

SPECIAL ISSUE

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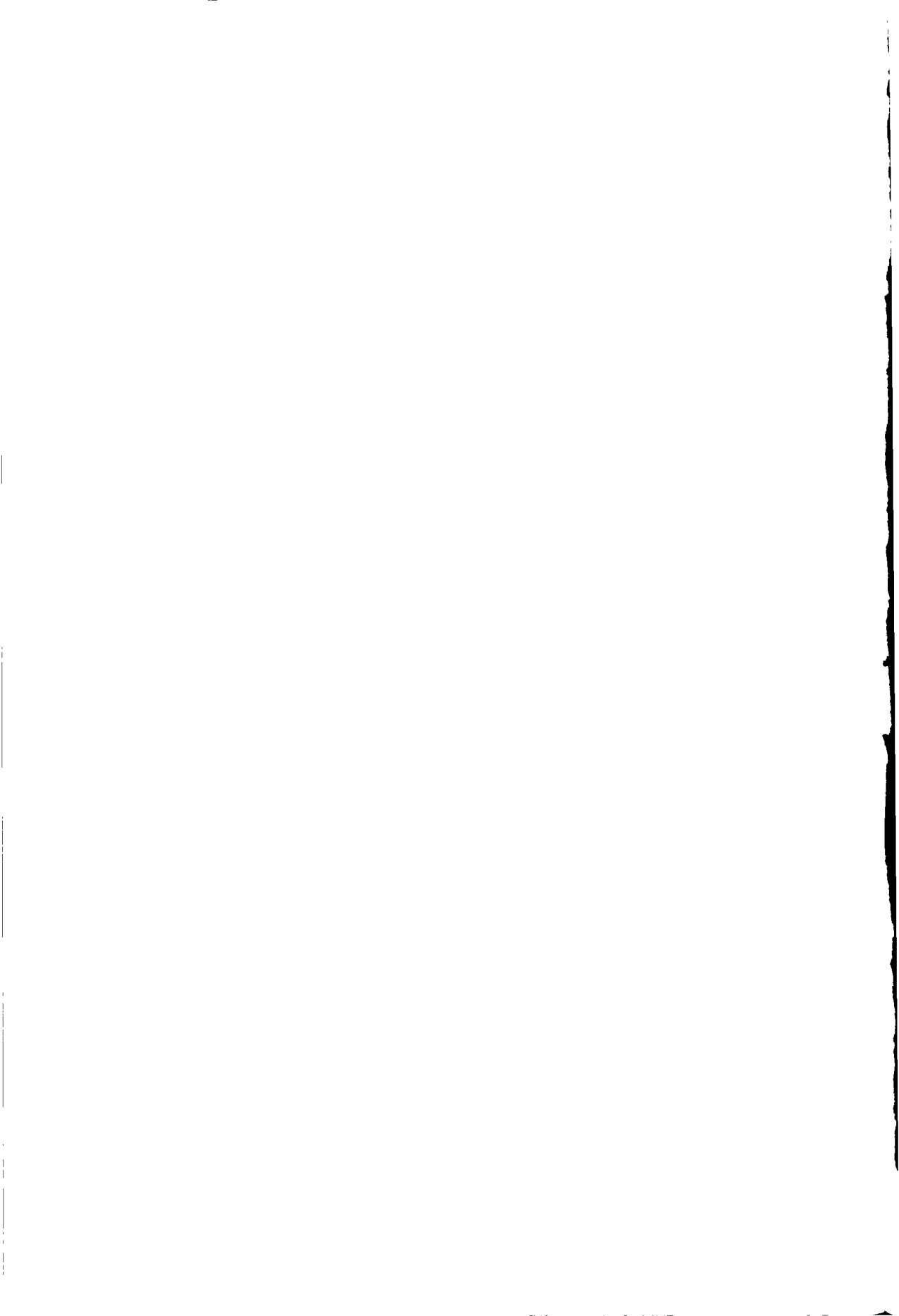
ACTS, 2014

NAIROBI, 24th October, 2014

CONTENT

Act—	PAGE
The Kisii County Transport Act, 2014.....	1

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THE KISII COUNTY TRANSPORT ACT, 2014

No. 13 of 2014

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ARRANGEMENT OF SECTIONS

Section

PART I- PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects and purpose.
- 4—Application.

