MOMBASA COUNTY GAZETTE SUPPLEMENT

ACTS, 2016

NAIROBI, 27th May, 2016

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No. 8 of 2016
Date of Assent: 3rd May, 2016
Date of Commencement: See Section 3
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THE MOMBASA COUNTY ROADS ACT, 2016

AN ACT of the County Assembly of Mombasa to provide for the integration, construction, maintenance and management of public roads, motor ways, public transport systems and protected roads, tolling of public roads and others matters incidental to the proper management of the County road network systems

ENACTED by the County Assembly of Mombasa, as follows—

PART I — PRELIMINARY

Short title

1. This Act may be cited as the Mombasa County Roads Act, 2016.

Interpretation.

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

“authorised person” means a person authorised in writing by the Directorate or any other applicable law;

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

“County Government” has the meaning as assigned to it by the Constitution of Kenya, 2010;

“county road” means a public road or a proposed public road within the County except a road classified as a national road;

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

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

“development” has the meaning assigned to it by the Physical planning Act 1996;

“development plan” means an aspect of County planning comprising of a set of documents that set out policies and proposals for the development and use of land in the Mombasa County;

“directorate” means the County Department in charge of roads;

“discontinue” means to terminate the construction, maintenance and management of the road;
“drain” includes a ditch, channel, gutter, pipe, tunnel, culvert, soak pit, percolation area or percolation trench or a barrier to divert water into a drain.

“Executive Member” means the County Committee Executive Member in charge of Transport and Infrastructure;

“footpath” means a road over which there is a public right of way for pedestrians only, not being a footway;

“footway” means that portion of any road associated with a roadway which is provided primarily for use by pedestrians;

“functions” includes powers and duties and references to the performance of powers and duties;

“Governor” means Governor of the County Government of Mombasa;

“land” has the meaning assigned it by the Lands Act;

“licensing records” means records maintained under section 60(2) (inserted of the Finance Act;

“maintenance” in relation to public roads includes improvement and management;

“national road” means a public road or a proposed public road which is classified as a national road under Schedule 4 of the Constitution of Kenya, 2010;

“planning authority” means the department in charge of land and physical planning;

“planning permission” means permission under Physical Panning Act of 1996;

“proposed road development” means any road planned for maintenance or improvement in respect of which an environmental impact statement is required to be prepared under section 16;

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

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

“Road” includes—

(a) any street, lane, footpath, square, court, alley, drainage or passage;
(b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway;

c) any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gulley, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channels, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road; and

d) any other structure or thing forming part of the road and necessary for the safety, convenience.

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

(a) the Directorate; or

(b) where the Directorate has entered into—

(i) an agreement with another person under section 26 in relation to any of the matters referred to in paragraph (e) of that section, or

(ii) an arrangement with a partner under the Public Private Partnership Act, 2013 in relation to any of the matters referred to in paragraph (a) of that subsection, that other person or partner;

(c) any road constructed by the County.

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

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

“Service area” means an area beside or in the proximity of a public road where services and facilities for users of the road are provided;

“Structure” means an authorized building or construction, vegetation, amenity, movable or immovable that is connected to and forms part of the roads system;

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

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

(b) for any other purpose connected with a scheme;
“Traffic sign” means any sign, notice, signal, light or other device erected or in any way displayed by or with the consent of a relevant authority, for the purpose of regulating, restricting or prohibiting traffic and vehicles of any kind, on a road;

Provided that all traffic signs shall conform to any regulations as to size, colour and type which may be prescribed by rules made under this Act;

“toll” means a charge, fee, payment, levy, tariff or tax payable for the use of a road;

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

“toll scheme” means a scheme under section 20 of this Act;

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

Commencement

3. This Act shall come into operation upon publication in the Gazette.

PART II—CLASSIFICATION OF COUNTY ROADS AND ASSIGNMENT OF FUNCTIONS

Classification of County roads

4. (1) Where a road has been classified as a county road under any applicable law, the Executive Member shall by order classify such road as a county road.

(2) The Executive Member may by order—

(a) designate particular roads for particular purposes taking it into account existing numbering system;

(b) divide a particular class of roads into subclasses.

(3) The Directorate shall assign a number or other identifying mark to each County road in respect of which it has responsibility.

(4) (a) The Directorate shall keep a schedule and map of all public roads in respect of which it has responsibility.

