

SPECIAL ISSUE

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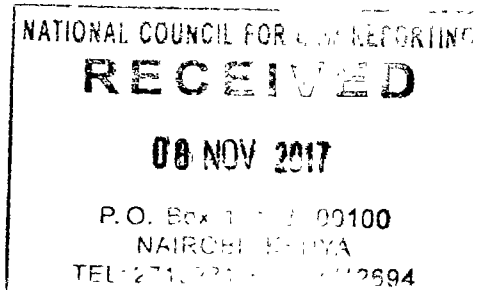
NAIROBI, 13th October, 2017

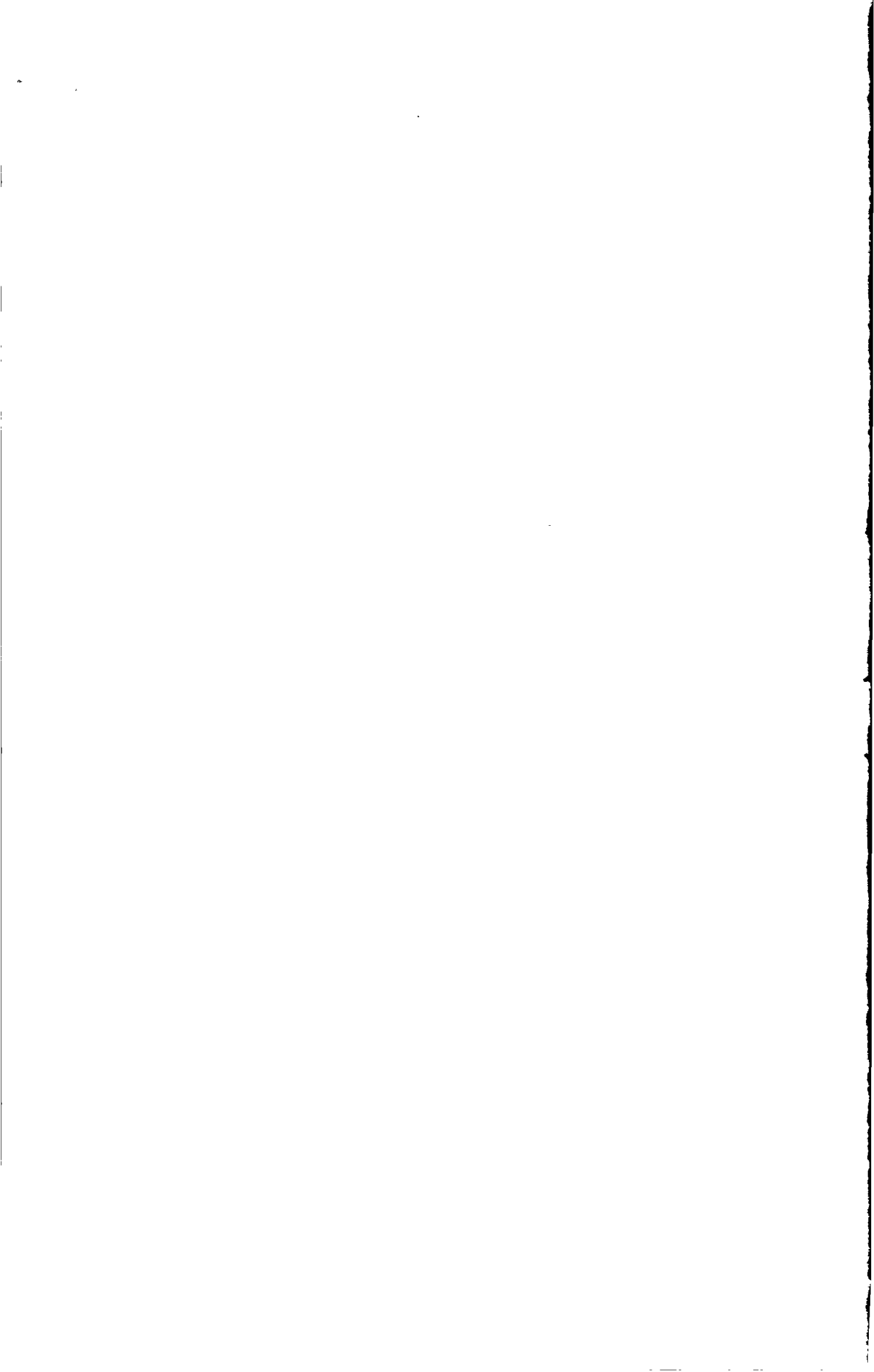
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**URBAN AREAS AND CITIES (AMENDMENT) BILL,
2017**

A Bill for

**AN ACT of Parliament to amend the Urban Areas and
Cities Act, 2011 and for connected purposes**

ENACTED by Parliament of Kenya as follows —

1. This Act may be cited as the Urban Areas and Cities (Amendment) Act, 2017.

Short title.

