisions with respect to pension or provident fund benefits of the members of staff of the councils.

(4) A person who does not wish to become an officer or member of staff of a council shall give notice in writing of that decision within fourteen days from the date of commencement of this Act, and that person shall thereupon cease to be an officer or member of staff of the council.

Existing
contracts, etc.

95. (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 such council as the body established by law to deal with transitional matters of the county governments may determine.

(2) Any remuneration payable by any local authority before the commencement of this Act to any person or officer and any liability, debt, decree outstanding against any local authority shall remain payable by the relevant council

in the same manner and from the same source of funds as they were prior to the commencement of this Act or as determined by the body established by law to deal with transitional matters of the county governments.

(3) Any meetings, proceedings or minutes of any local authority, or of a committee or sub-committee thereof and any power, duty or obligation vested in any local authority shall remain valid and effectual on the commencement of this Act until reversed by the relevant council.

Pending actions
and
proceedings.

96. 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 the relevant councils established under this Act, or in such manner as the body established by law to deal with transitional matters of the county governments shall determine.

FIRST SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings.

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least six members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be thirteen members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

Conflict of
interest.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before a council and is present at a meeting of a council at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such

member is vital to the deliberations of the meeting, a council may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(2) A member of the Board shall be considered to have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Board.

(3) Where the Board becomes aware that a member has a conflict of interest in relation to any matter before the Board, the Board shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter.

(4) If the chairperson has a conflict of interest he shall, in addition to complying with the other provisions of this section, disclose the conflict that exists to the Cabinet Secretary in writing.

(5) Upon the Board becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Board and the member with the conflict of interest shall not vote on this determination.

(6) Where the Board determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided for in subparagraph (1), the member shall resign unless the member has eliminated the conflict to the satisfaction of the Board within thirty days.

(7) The Board shall report to the Cabinet Secretary any determination by the Board that a conflict is likely to

interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Board.

(8) The annual report of the Board shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.

(9) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(10) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

Code of
conduct.

3. (1) Within twelve months of the commencement of this Act, the Board shall adopt a code of conduct prescribing standards of behaviour to be observed by the members of the Board in the performance of their duties.

(2) Subject to sub-paragraph (1), before adopting any code of conduct or making any substantial amendments to an existing code of conduct, the Board shall publish the proposed code or amendments in the Gazette and in a newspaper circulating nationally, inviting public comments.

(3) The Board shall include in its Annual Report a report on compliance with the code during the period covered by the Annual Report

(4) The code of conduct adopted or prescribed under this paragraph shall be binding on the Board and its staff.

Execution of
instruments.

4. Any contract or instrument which, if entered into or executed by a person not being a body corporate,

would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

Minutes.

5. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

SECOND SCHEDULE

CLASSIFICATION OF MUNICIPALITIES BY FUNCTIONS

City – (Population 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
Electricity and Gas Reticulation
Abattoirs
Refuse Collection
Solid waste management
Air noise
Child Care Facilities
Pre-Primary Education
Local Distributor Roads
Conference Facilities
Community Centres

Five Star Hotel
Three Star
Homestays
Guest Houses
National Hospital
Referral hospital
County Hospital
University
Constituent University Campuses
Polytechnic
Training Institution
National School
County School
Municipal 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 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

Large Municipalities (100,000 – 249,999)

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
Electricity and Gas Reticulation
Abattoirs
Refuse Collection
Solid waste management
Air noise
Child Care Facilities
Pre-Primary Education
Local Distributor Roads
Conference Facilities
Community Centres
Five Star Hotel
Three Star
Homestays
Guest Houses
National Hospital
County Hospital
Constituent University Campuses
Polytechnic

Training Institution
National School
County School
Municipal Stadium
National Stadium
International Airport
Airport
Airstrip
National Theatre
Theatre
Library Service
Administrative Seat
Financial Hub
Consulate
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

Medium Municipalities (50,000 – 99,999)

Planning and Development Control
Traffic Control and Parking
Street Lighting
Outdoor Advertising

Cemeteries and Crematoria
Libraries
Storm Drainage
Ambulance Services
Heath Facilities
Fire Fighting and Disaster Management
Sports and Cultural Activities
Abattoirs
Refuse Collection
Solid waste management
Air noise
Child Care Facilities
Pre-Primary Education
Community Centres
Three Star
Homestays
Guest Houses
County Hospital
Constituent University Campuses
Polytechnic
Training Institution
National School
County School
Municipal Stadium
Airport
Airstrip
Minor roads
Library Service
Administrative Seat
Museum
Historical Monument
Fire Station
Emergency Preparedness
Postal services
Regional Radio Station
Community Radio
Funeral Parlour
Cemetery
Recreational Parks

Management of Markets
Marine Water front
Animal control and welfare
Religious Institution

Small Municipalities (10,000 – 49,999)

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
 Minor roads
 Museum
 Historical Monument
 Postal services
 Regional Radio Station
 Community Radio
 Funeral Parlor
 Cemetery
 Recreational Parks
 Management of Markets
 Marine Water front
 Animal control and welfare
 Religious Institution

MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide a legislative framework to give effect to the provisions of Article 184 of the Constitution. In so doing, it seeks to make provision for the identification, classification, governance and management of urban areas and cities as contemplated in the Constitution. It similarly seeks to define the criteria to be applied in establishing urban areas and cities.

Part I contains preliminary provisions.

Part II contains provisions on the classification and establishment of urban areas and cities. It sets out those factors which should be considered in the classification of urban areas and cities. It further provides for the conferment of both the city and municipal status on areas that meets the criteria stipulated in the Bill.

Part III contains provisions on the governance and management of urban areas and cities. It provides for the establishment of councils and oversight committees for the governance of cities and the various types of municipalities. It stipulates the manner in which these councils and oversight committees are to be constituted and how will they run their

affairs. This Part also provides for the positions of both mayor and deputy mayor and how those positions are to be filled.

Similarly, this Part provides for the appointment of managers and administrators for the various councils and oversight committees, who shall be responsible for the management of councils and oversight committees, as the case may be.

Part IV contains provisions relating to delivery of services in cities and municipalities. It lays down which services are to be provided and how those services are to be delivered. It provides for cities and municipalities to enter into partnerships and joint ventures with utility companies for purposes of providing certain services.

Part V contains provisions on the Urban Areas and Cities Advisory Board. The Board is established as a body unincorporate. Its composition, term of office of members and its functions have been stipulated in this Part.

Part VI contains provisions on integrated development planning. Cities and municipalities are obliged to formulate urban development plans which will constitute the framework on which to run their affairs and delivery of services to residents.

Part VII contains financial provisions.

Part VIII contains miscellaneous provisions.

Part IX contains transitional provisions.

The enactment of this Bill will occasion additional expenditure of public funds to be provided for in the estimates.

Dated the, 2011.