(b) The Directorate shall prepare the schedule and map as soon as practicable after the commencement of this act and shall take all reasonable measures to keep the schedule and map up to date.

(c) The schedule and map shall be kept at the offices of the Directorate and shall be available for inspection during office hours.
(d) The schedule and map may be kept otherwise than in a legible form provided that the information contained therein is capable of being reproduced in a legible form.

(5) The Directorate shall, at the request of the Executive Member and in such manner as may be specified by him, carry out an inventory of all public roads, or of any class or subclass of public road, in respect of which it has responsibility.

(6) The Executive Member shall upon the recommendation of the Directorate, order for the removal or demolition of any encroachment or structure on a county road.

(7) Any demolition or removal pursuant to subsection (6) above shall be by notice of not less than thirty days and not more than sixty days and shall be served by—

(a) delivering it to the person encroaching on a county road;

(b) leaving it at the usual or last known place of abode of the person encroaching a county road; or

(c) sending it by registered post addressed to the person encroaching a county road at his usual or last known address.

Declaration of public roads

5. (1) The Executive Member may in consultation with the department in charge of physical planning, by order—

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

(b) Where the Executive Member proposes to declare a road to be a public road he shall—

(i) satisfy that the road is of general public utility;

(ii) satisfy that the road is not on private land, but if on private land, the owner of the private land shall be adequately compensated;

(iii) consider the financial implications for the Directorate of the proposed declaration;

(iv) publish in one or more newspapers circulating in the area where the proposed road is located a notice indicating the time (which shall be not less than one month), place and
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period during which a map showing such road may be inspected;

(v) state in the notice that objections or representations may be made in writing to the Directorate in relation to such declaration before a specified date (the notice shall be not less than two weeks after the end of the period for inspection);

(vi) consider any objections or representations made to it under this section.

(2) The consideration of objections or representations and the making of an order under subsection (1) shall be a reserved function of a review committee comprising of five members appointed by the Executive Member.

(3) The review committee established in subsection (3) above shall consist of—

(a) an Advocate of the High Court of Kenya with not less than ten years post-admission experience;

(b) a Valuer with not less than ten years experience;

(c) a Land Surveyor with not less than ten years experience; and

(d) two representatives of the public from the area in which the land is to be declared a public road.

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

Re-classification of public roads

6. (1) The County shall re-classify a public road in accordance with the provisions of this Act.

(2) Where the Directorate proposes to re-classify a public road it shall—

(a) publish in one or more newspapers circulating in the area where the public road proposed to be re-classified is located a notice indicating the times at which, the period (which shall be not less than one month) during which and the place where a map showing such public road may be inspected and stating that objections or representations may be made in writing to the Directorate in relation to such proposal before a specified date (which shall be not less than two weeks after the end of the
period for inspection) and stating that persons making such objections or representations may make a request in writing to state their case at an oral hearing conducted by a person appointed by the road Directorate for that purpose;

(b) affix a copy of such notice in a prominent position at each end of the public road proposed for a period not less than fourteen days;

(c) consider any objections or representations made to it under paragraph (a) and not withdrawn;

(d) if it considers it appropriate, afford an opportunity to persons making objections or representations and who so request in writing to state their case at an oral hearing conducted by a person appointed by the Directorate and consider the report and any recommendation of the person so appointed.

3 (a) The Directorate shall no longer be responsible for the maintenance of a County road from the date on which the order re-classifying it is made by the Directorate,

(b) The re-classification of a public road shall not affect any public right of way over such road and the Directorate shall not do anything to interfere with such right of way save as is provided for in law.

4 The Directorate shall as soon as may be after a public road has been re-classified publish notice of such re-classification in the newspaper or newspapers in which notice of the proposed re-classification was published under subsection (2) (a) and shall notify in writing any person who made written objections or representations to it in relation to such Re-classification.

5 A person who, without permission of the Directorate, removes, or who defaces or damages a notice erected under subsection (2) (b) shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings, or to both.

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

7. (1) The maintenance and construction of all county roads shall be the function of the County Directorate.

(2) The expenses of the Directorate in respect of its functions under subsection (1) shall be charged on the departmental financial allocation.
(3) In the performance of its functions under this Act the Directorate shall consider the needs of all road users.

(4) (a) A person or group of persons may, with the consent of the Chief Officer, carry out maintenance works on a County road.