2. The Urban Areas and Cities Act, 2011, in this Act referred to as “the principal Act”, is amended in section 2 (1) —

Amendment of
section 2 of No.
13 of 2011

(a) by deleting definition “city county” and substituting therefor the following new definition—

“city county” means a county which is also a city under this Act;

(b) in the definition of the word “urban area”—

(i) by deleting the word “or” appearing between the word “municipality” or “a town” and substituting therefor with a comma;

(ii) by inserting the words “or a market centre” immediately after the word “town”;

(c) by inserting in the proper alphabetical sequence the following new definitions —

“neighbourhood association” means a registered cluster of residents groupings actively representing the interests of a recognised constituency of urban citizens within the defined urban jurisdiction; and

“resident population” means the core urban and peri-urban population of an urban area or city according to the final gazetted results of the last population census carried out by an institution authorized under any written law, preceding the application for grant of any status.

3. Section 3 of the principal Act is amended by —

- (a) renumbering section 3 as 3(1); and
- (b) inserting a new subsection immediately after subsection (1) as follows—

Amendment of section 3 of the principal Act.

(2) In implementing this Act, county governments shall comply with the National Urban Development Policy.

4. The principal Act is amended by inserting the following new sections immediately after section 4 —

Insertion of new sections after section 4 of the principal Act.

Boundaries of urban areas and cities.

4A. (1) Delineation of the boundaries of urban areas or cities may be initiated by the Cabinet Secretary or by the relevant county government making a written request to the Cabinet Secretary to appoint the *ad hoc* committee in the manner provided under subsection (2).

(2) The Cabinet Secretary shall, on receipt of the request under subsection (1) or on considering it necessary, appoint by notice in the *Kenya Gazette* an *ad hoc* committee to delineate the boundaries of an urban area or a city.

(3) The *ad hoc* committee appointed by the Cabinet Secretary under subsection (2) shall comprise—

- (a) a representative of the Independent Electoral and Boundaries Commission, who shall be the chairperson;
- (b) three representatives from the national government drawn from—
 - (i) the Ministry for the time being responsible for urban development;
 - (ii) the Ministry for the time being responsible for Environment;
 - (iii) the Ministry for the time being responsible for Agriculture;

- (c) three representatives from the county government drawn from—
 - (i) the Department for the time being responsible for urban development;
 - (ii) the Department for the time being responsible for Environment;
 - (iii) the Department for the time being responsible for Agriculture; and
 - (d) two representatives from the following Professional Associations—
 - (i) Institute of Surveyors of Kenya; and
 - (ii) Kenya Institute of Planners.
- (4) Where an *ad hoc* committee is to be appointed under sub section (2) –
- (a) the governor shall nominate the three representatives referred to under subsection (3)(c) for appointment by the Cabinet Secretary; and
 - (b) each of the relevant Professional Associations shall nominate its representative referred to under subsection (3)(d) for appointment by the Cabinet Secretary.
- (5) Where the boundaries of an urban area extend in more than one county, membership of the *ad hoc* committee shall include representatives of the relevant counties and the proposal for delineation of the boundaries shall be handled by the Council of Governors.

5. Section 5(1) of the principal Act is amended—

- (a) by deleting paragraph (a) and substituting therefor the following new paragraph (a)—

Amendment of section 5 of the principal Act.

- (b) (a) has a resident population of two hundred and fifty residents;
- (c) in paragraph (b) by inserting immediately after the word “Act” the words “and other existing laws”;
- (d) by deleting paragraph (e) and substituting therefor with the following new paragraph—
 - (e) has the capacity to effectively and efficiently deliver its services to its residents and has in existence, the services provided in the First Schedule.
- (e) by deleting paragraphs (g) and (h).

6. Section 9 of the principal Act is amended by—

Amendment of section 9 of the principal Act.