PART II—THE DEPARTMENT OF TRANSPORT

- 5—Department of transportation.
- 6—Organization of department; officers and employees.
- 7—Functions, powers and duties of the department.

PART III—TRAFFIC, PUBLIC ROAD TRANSPORT AND STREET LIGHTING

- 8—Transportation of hazardous materials.
- 9—Right of entry.
- 10—Operating license.
- 11—Preventing engagement of a public transport vehicle.
- 12—Conveying dangerous or offensive articles in public transport vehicles.
- 13—Boarding and disembarking of public transport vehicles.
- 14—Queues at public transport facilities.
- 15—Payment of fares.
- 16—Rights and duties of passengers when a public transport vehicle becomes defective.
- 17—Actions prohibited on a public transport vehicle.
- 18—Property left in public transport vehicles.
- 19—Obstruction and disruption of traffic.

- 20—Duties of pedestrians.
- 21—Use of hooter.
- 22—Prohibition on use of communication device while driving.
- 23—General Penalty.
- 24—County to install street lighting.
- 25—Maintenance of street lights.
- 26—Damage to street lights.

PART IV—PARKING

- 27—Parking on a public road.
- 28—Prohibited parking areas.
- 29—No parking' and 'street maintenance.
- 30—Towing away of vehicle.
- 31—Parking on alleys.
- 32—Parking on private property.
- 33—Parking of trailers upon public road.
- 34—Parking on taxi zone.
- 35—Parking a taxi cab within a taxi zone with 'Not for Hire' sign.
- 36—Compliance of this act by taxicabs.
- 37—Parallel parking.
- 38—Angle parking where no parking guidelines are visible.

PART V—SAFE AND ADEQUATE SERVICE, JUST AND REASONABLE CHARGES

- 39—Safe and adequate service; just and reasonable charges.
- 40—Tariff schedules; publication.

PART VII—LIGHT RAILWAY

- 41—Development of Light railway.
- 42—Power to enter upon land.
- 43—Regulation of light railway.
- 44—Trespass on a railway.
- 45—Use of a vehicle on a light railway.
- 46—Obstructing authorised officers.

PART VII—GENERAL PROVISIONS

47—Power to make further Regulations.

48—Repeal of by laws.

THE KISII COUNTY TRANSPORT ACT, 2014

AN ACT of the County Assembly of Kisii to establish the county department of transport, to provide for matters relating to traffic, parking, county roads, street lighting, public road transport and for connected purposes

ENACTED by the County Assembly of Kisii as follows—

PART I—PRELIMINARY

1. This Act may be cited as Kisii County Transport Act, 2014.

Short Title.

2. In this Act—

Interpretation.

“authorised person” means any person responsible for carrying out any duty or function or delegated to carry out any duty or function in terms of this Act and includes a traffic marshal, traffic conductor and any other authorised person authorised under any other law;

“county executive member” means the County Committee Executive Member in charge of transport;

“county roads” means all other roads except those marked as National Roads in the Second Schedule of the Kenya Roads Act;

“department” means the county department of transport established under section 5 of this Act;

“director” means the county director of transport under this Act;

“hazardous materials” means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce by all modes;

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“light railway” means a railway whether above, on or under the ground and includes underground metropolitan trains, trams, sky trains, cable trains and magnetic levitation trains.

“motor vehicle” includes a vehicle, machine, bus, tractor, truck trailer or semi-trailer, propelled or drawn by mechanical power and used upon public roads in the transportation of property or passengers, but does not include any locomotive or car operated exclusively on a rail, rails or track;

“owner” when used in relation to goods includes any consignor, consignee, shipper or agent for the sale, receipt, custody, loading or unloading and clearance of those goods and includes any other person in-charge of the goods and his agent in relation thereto; and when used in relation to a vessel includes any part owner, broker, charterer, agent or mortgagee in possession of the vessel or other person or persons entitled for the time being to possession of the vessel;

“permit” means operating Authority issued under this Act;

“person” includes an individual, firm, partnership, association or corporation;

“ranking facility” includes—

- (a) a place upon a public road from which a public transport service may ply for hire or convey and drop off passengers; and
- (b) any place demarcated or designated for the exclusive parking of specific public transport vehicles by a road traffic sign.