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

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

(i) the works shall be deemed to have been carried out by the Directorate; and

(ii) the person or group (and each member thereof) who carried out the works shall be indemnified by the Directorate against all actions and claims howsoever arising in respect of the works and the carrying out of works.

(d) The Directorate may provide materials, plant, equipment and the services of its staff to a person or group carrying out works under this subsection.

(5) The Directorate may do all such things as may arise out of or are consequential on or are necessary or expedient for the performance of its functions under this Act or otherwise in relation to public roads or are ancillary thereto.

(6) Notwithstanding the definition of “road” in this act, nothing in this Act shall be construed as imposing on the Directorate any liability, duty or obligation to—

(a) construct or maintain fences or retaining walls adjoining a public road which are the responsibility of any other person and which do not form part of the road; or

(b) construct or maintain any bridges, tunnels, railway crossings or any other structure which by virtue of any enactment are the responsibility of a railway company or National government or other person.

7 (a) A person who, without approval of the Directorate or the consent of the Chief Officer—

(i) erects an illegal structure or amenity on a public road;
(ii) defaces a public road by writing or by any other means;
(iii) damages a public road;
(iv) excavates a public road;
(v) places or deposits any material or thing on a public road;
(vi) permits dung or urine from an animal owned by him or any material or thing which falls from a vehicle owned or used by him, to be left on a public road; or
(vii) does any other thing, such that the material, thing, dung or urine or the doing of such other thing is a hazard or potential hazard to persons using a public road or obstructs or interferes with the safe use of a public road or the maintenance of a public road,

shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both.

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

(c) Where a person does anything in contravention of paragraph (a), the Directorate may remove any defacing and repair any damage, fill in any excavation, remove any material, thing, dung or urine or remove or reduce any hazard, potential hazard, obstruction or interference and may recover from such person, as a simple contract debt in any court of Law, any costs reasonably incurred by it.

Agreements and arrangements between National Government road Authorities and the County Government

8. (1) Whenever it appears to the Executive Member that arrangements should be made by two or more road authorities for the joint discharge of any of their functions relating to national or county roads the Executive Member may request the road authorities to enter into arrangements in accordance with such terms and conditions as the Executive Member may specify.

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

(3) The Executive Member shall carry out any agreement or arrangements to which this section relates and to which it is a party in accordance with the terms thereof.
(4) It shall be the duty of the Executive Member which is a party to an agreement or arrangement under this Act to furnish to the Executive Committee and County Secretary a copy of such agreement or arrangement.

PART III—ROAD USAGE AND PROTECTED ROADS

Use of County roads

9. Use of a County road shall be subject to this Act, regulations and any other applicable law.

Protected roads

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

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

(i) specified types of traffic,

(ii) specified classes of vehicles, but shall not prohibit or restrict such use by ambulances, fire brigade vehicles, security agencies, the defense forces for the purpose of maintaining such protected road.

(b) A person who contravenes a prohibition or restriction under paragraph (a) shall be guilty of an offence.

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

11. (1) (a) Upon recommendation of the Directorate in consultation with the physical planning authority, the Executive Member may, by notice remove any protected road, or part thereof, from the protected road scheme.

(b) Upon recommendation of the Directorate in consultation with the physical planning authority, the Executive Member may modify a protected road scheme and such modifications shall take effect from the date of such order.

(2) A person shall not undertake any development of land which would permit or involve direct access to or from a public road or which
would contravene the provisions of an approved protected road scheme relating to direct access to or from a protected road.

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

(b) Any person who contravenes subsection (2) shall be guilty of an offence.

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

Environmental Impact Assessment

12. (1) The Directorate shall prepare an Environmental Impact Assessment of any proposed road development and construction of a public road.

(2) Where the Directorate considers that any proposed road development consisting of the construction of a proposed public road or the improvement of an existing public road is likely to have significant effects on the environment, it shall inform the Executive Member in writing and where the Executive Member concurs with the road Directorate he shall give a direction to the road Directorate.

Acquisition of land

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

Control of works by County Government

14. (1) Any works to be done on public roads that can affect the road network system, shall not be undertaken without the consent of the Directorate.

(2) The carrying out by a state authority of emergency works necessary to eliminate or reduce danger or risk to persons or property or of maintenance works shall not require consent; however it shall be necessary to inform the Directorate as soon as is practicable.