- (a) deleting subsection (3) and substituting therefor with the following—

(3) Subject to subsection (4), an urban area may be classified as a municipality under this Act, if the urban area satisfies the following criteria –

- (a) has a resident population of a least fifty thousand residents ;
- (b) has an integrated urban area development plan in accordance with this Act and other existing laws;
- (c) has the capacity to effectively and efficiently deliver its services to its residents and has in existence, the services provided in the First Schedule;
- (d) has demonstrable good system and records of prudent management.

Cap.286.

- (b) by inserting the following new subsection immediately after subsection (3)—

(4) Despite subsection (3), every the headquarters of a county government shall be conferred the status of a municipality, whether or not it meets the criteria for a classification as a municipality.

7. Section 10 of the principal Act is amended by deleting paragraph (d) appearing in subsection (2) and substituting therefor with the following new paragraph —

Amendment of Section 10 of the principal Act.

(d) has the capacity to effectively and efficiently deliver its services to its residents and has in existence, the services provided in the First Schedule.

8. The principal Act is amended by inserting a new section immediately after section 10 as follows—

Insertion of new section after section 10 of the principal Act.

Eligibility for grant of the status of market centre.

10A. (1) The county governor may, upon approval of the county assembly, confer the status of a market centre on an area that meets the criteria set out in subsection (2).

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

- (a) a resident population of at least two thousand residents; and
- (b) an integrated urban area development plan in accordance with this Act and any other existing law.

Management of a market centre.

10C. A market centre shall be governed and managed by the county government.

9. Section 12 of the principal Act is amended by deleting the marginal note and substituting therefor with the following “Structures and management of cities, municipalities.”

Amendment of Section 12 of the principal Act.

10. Section 13 of the principal Act is amended by—

Amendment of Section 13 of the principal Act.

- (a) deleting the words county executive committee appearing in subsection (1) and substituting therefor with the words “county governor”;
- (b) inserting a new subsection immediately after subsection (1) as follows—

(1A) The members of the Board of a city appointed under subsection (1) shall be constituted

as follows—

- (a) the county executive committee member for the time being responsible for cities and urban areas or his representative;
- (b) six members shall be competitively appointed by the county governor, with the approval of the county assembly;
- (c) four members shall be nominated by the organization specified under subsection(2) and appointed by the county governor, with the approval of the county assembly;
- (d) the Secretary appointed under section 13A, who shall be an ex officio member of the Board.

(c) deleting subsection (2) and substituting therefor with the following new subsection—

(2) The four members of the board of a municipality specified under subsection (1) (c), shall be nominated by—

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

(c) deleting subsection (4) and substituting therefor the following new subsections—

(4) The county governor shall while considering the nominated members identified by the organizations specified under section 13 (2), require the organizations to produce—

- (a) signed minutes as evidence of an accountable process of nomination;
- (b) evidence of compliance with statutory obligations;
- (c) vetting form to establish that the nominee has complied with the prescribed criteria for

appointment as a member of the board.

(5) A person shall be qualified for appointment as a chairperson of the board if that person—

- (a) holds a bachelor's degree from an institution recognized in Kenya;
- (b) has a distinguished career in a medium level management position in either the private or public sector;
- (c) holds at least ten years' post-qualification professional experience; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(6) A person shall be qualified for appointment as a member of the board if that person—

- (a) holds a bachelor's degree from an institution recognized in Kenya;
- (b) has a distinguished career in a medium level management position in either the private or public sector;
- (c) holds at least seven years' post-qualification professional experience; and
- (d) satisfies the requirements of Chapter Six of the Constitution.”

(7) A person shall not be appointed a member of the Board if that person—

- (a) is an undischarged bankrupt;
- (b) has been removed from office for contravening the Constitution or any other law;
- (c) is not a citizen of Kenya; or
- (d) has, in the conduct of his or her, affairs not met any statutory obligation.

11. The principal Act is amended by inserting a new section immediately after section 13 as follows—

Insertion of new sections after section 13 of the principal Act.

Appointment of Secretary of the

13A. (1) The County Public Service

Board of a city

Board shall, through a competitive process appoint a Secretary to the board on such terms and conditions as the County Public Service Board, in consultation with the city or municipal board shall determine.

(2) A person is qualified to be appointed as the Secretary of the board, if that person —

- (a) has a degree from an institution recognised in Kenya;
- (b) has at least four years' experience in management; and
- (c) satisfies the requirements of Chapter six of the Constitution.

(3) The Secretary shall be—

- (a) responsible for the day to day management of the affairs of the board; and
- (b) perform such other duties as may be assigned by the board.

(4) The Secretary shall hold office for a term of five years.