“vehicle” means a device designed or adapted mainly to travel on wheels or crawler tracks and includes such a device which is connected with a draw bar to a break down vehicle and is used as part of the towing equipment of a breakdown vehicle to support any axle or all the axles of a motor vehicle which is being salvaged other than such a device which moves solely on rails;

“trailer” means any vehicle designed to be drawn by a motor vehicle, but does not include a sidecar attached to a motor cycle.

3. The objects and purpose of this Act is to provide for all matters necessary to—

- (a) provide for adequate, safe and efficient county transport facilities and services at a reasonable cost to the people;

Objects and
purpose.

(b) facilitate the management, planning and development of county transport facilities and transport infrastructure;

(c) give effect to, and ensure a balanced transport policy and planning.

4. (1) This Act applies to county roads and county transport, infrastructure and services.

Application.

(2) Subject to the provisions of this act priority shall be given to persons with disabilities, elderly persons, pregnant women and any other person with special needs.

PART II—THE DEPARTMENT OF TRANSPORT

5. (1) There shall be in the county a department of transport.

Department of transport.

(2) The head of the department shall be the county director of transport, who shall be appointed by the County Public Service Board, with the approval of the County Assembly, and shall hold office for a term of five years and shall be eligible for re-appointment for one further term.

6. (1) The county department of transport may, in consultation with the County Public Service Board from time to time, create, abolish, transfer and consolidate divisions, and other units within the department not expressly established by law as may be necessary for the efficient operation of the department.

Organization of department; officers and employees.

(2) Each officers and employees shall be a person qualified by training and experience for the performance of the duties assigned to them.

7. The department, by or through the director shall have the following general functions, powers and duties.

Functions, powers and duties of the department.

(1) To co-ordinate and develop a comprehensive and balanced transport policy and planning for the county.

(2) To co-ordinate and assist in the balanced development and operation of transport facilities and services in the county.

(3) To make such studies and analyses of transport problems relating to any aspect of transport in the county.

(4) To partner with and co-operate with—

- (i) officials of the state department having duties and responsibilities concerning transport;
- (ii) officials and representatives of public corporations;
- (iii) official representatives of neighbouring counties and of inter-county agencies on problems affecting transport in the county or counties;
- (iv) officials and representatives of transport facilities and systems in the county;
- (v) persons, organizations and groups utilizing, served by, interested in or concerned with transport facilities and systems in the county.

(5) To exercise all functions, powers and duties relating to traffic regulation and control as set forth in this Act.

(6) To formulate and execute contracts, keep accounts, record personnel data, compile statistics and engage in research opportunities.

(7) To prepare plans, specifications, designs and estimates, and, by the procedures and methods provided by the laws relating thereto, to construct and reconstruct—

- (i) the public roads that are under the jurisdiction of the county;
- (ii) the canals, waterways of the county and structures that are under the jurisdiction of the county;
- (iii) the bridges and grade separation structures that are under the jurisdiction of the county;
- (iv) parking facilities and appurtenances at or adjacent to transportation interfaces and connections to such facilities.

(8) to operate and maintain—

- (i) the county road, other public ways, bridges and grade separations;
- (ii) the canals, waterways and structures of the county; and
- (iii) parking facilities and appurtenances at or adjacent to transportation interfaces and connections to such facilities.

(9) The department of transport shall have power to cooperate with the agencies of other counties and of the National government which are connected with national defense, in the formulation and execution of plans for the rapid and safe movement over county roads of troops, vehicles of a military nature, and materials affecting national defense.

PART III—TRAFFIC AND PUBLIC ROAD TRANSPORT

8. The department is hereby authorized to promote safety in the transportation of hazardous materials by all modes of transport, and in connection therewith it shall have the power to make rules and regulations governing transportation of hazardous materials.

Transportation
of hazardous
materials.