Service areas or public roads schemes

15. (1) A public road scheme may include provision for a service area.
(2) Where a public road scheme approved includes provision for a service area or a service area provided is located on a public road, the Directorate may—

(a) provide or operate in the service area facilities or services for persons and vehicles using the public road to which the scheme relates,

(b) make an agreement with any person whereby that person, either by himself or herself or jointly with the Chief Officer in charge of transport provides or operates in the service area such facilities or services.

Toll schemes

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

(2) The Chief Officer in consultation with the Directorate, may give special consideration to the question of exempting from tolls.

(3) A scheme prepared under subsection (1) shall—

(a) specify the public road or proposed public road in respect of the use of which it is proposed to establish a system of tolls;

(b) indicate the classes of vehicles and road users for whose use the toll road is intended;

(c) indicate the classes of vehicles which and road users who will be charged tolls in respect of such use;

(d) include an estimate of the amounts of the tolls that it is proposed to charge in respect of the use of the toll road by such vehicles and road users;

(e) specify the manner and method of the charging of and collection of tolls;

(f) specify such other information as the road Directorate making the scheme considers appropriate or the Executive Member prescribes by regulations.

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

(a) information in relation to the general arrangements for the construction, maintenance and operation of the toll road to which the scheme relates and for the payment of the cost of such construction, maintenance and operation;
(b) estimates of the cost of the road, capital costs and operating costs of the tolling road;

(c) estimates of the volume and kind of traffic that will use the road and the amounts of the tolls in respect of such traffic.

(5) The Chief Officer may amend a toll scheme adopted by him under this Act.

(6) (a) The County shall, before adopting a scheme prepared under this Act, send a copy of the scheme to the appropriate road Authority and serve a notice stating—

(i) that a scheme has been prepared; and

(ii) that representations may be made in writing to the Directorate in relation to the scheme before such date as is specified in the notice (being not less than 6 weeks from the date of service of the notice).

(b) The Directorate shall consider any representations made to it pursuant to a notice under paragraph (a).

Toll schemes

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

(a) stating that a draft toll scheme has been prepared,

(b) indicating the place, time and a duration of not less than thirty days for viewing of a copy of the scheme prepared, inspection of the map and any explanatory statement; and

(c) stating that objections to the draft toll scheme may be made in writing to the Directorate before such date as is specified in the notice (being not less than 2 weeks from the end of the period for inspection referred to in paragraph (b).

(2) (a) Subject to paragraph (b), the Directorate may adopt a scheme prepared by it under subsection (1), with or without modifications and, subject to subsection (3), a scheme so adopted is hereafter in this Act referred to as a “toll scheme”.

(b) If an objection to a draft toll scheme is made to the Chief Officer and the objection is not withdrawn, the Chief Officer shall cause an oral hearing to be held into the matters to which the objection relates, by the Review Committee established
under section 5(2), and shall consider the report of and any recommendation made by review committee.

(3) The Chief Officer upon approval shall gazette a toll scheme and the same shall come into force on the day of such publication.

**Power to charge tolls**

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

(2) Subject to the provisions of this Act, the Directorate may collect revenue in accordance with the Public Finance Management Act, 2012.

**Revocation of toll scheme**

19. (1) The Directorate may by order revoke a toll scheme adopted by it under section 17.

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

(a) stating that it proposes to revoke the scheme;

(b) indicating the times at which, the period (being not less than one month from the first publication of the notice) during which, and the place at which, a copy of the proposal may be inspected;

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

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

(4) The Directorate may at its discretion cause an oral hearing to be held into any matter to which objections or representations, made in accordance with a notice under subsection (2) and not withdrawn, relate, by a person appointed by the Directorate, and where the Directorate causes an oral hearing to be so held it shall, before revoking the toll scheme under subsection (3), consider the report of and any recommendation made by that person.
(5) The Directorate shall publish in one or more newspapers circulating in the area where the toll road is located notice of the making of any order under subsection (1).

**Offences**

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

(2) (a) Notice of the charge of a toll may be served on a person by the road undertaking concerned by post—

(i) at the place where the person ordinarily resides or carries on business; or

(ii) if an address for the service of such a notice has been provided by the person, that address, or where arrangements have been made between the person and the road undertaking by such means specified (such as electronic mail) to the place or address specified, in the arrangements.