(5) The provisions of section 16 relating to grounds for vacation of office shall, with necessary modifications, apply to the Secretary of the board appointed under this section.

12. Section 14 of the principal Act is repealed and replaced with the following new section —

Repeal and replacement of Section 14 of the principal Act.

Board of municipalities.

14. (1) A board of a municipality shall consist of nine members appointed by the county governor with the approval of the county assembly.

(2) The members of the board appointed under subsection (1) shall be constituted as follows—

- (a) the county executive member for the time being responsible for cities

and urban areas or his representative;

- (b) four members shall be competitively appointed by the county governor, with the approval of the county assembly;
- (c) four members shall be nominated and appointed by the county governor, with the approval of the county assembly;
- (d) the chief officer responsible for urban development; and
- (e) the municipal manager appointed under section 28 who shall be the secretary of the board and an ex officio member of the board.

(2) The four members of the board of a municipality specified under subsection (2) (c), shall be nominated by—

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

(3) The county governor shall, while appointing the members of the board, ensure gender equity, representation of persons with disability, youth and marginalised groups.

(4) The county governor shall while considering the nominated members identified by the organizations specified under subsection (2), require the organizations to produce—

- (a) signed minutes as evidence of an accountable process of nomination;

- (b) evidence of compliance with statutory obligations; and
- (c) vetting form to establish that the nominee has complied with the prescribed criteria for appointment as a member of the board.

(5) A person shall be qualified for appointment as a chairperson of the board if that person—

- (a) holds at least a degree from an institution recognized in Kenya;
- (b) has a distinguished career in a medium level management position in either the private or public sector;
- (c) holds at least ten years' post-qualification professional experience; and
- (d) satisfies the requirements of Chapter Six of the Constitution;
- (e) is ordinarily resident or has a permanent dwelling in the municipality; and
- (f) carries on business in the municipality or has lived in the municipality for at least five years.

(6) A person shall be qualified for appointment as a member of the board if that person—

- (a) holds at least a diploma from an institution recognized in Kenya;
- (b) has a distinguished career in a medium level management position in either the private or public sector;
- (c) holds at least five years' post-qualification professional experience; and
- (d) satisfies the requirements of Chapter Six of the Constitution;
- (e) is ordinarily resident or has a

permanent dwelling in the municipality; and

(f) carries on business in the municipality or has lived in the municipality for at least five years.

(7) A person shall not be appointed a member of the Board if that person—

(a) is an undischarged bankrupt;

(b) has been removed from office for contravening the Constitution or any other law;

(c) is not a citizen of Kenya; or

(d) has in the conduct of his or her affairs not met any statutory obligations.

13. Section 20 of the principal Act is amended by—

Amendment of section 20 of the principal Act.

(a) deleting the marginal note and substituting therefor with the words “Governance and management functions of a board”; and

(b) by deleting subsection (2).

14. Section 21(1) of the principal Act is amended in paragraph (f) (g) by inserting the words “as provided in the County Governments Act, 2012 and any other national legislation on public participation” after the words “Second Schedule to this Act”.

Amendment of section 21 of the principal Act.

15. Section 22 (1) of the principal Act is amended in paragraph (b) by deleting the word “plan” and substituting thereof the word “formulate”.

Amendment of section 22 of the principal Act.

16. Section 27 of the principal Act is amended by inserting the words “in accordance with the County Governments Act, 2012” immediately after the words “as a county government”.

Amendment of section 27 of the principal Act.

17. Section 29 of the principal Act is amended by deleting the words “ by an institution responsible for recruiting public servants in the county” and substitution therefor with the words “the county public service board established under section 57 of the County Governments Act, 2012.

Amendment of section 29 of the principal Act.

18. Section 30 of the principal Act is amended in

Amendment of

subsection (1) (c) by deleting the word “five” and replacing it with the word “ten”.

section 30 of the principal Act.

20. Section 31 of the principal Act is repealed and replaced with the following new sections—

Repeal and replacement of section 31 of the principal Act.

Governance and Management of towns.

Management of towns.

31. (1) The management of a town shall be vested in a town committee comprised of five members which shall be constituted as follows—

- (a) the county executive committee member responsible for urban areas and cities or his representative;
- (b) two members appointed competitively by the county governor;
- (c) a cluster representing registered associations of the informal sector; and
- (d) a cluster representing the business community.

(2) The members of the town committee specified under subsection (1) shall be appointed by the county governor with the approval of the county assembly.