9. An authorised officer may, in enforcing the provisions of this Act, at any reasonable time and without prior notice—

Right of entry.

- (a) enter a public transport service facility to inspect the facility; and
- (b) make enquiries from a person connected with such facility.

10. (1) No person shall drive a motor vehicle on a public road—

Operating
licence.

- (a) except under the authority and in accordance with the conditions of a licence issued to him or her in terms of the relevant law; and
- (b) unless he or she keeps such licence or document or any other prescribed authorisation with him or her in the motor vehicle.

11. No person shall through use of force, intimidation, threats or by any other means, prevent or try to prevent—

Preventing
engagement of a
public transport
vehicle.

- (a) any person from obtaining or engaging a public transport vehicle; or
- (b) the driver of a public transport vehicle from taking on passengers;
- (c) the operation of any public vehicle which is lawfully operated.

12. Knowingly convey a person or thing or allow that person or thing to be conveyed in such vehicle, whether or not the public transport vehicle has been engaged, if that person or thing—

Conveying dangerous or offensive articles in public transport vehicles.

- (a) is not permitted to be conveyed in terms of an existing law; or
- (b) reasonably been exposed to or contaminated by an infectious or contagious disease.

(2) For purposes of this section a person contemplated by section (1) shall include—

- (a) an escaped convict;
- (b) any person escaping from a quarantined area;
- (c) any other person as the County Executive Member may determine.

13. (1) No person may board a public transport vehicle until all persons desiring to disembark from such vehicle have done so.

Boarding and disembarking of public transport vehicles.

(2) No person may board a public transport vehicle where the number of passengers would be in excess of the total number of passengers which it is authorised to carry.

(3) No person may board or alight or attempt to board or disembark from any public transport vehicle whilst such vehicle is in Motion.

(4) While boarding or disembarking priority shall be given to persons with disabilities, elderly persons, pregnant women and any other person with special needs.

14. (1) The department may establish ranking facilities in the county and may further erect or cause to be erected a queue sign or queuing barrier in any suitable form for the purpose of queuing.

Queues at public transport facilities.

(2) All passengers intending to enter any public transport vehicle at an established ranking facility or stopping place must queue from the point at which it is indicated that such public transport vehicle will leave.

(3) Where no queue sign has been erected, passengers waiting to enter a public transport vehicle must form themselves into a queue not exceeding two abreast or in a single file when required to do so by an approved public transport conductor or authorised official of the county.

(4) A passenger may only enter a public transport vehicle when he or she gets to the front of the queue.

(5) Every passenger queuing must comply with all the instructions given by a public transport conductor, authorised officer or authorised official when on duty.

15. (1) A passenger must pay the determined fare for the journey. Payment of fares.

(2) The fare to be paid shall not exceed the amount displayed on the vehicle according to the Public Service Vehicle Act.

16. (1) If a public transport vehicle becomes defective or, for any reason whatsoever, is unable to proceed, the passengers must disembark such defective vehicle and should the passengers have already paid their fares, they are entitled to a refund to the amount of their fares so paid. Rights and duties of passengers when a public transport vehicle becomes defective.

(2) Upon agreement with the driver or owner or operator of the defective public transport vehicle, passengers should be allowed to travel with the next available public transport vehicle for the remainder of the distance in respect of the paid fares, at the cost of the owner of the defective public transport vehicle.

(3) A driver or owner or operator who refuses to refund a passenger, as contemplated in subsection (1), or who refuses to allow a passenger to travel in the manner as contemplated in subsection (2) commits an offence.

(4) Where the vehicle has become defective in an area, the driver shall take reasonable steps to ensure the security of the passengers.

17. The following actions are prohibited on a public transport vehicle when passengers are on board— Actions prohibited on a public transport vehicle.

- (a) smoking;
- (b) playing offensive or excessively loud music;
- (c) using obscene or offensive language;
- (d) committing an offensive act;
- (e) interfering with the comfort of any passenger;
- (f) damaging anything and interfering with the equipment of the public transport vehicle in any way;

- (g) forcibly causing the driver to deviate from his route;
- (h) endangering the life of another passenger;
- (i) interfering with the actions of the driver;
- (j) showing or displaying any pornographic material;
- (k) or any other actions prohibited by any other law.