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

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

(a) recording the date and time of a vehicle passing through the toll road and whether payment in respect of the vehicle for the use of the road has been discharged or incurred; and

(b) taking photographic images of the vehicle and its identification mark.

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

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

(6) A person who by his or her actions does anything to avoid being charged or paying a toll while on a toll road is guilty of an offence.
(7) A person guilty of an offence under this section is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding 6 months, or to both.

Road users' duty of care

21. (1) A person using a public road shall take reasonable care for his own safety and for that of any other person using the public road.

(2) A person using a public road shall take all reasonable measures to avoid—

(a) injury to himself or to any other person using the public road;

(b) damage to property owned or used by him or by any other person using the public road.

Cycle ways

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

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

(a) that the cycle way is for the exclusive use of pedal cyclists; or

(b) that the cycle way is for the exclusive use of pedal cyclists and non-motorized transportation.

(3) Any person who uses a cycle way in contravention of an order under subsection (2) above shall be guilty of an offence and liable on conviction to imprisonment to a term not exceeding three months or to a fine not exceeding ten thousand shillings or, or to both.

Temporary structures on county roads

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

(2) An authorised person may remove a temporary structure from a county road.

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

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

(5) A temporary structure removed and stored under this section may be given to a person claiming the temporary structure if he makes a declaration in writing that he is the owner of the structure or is authorised by its owner to claim it.

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

(a) the owner of the temporary structure fails to claim it and remove it from the place where it is stored within one month of the date on which a notice under subsection (4) was served on him; or

(b) the name and address of the owner of the temporary structure cannot be ascertained by reasonable inquiry.

(7) A temporary structure shall not be disposed of under this section within forty five days of the date of its removal under this section.

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

**Dangerous structures and trees**

24. The owner of any structure or anything introduced to a land which is situated on a public road shall take all reasonable steps to ensure that—

(a) the structure or the use of the land thereof is not a hazard or a potential hazard to other road users.

(b) It does not interfere or obstruct the safe use or maintenance of a public road.

(2) Any person who contravenes subsection (1) above commits an offence and is liable on conviction to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings, or to both.

(3) Any person not satisfied with any action taken pursuant to this section may appeal to the Review Committee established under section 5(2).

(4) Any person not satisfied with a decision of the Review Committee may seek legal redress in a Court of Law.

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

(6) Where the Directorate takes action under subsection (5) it may recover any reasonable costs incurred by it from the owner or occupier as a simple contract debt in any court of competent jurisdiction.

(7) Where the Directorate has entered or proposes to enter on any land under subsection (5), it shall as soon as may be served on the owner or the occupier of the land, a notice stating that it has entered or proposes to enter on the land and specifying the action that it has taken or proposes to take thereon.

(8) (a) Where a person takes action—

(i) to remove, modify or carry out specified works in relation to a structure, or

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

(b) A person who contravenes this subsection shall be guilty of an offence and is liable on conviction to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings, or to both.

Road races

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

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

(i) prohibit the holding of the road race;

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

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

(3) Any person who contravenes subsection (2) shall be guilty of an offence.

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

(a) requirements in relation to the making and consideration of objections,

(b) requirements in relation to the giving of security or the provision of an indemnity.

Temporary closing of roads

26. (1) The Directorate may by order—

(a) for the purpose of facilitating a road race under section 25, or any other event;

(b) for the purpose of facilitating the carrying out of works; or

(c) for any other purpose;

close a public road to traffic for such specified period and subject to such specified conditions as it thinks fit.

(2) (a) A person who uses a public road in contravention of an order made under subsection (1) shall, unless he is authorised in writing by the Directorate to do so, be guilty of an offence.

(b) A person who obstructs or interferes with the holding of a road race or any other event or with the carrying out of works or any activity in respect of which an order under subsection (1) is in force shall be guilty of an offence.

(c) A person who holds, organises or promotes a road race or other event or who carries out works or any other activity in respect of which an order under subsection (1) is in force and who contravenes any condition specified in that order shall be guilty of an offence.

(d) A person who without lawful authority closes a public road shall be guilty of an offence.
Drainage

27. (1) The Directorate may construct and maintain drains in, on, under, through or to any land for the purpose of draining water from, or preventing water flowing onto a public road,

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

(a) at least one month before the date upon which it proposes to enter on the land, serve a notice on the owner or occupier of the land—

(i) stating that it proposes to enter on the land;

(ii) specifying the function that it proposes to perform thereon;

(iii) stating that objections or representations may be made in writing to the Directorate in relation to the proposed performance of the function before a specified date which shall be not less than two weeks from the date of service of the notice; and

(iv) informing him of his right to restoration of his property.