(3) A person shall be qualified for appointment as chairperson, vice-chairperson or member of a town committee if that person—

- (a) holds at least a Kenya Certificate of Secondary Education or its equivalent and post-secondary education professional diploma;
- (b) has a distinguished career in a management position in either the private or public sector;
- (c) holds at least three years’ post-qualification professional experience;

(d) satisfies the requirements of Chapter six of the Constitution; and

(e) is ordinarily resident or has a permanent dwelling in the town for at least five years or carries on business in the county.

(4) A person shall not be appointed a member of a town committee if that person—

(a) is an undischarged bankrupt;

(b) has been removed from office for contravening the Constitution or any other law;

(c) is not a citizen of Kenya; or

(d) has in the conduct of his or her affairs not met any statutory obligations.

(5) The provisions of section 16 and 18 relating to vacation of office and removal from office of members of the board of a city or a municipality shall apply, with the necessary modification, to a member of a town committee.

Functions of a town committee

31A. The functions performed by the board of a city or a municipality specified under section 20(1) shall be performed by the town committee.

Appointment of an administrator.

31B. (1) There shall be an administrator for every town established under this Act who shall be appointed by the County Public Service Board established under section 57 of the County Governments Act, 2012.

No.17 of 2012.

(2) The administrator of a town shall perform such functions as the town committee, appointed under section 31, may determine.

(3) A person shall be qualified to be appointed as an administrator under subsection (1), if that person—

- (a) holds a degree from a university recognised in Kenya or its equivalent;
- (b) has proven experience of at least three years in administration or management either in public or private sector;
- (c) is a citizen of Kenya; and
- (d) satisfies the requirements of chapter six of the Constitution.

19. The First Schedule is repealed and replaced with the following new Schedule.

Repeal and
replacement of
the First
Schedule.

FIRST SCHEDULE

[s. 5(1) (e), 9(1) (e), and 10 (2) (d)]

Classification of Urban Areas and Cities and by Services

In classifying an area as a city, municipality or town, regard shall be had to the ability to provide the following services and also the existence of the services required to be provided by the National Government:

City — (Population: at least 250,000)

Planning and Development Control
City Economic Development Plan
Traffic Control and Parking
Water and Sanitation
Street Lighting
Outdoor Advertising
Cemeteries and Crematoria
Public Transport
Library services
Storm Drainage
Ambulance Services
Heath Facilities
Fire Fighting and Disaster Management
Control of Drugs
Sports and Cultural Activities
Electricity and energy provision (gas, kerosene, biomass etc)
Abattoirs
Refuse Collection
Solid waste management
Pollution (Air, water and soil) control
Child Care Facilities
Pre-Primary Education
Local Distributor Roads
Conference Facilities
Community Centres
County Hospital
Constituent University Campuses
Polytechnic
National School
Stadium
Airport
Airstrip
Theatre
Library Service
Administrative Seat
Financial Hub

Museum
Historical Monument
Fire Station
Emergency Preparedness
Postal services
Funeral Parlour
Recreational Parks
Management of Markets
Animal control and welfare
Religious Institution
Organised Public Transport

Municipality – (Population at least 50,000)

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 Energy provision (gas, kerosene etc.)
Abattoirs
Refuse Collection
Solid waste management
Pollution (Air, water, soil) control
Child Care Facilities
Pre-Primary Education
Local Distributor Roads
Community Centres
County Hospital
Constituent University Campuses
Polytechnic
County School
Stadium
Airstrip
Theatre
Library/ICT services

Administrative Seat
Local Economic Development Plan
Museum/cultural centres
Fire Station
Emergency Preparedness
Telecommunication services /postal services/ICT
Funeral Parlour
Cemetery
Recreational Parks
Animal control and welfare
Religious Institution

Town — (Population at least 10,000)

Street Lighting
Cemeteries and Crematoria
Library Services
Health Facilities
Sports and Cultural centers or facilities
Abattoirs
Refuse Collection
Solid waste management
Pollution (Air, water and soil) control
Child Care Facilities
Pre-Primary Education
Community Centres
Vocational Institution
Primary or High school
Bus park
Road network, streets, walkways, sideways and cycle ways
Postal services or telecommunication
Funeral Parlour or mortuary
Cemetery
Recreational parks
Animal control and welfare
Religious Institution

Market Centre — (Population at least 2,000)

Street Lighting
Health Facilities
Sports and Cultural centers/facilities
Abattoirs/Slaughterhouse
Refuse Collection

Solid waste management

Child Care Facilities

Pre-Primary Education

Community Centres

Primary school

Bus park

Road network/streets/walkways/sideways/cycle ways

Recreational parks

Animal control and welfare

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

The Bill proposes to amend the Urban Areas and Cities Act 2011, in order to review the criteria provided for classifying an area as a city, municipality, town or market centre. The review was necessary since the criteria provided in the Act are not achievable by the county governments under the prevailing circumstances, unless the law is amended. The proposed amendments shall enable county governments to also efficiently and effectively deliver services in the areas designated as urban areas and cities.