(2) Any person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding fifty thousand or to a imprisonment for a term not exceeding six months.

18. The driver of a public transport vehicle must carefully examine the vehicle after a trip, and if a passenger has left behind any property in the vehicle, the driver must—

Property left in public transport vehicles.

- (a) deliver that property to the person who left it behind; or
- (b) if he or she is unable to deliver that property to the person who left it behind, take the property, as soon as possible, to the lost property office of his or her employer or to the nearest police station and deposit it with the officer on duty and obtain a receipt for it.

19. (1) No person may park or allow a public transport vehicle to park in a stopping place designated for specific public transport vehicles.

Obstruction and disruption of traffic.

(2) No public transport vehicle may traverse a pedestrian crossing when stopping to enable passengers to be picked up or dropped off.

(3) No public transport vehicle may park in a demarcated parking place any longer than is required to enable waiting passengers to be picked up or dropped off.

20. (1) A pedestrian may cross a public road only at a pedestrian crossing or an intersection or at a distance further than 100 metres from such pedestrian crossing or intersection.

Duties of pedestrians.

(2) Where a marked pedestrian crossing exists at an intersection, a pedestrian may only cross the intersection within the marked pedestrian crossing.

(3) Where a traffic-control light signal, which embodies

pedestrian signals, operates at an intersection, a pedestrian may not commence to cross the roadway in a pedestrian crossing at the intersection while the red light of a pedestrian signal is displayed in the direction opposite to that in which he or she is proceeding.

(4) Where no pedestrian signals are operating at an intersection, but such intersection is controlled by a traffic-control light signal, a pedestrian may not commence to cross the roadway in a pedestrian crossing at the intersection while the red light of the traffic-control light signal is displayed in the direction opposite to that in which he or she is proceeding.

(5) Where a traffic-control light signal, which embodies pedestrian signals, are operating at a pedestrian crossing elsewhere than at an intersection, a pedestrian may only commence to cross the roadway in the pedestrian crossing when the green light of the pedestrian signal is displayed in the direction opposite to that in which he or she is proceeding.

(6) No pedestrian may carelessly, negligently or recklessly disregard, or endanger his or her own safety, or the safety of a person or vehicle using a public road.

21. No person shall on a public road use the sounding device or hooter of a vehicle except when such use is necessary in order to comply with the provisions of this Act or any other law or on the grounds of safety.

Use of hooter.

22. (1) Subject to any other law, no person shall drive a motor vehicle on a public road while holding, using or operating a cellular or mobile telephone or any other communication device in one or both hands or with any other part of the body unless such a cellular or mobile telephone or other communication device is affixed to the vehicle or is part of the fixture in the vehicle and remains so affixed while being used or operated, or is specially adapted or designed to be affixed to the person of the driver as headgear, and is so used.

Prohibition on use of communication device while driving.

(2) An authorised officer may, in the public interest and safety of the public, confiscate and impound a hand held communication device.

(3) The authorised officer must, when confiscating any hand held communication device—

- (a) inform the owner of such communication device of the reasons of confiscating and impounding;
- (b) issue a receipt to the owner of such hand held communication device, stating the place at which such device may be claimed; and
- (c) follow all procedures contained in any policy of the county dealing with the confiscation and impoundment of property.

23. A person who contravenes a provision of this Part commits an offence and is liable to a fine not exceeding one hundred thousand or to imprisonment to a term of imprisonment not exceeding one year, or to both fine and imprisonment.

General Penalty.

24. The County Government shall install street lights within the county with special attention to the following areas; Major Traffic Routes, High Crime Urban Areas, Town Centres, Pedestrian Crossings, Pedestrian Subways, residential areas, foot bridges and shopping centres.

County to install street lighting.

25. The department shall be responsible for the maintenance of streetlights.

Maintenance of street lights.

26. (1) No person shall willfully, carelessly or negligently cause damage to any streetlight.

Damage to street lights.

(2) Any person who contravenes this section shall, upon conviction be liable to a fine not exceeding thirty thousand shillings or a term of imprisonment not exceeding one year or to both.