(b) consider any objections or representations made to it under paragraph (a).

(3) (a) Where as a result of flooding, landslide, subsidence or other emergency there is an immediate and serious hazard to persons using a public road or serious damage has been, is being or will be caused to a public road, the Directorate may take immediate action to remove or reduce the hazard or prevent or reduce the damage or any further damage.

(b) In the exercise of its functions under paragraph (a), the Directorate may enter on any land and carry out any works or do anything which it considers necessary for the purposes of paragraph (a).

(4) The owner or occupier of any land adjacent to a public road shall take all reasonable steps to ensure that water, soil or other material is prevented from flowing or falling onto a public road from his land.

(5) The Directorate may serve a notice in writing on the owner or occupier of any land adjacent to a public road requiring him to carry out specified works or take specified measures to prevent water, soil or other material from flowing or falling onto a public road from his land.

(6) (a) A person on whom a notice under subsection (5) has been served may, within fourteen days from the date of service, appeal against
the notice to Review Committee established in this Act on any one or more of the following grounds—

   (i) that he is not the owner or occupier of the land;

   (ii) that water, soil or other material was not and is not flowing or falling onto a public road from his land;

   (iii) that compliance with the requirements of the notice would involve unreasonable expense;

   (iv) that the notice specified an unreasonably short time for complying with its requirements or any of them.

(b) Notice of the appeal shall be given to the Review Committee through the Chief Officer.

(7) An owner or occupier who fails to comply with a notice under this section shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings, or to both.

(8) Where an owner or occupier fails to comply with a notice under this section, the Directorate may take the action specified in the notice or such other action prescribed by law.

(9) Where the Directorate takes action under this section, it may recover any reasonable costs incurred by it from the owner or occupier as a simple contract debt in any court of competent jurisdiction.

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

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

   (ii) interferes with, or carries out any works which interfere with, a bridge, culvert, retaining wall, embankment or other structure providing lateral or other support for a public road,

     shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings, or to both.

(b) A consent under paragraph (a) may be given by the road Directorate subject to such conditions, restrictions or requirements as it thinks fit and any person who fails to comply with such conditions, restrictions or requirements shall be guilty of an offence.
(c) (i) Where the Directorate considers that the carrying out, with or without its consent, of an activity referred to in paragraph (a) has damaged, is damaging or will damage a public road, it may serve a notice in writing on the person carrying out such activity or on the owner or occupier of the land on which such activity is being carried out requiring that the activity cease forthwith and a person who fails to comply with a notice served on him shall be guilty of an offence.

(iii) The Directorate may repair any damage and take measures to prevent or reduce any damage relating to an activity under paragraph (a) and may, where it has not given its consent under that paragraph, recover from the person carrying out the activity or the owner or occupier of the land, as a simple contract debt in any court of competent jurisdiction, any costs reasonably incurred by it.

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

Powers of inspection

28. (1) Any authorised person shall be entitled to enter at all reasonable times subject to producing his authority in writing or identification and inspect any land for the purposes of this Act.

(2) An authorised person shall be entitled in the performance of his functions under this section to take with him on to land such persons and equipment as he considers necessary to assist him and to carry out such surveys, investigations, excavations, borings or tests, to take samples or to do any other thing which he considers necessary for the purposes referred to in subsection (1).

(3) Where an authorised person is denied entry to land in the exercise of his functions under this section the Executive member, or the Chief Officer, as the case may be, may apply to the Court for a warrant authorising such entry.

Service of notice

29. Whenever the Executive Member is satisfied in relation to a notice required to be served under this Act that—

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

Application of monies

30. Monies accruing to the Directorate under this Act shall be applied in accordance with Public Finance Management Act, 2012.

Disposal of proceeds of sale

31. Where the Directorate will become entitled to dispose or procure the disposal of anything removed from a public road under this Act, the Directorate shall do so in accordance with the Public Procurement and Disposal Act, 2005 and any other applicable law.

General Penalty

32. Any person contravening any provision of this Act, for which no other punishment is given is liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year, or to both.

Regulations

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