The Bill proposes to reduce the number of the resident population required for a city from five hundred thousand resident population to two hundred and fifty thousand resident population. In the case of a municipality, the resident population has been reviewed from two hundred and fifty thousand to fifty thousand resident population. The proposed market centres are required to have at least two thousand resident population.

It also provides for the manner in which boundaries of urban areas and cities are to be determined. The existence of an integrated urban area development plan is also a requirement for classifying an area as a market centre.

The Bill has also clarified on the qualification for the Board members of cities and municipalities and those of the town committees, city and municipal managers as well as those of the town administrators.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as the classification of the various designated areas will affect the functions and powers of County Governments set out in the Fourth Schedule, especially in terms of service delivery.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 6th October, 2017.

KIPCHUMBA MURKOMEN,
Senator.

Section 2 of No. 13 of 2011, which it is proposed to amend—

“urban area” means a municipality or a town.

Section 4 of No. 13 of 2011, which it is proposed to amend by inserting a new section—**General classification of urban areas and cities**

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

Section 5 of No. 13 of 2011, which it is proposed to amend—**Criteria for classifying an area as city**

(1) Subject to subsection (3), an urban area may be classified as a city under this Act if the urban area satisfies the following criteria—

- (a) has a population of at least five hundred thousand residents according to the final *gazetted* results of the last population census carried out by an institution authorized under any written law, preceding the application for grant of city status;
- (b) has an integrated urban area or city development plan in accordance with this Act;
- (c) has demonstrable capacity to generate sufficient revenue to sustain its operation;
- (d) has demonstrable good system and records of prudent management;
- (e) has the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule;
- (f) has institutionalised active participation by its residents in the management of its affairs;
- (g) has infrastructural facilities, including but not limited to roads, street lighting, markets and fire stations, and an adequate capacity for disaster management; and
- (h) has a capacity for functional and effective waste disposal.

(2) Nothing in this section may preclude an area from being conferred with the status of special purpose city under this Act if it has significant cultural, economic or political importance.

Section 6 of No. 13 of 2011, which it is proposed to amend the marginal note—**Management and Infrastructure in the capital city**

- (1) The capital city of Kenya is Nairobi.

(2) The capital city shall be governed and managed in the same manner as a county government.

(3) The capital city shall provide infrastructure necessary to sustain the following—

- (a) the seat of the national government;
- (b) offices of diplomatic missions;
- (c) efficient transport network connecting to rural areas, towns and other local, regional and international cities; and
- (d) commerce and industry.

(4) The capital city shall decentralise its functions and the provisions of its services to the extent that it is efficient and practicable to do so.

(5) Subject to subsection (2), the two levels of government shall enter into an agreement regarding the performance of functions and delivery of services by the capital city.

(6) An agreement entered into under subsection (5) may provide for—

- (a) the administrative structure of the capital city, subject to the provisions of this Act;
- (b) funding of operations and activities of the capital city;
- (c) the joint projects to be undertaken by both governments in the capital city;
- (d) dispute resolution mechanisms; and
- (e) such other information as the two levels of government may determine.

Section 9 of No. 13 of 2011, which it is proposed to amend—

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

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

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

Section 10 of No. 13 of 2011, which it is proposed to amend by inserting a new section—

Eligibility for grant of a town status

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

- (a) a population of at least ten thousand residents according to the final *gazetted* results of the latest population census carried out by an institution authorized under any written law, preceding the grant;
- (b) demonstrable economic, functional and financial viability;
- (c) the existence of an integrated development plan in accordance with this Act;
- (d) the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule; and
- (e) sufficient space for expansion.

Section 12 of No. 13 of 2011, which it is proposed to amend by rephrasing the marginal note—

Management of cities and municipalities

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

- (a) a board constituted in accordance with section 13 or 14 of this Act;
- (b) a manager appointed pursuant to section 28; and