PART IV—PARKING

27. No person shall park or permit a vehicle to be parked on a public road contrary to a traffic sign or in a manner that impedes the flow of traffic.

Parking on a public road.

28. Unless required or permitted by this Act or by a traffic control device, or in compliance with the directions of a traffic officer, or to avoid conflict with other traffic, no person shall stop or park a vehicle—

Prohibited parking areas.

- (a) at an intersection nearer than ten (10) metres to the projection of the curb line immediately ahead or immediately to the rear;

- (b) within ten (10) metres on the approach to a stop sign or yield signs;
- (c) within five (5) metres of any fire hydrant, or when the hydrant is not located at the curb, within five (5) metres of the point on the edge of the roadway nearest the hydrant;
- (d) within ten (10) metres of the approach to a pedestrian crossing;
- (e) on a sidewalk;
- (f) facing oncoming traffic;
- (g) on any bridge or approach to any bridge;
- (h) in a passenger loading or unloading space posted as such by a traffic control device except when actually taking or discharging passengers;
- (i) on any portion of a public road posted as “No Parking”;
- (j) on any land owned by the county which the county uses or permits to be used as a playground, recreation area, utility lot, or public park, except in such areas designated or posted for parking;
- (k) on any space posted as a fire lane except for emergency vehicles;
- (l) on any space posted for disabled persons parking unless such vehicle is designated as a disabled persons vehicle;
- (m) in a transit zone except a transit vehicle;
- (n) in such a manner so as to obstruct an emergency exit;
- (o) in such a manner so as to obstruct the entrance or exit of a fire hall or ambulance station.

29. Notwithstanding any other provision in this Act, the department through any of its authorised officers or employees, is hereby authorized to cause moveable signs to be posted on or near a road to indicate “No Parking”, or “Street Maintenance” and when so posted, such signs shall take precedence over all other traffic control devices.

No parking' and
'street
maintenance.

30. Any vehicle parked contrary to this act may be towed away at the owner's expense.

Towing away of vehicle.

31. No person shall park a vehicle or permit a vehicle to be parked on private property without the permission or authorization of the owner of the private property or a person having lawful possession or control of the private property.

Parking on alleys.

32. No person shall park or permit to be parked, any trailer upon any public road unless the said trailer is attached to a vehicle by which it may be propelled or drawn and when so attached, the trailer shall be deemed part of the vehicle and subject to the provisions pertaining to vehicles.

Parking of trailers upon public road.

33. No person shall park or permit to be parked a vehicle that is not a taxicab, in an area posted as a taxi zone.

Parking on taxi zone.

34. (1) The operator of a taxicab, except when answering a call, shall not park the taxicab upon any roadway other than within a taxi zone, unless such taxicab is displaying a "Not for Hire" sign and the operator is out of the taxicab.

Parking a taxicab within a taxi zone with 'Not for Hire' sign.

(2) Nothing in this part shall be construed as to allow parking contrary to any other provision of this Act.

35. Notwithstanding the establishment of a taxi zone on a roadway, an operator of a taxicab stopping or parking in such a zone shall comply with the requirements of this Act.

Compliance of this act by taxicabs.

36. When parking a vehicle on a roadway, a person may only park a vehicle—

Parallel parking.

(a) with the sides of the vehicle parallel to the curb or edge of the roadway, and the right wheels of the vehicle not more than five hundred (500) millimeters from the right curb or edge of the roadway; or

(b) in the case of a one-way highway where parking on either side is permitted, with the sides of the vehicle parallel to the curb or edge of the roadway, the wheels that are the closest to a curb or edge of the roadway not more than five hundred (500) millimeters from that curb or edge, and the vehicle facing in the direction of travel authorized for the highway.

37. When a sign indicates that angle parking is permitted or required, and no parking guidelines are visible on the roadway:

Angle parking where no parking guidelines are visible.

- (a) a person may only park a vehicle with the vehicle's sides at an angle of between thirty (30) and sixty (60) degrees to the curb or edge of the roadway; and
- (b) in the case of a vehicle other than a motorcycle, with the nearest wheel not more than five hundred (500) millimeters from the curb or edge of the roadway; or
- (c) in the case of a motorcycle, with the nearest wheel of the motorcycle not more than five hundred (500) millimeters from the curb or edge of the roadway, and the motorcycle angled adjacent to the lane on which the motorcycle is parked.

PART VI—SAFE AND ADEQUATE SERVICE, JUST AND REASONABLE CHARGES

38. Every corporation, person or public transport service providers performing a transport service in the county , shall furnish, with respect thereto, such service and facilities as shall be safe and adequate and in all respects just and reasonable.

Safe and adequate service; just and reasonable charges.

(2) All charges made or demanded by any such corporation, person or transport service provider for the transportation of passengers or property or for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order of the director of transport and made as authorized by this Act .

(3) Every unjust or unreasonable charge made or demanded for any such service or transportation of passengers or property or in connection therewith or in excess of that allowed by law or by order of the director is prohibited.

(4) All transport service providers have a general duty to deal reasonably with customers and adequately address customer complaints.

39. Every county transport service provider shall file with the department of transport and shall print and keep open to public inspection schedules showing the rates, fares

Tariff schedules; publication.

and charges for the transportation of passengers and property within the county between each point upon its route and all other points thereon; and between each point upon its route and all points upon every route leased, operated or controlled by it.

40. (1) Unless the county director of transport otherwise orders, no change shall be made in any rate, fare or charge, or joint rate, fare or charge, which shall have been filed and published by a county transport service provider in compliance with this Act, except after thirty days' notice to the director.

Changes in fares and charges.

(2) The director, for good cause shown, may allow changes in rates without requiring the thirty days' notice and publication herein provided for, by duly filing and publishing in such manner as he may direct an order specifying the change so made and the time when it shall take effect; all such changes shall be immediately indicated upon its schedules by the county transport service provider.

PART VII—LIGHT RAILWAY

41. The department may develop light railway works in the county and in connection thereto may maintain, improve or repair the light railway.

Development of Light railway.

42. (1) An authorised officer may, on production of his or her authorisation if so requested by any person affected, for the purposes of this part enter on any land and—

Power to enter upon land.

- (a) inspect and survey the land and make any inquiry, investigation or examination for the purpose of ascertaining whether or not the land is suitable for the purposes of the construction of a light railway;
- (b) carry out any investigation or examination thereon preliminary or incidental to the purposes aforesaid;
- (c) bring thereon such other persons or equipment as he or she may reasonably consider necessary for the purposes of his or her functions under this section;
- (d) line sight, drill, bore, probe or excavate, or take such samples and carry out such tests as he or she reasonably considers necessary or expedient for the purposes of such functions.

(2) Before an authorised officer enters any dwelling house under subsection (1), he or she shall obtain the consent (which shall not be unreasonably withheld) of any owner or occupier of the dwelling house.

43. (1) The Department may make Regulations generally for the purposes of giving effect to this part.

Regulation of
light railway.

(2) The department may make Regulations for the management, control, operation and the regulation of a light railway and in relation to the repair, improvement, extension and development thereof and, without prejudice to the generality of the foregoing, in relation to any one or more of the following matters—

- (a) the regulation of the times of arrival and departure of light railway vehicles;
- (b) the prevention of the commission of nuisances in or upon light railway vehicles;
- (c) the prevention of damage to light railway vehicles;
- (d) the removal from or the prohibition of the use on a light railway line of any vehicle or thing which is or may become a danger to life, health, the operation or maintenance of a light railway or would otherwise interfere with the proper operation of a light railway;
- (e) the fixing, altering, charging and recovery of fares, fees, tolls and charges in respect of the travelling upon or use of light railway vehicles;
- (f) the general regulation, subject to any statutory provisions in that behalf, of the travelling upon or use of light railway vehicles and the working of light railway transport services by the board;
- (g) the safe custody and redelivery or disposal of any property found on or in any light railway vehicles of the county and the fixing of charges in respect thereof.

(2) Regulations under this section may contain such incidental, subsidiary and ancillary provisions as the department considers necessary or expedient for the purposes of the Regulations.

(3) A person who contravenes a regulation under this section shall be guilty of an offence and shall be liable upon