

THE URBAN GOVERNMENT ACT

*Date of commencement: 1st July, 1969.*

*Date of assent: 7th May, 1969.*

*Arrangement of sections*

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*An Act to make provision for the establishment and regulation of urban authorities and to provide for matters incidental thereto and connected therewith.*

PART I

PRELIMINARY

*Short title.*

1. This Act may be cited as the Urban Government Act, 1969.

*Application.*

2. The provisions of this Act shall apply to —
  - (a) every local authority constituted under it in the manner and to the extent herein prescribed;
  - (b) the Government.

*Interpretation.*

3. In this Act, unless the context otherwise requires —

“Act” includes regulations made under this Act;

“Board” means a Town Board established under the provisions of Part XIII;

“Chairman” means Chairman of a Council or Board, and in any municipality or town where such person is known by any title other than Chairman, any references in this Act to Chairman shall, in relation to such municipality or town, be construed as a reference to such person;

“construct” or “construction” in the case of any street includes provision for the lighting of the street and its draining, levelling, paving, kerbing, metalling, channelling, and every method of making a carriageway or footway, and the provision of access to the street;

“Council” means a municipal or Town Council, as the case may be, established under the provisions of Part II;

“councillor” means a person elected or appointed a member of a Council or Board;

“District Commissioner” means district commissioner in whose district a municipality or town is situated;

“local authority” means a Municipal Council, Town Council, Town Board or other organ of local government duly established under any law;

“Minister” means Minister for Local Administration;

“municipality” means a municipality established under Part II;

“occupier” means a person in actual occupation of land or premises without regard to the title under which he occupies;

“owner” in relation to immovable property, means the person in whom is vested the legal title thereto and includes a person who purchases, leases, or otherwise acquires immovable property from the Government or a local authority and that person shall be deemed to be the owner from the date of purchase or acquisition or the commencement of the lease;

“public nuisance” means any act, omission or condition which is offensive to health, or which materially interferes with the ordinary comfort, convenience, peace or quiet of the public or adversely affects the safety of the public;

“public place” means a street, square, park, recreation ground, garden, commonage or open space in the area of a local authority —

- (a) which is vested by deed of title or in terms of section 67(1) or by any law in the local authority for the use and benefit of the public; or
- (b) which the public has the right to use without charge;

“street” means street, road, lane, avenue, by-road, passage, thoroughfare or other right of way and includes bridge, subway, pavement, footpath, sidewalk, drain, culvert or the like therein;

“town” means a town established under the provisions of Part XIII;

“Town Clerk” or “Treasurer” means the persons appointed as such under the Act and for the time being lawfully acting respectively in the capacities of Town Clerk and Town Treasurer of the municipality.

## PART II CONSTITUTION OF TOWN COUNCILS

### *Declaration of municipalities.*

4. (1) Subject to the provisions of this section the Minister may by notice in the Gazette —

- (a) declare any area to be a municipality;
- (b) assign a name to and alter the name of a municipality;
- (c) define the boundaries of any municipality and alter such boundaries; and
- (d) declare that any area shall cease to be a municipality.

(2) The Minister shall not publish a notice under subsection (1) without first —

- (a) publishing a notification in the Gazette and a newspaper circulating in the area concerned advising the public of the details of the notice he intends to publish and the reasons therefor, and inviting any person to submit any representations he may wish to make to the Minister by a time to be specified in such notification; and
- (b) considering any representations made in response to the notification published under paragraph (a) and, where a commission has been appointed under subsection (3), the report of that commission.

(3) Where the Minister intends issuing a notice under subsection (1)(c) he shall, and in other cases he may, appoint a commission consisting of one or more persons selected by him to consider any representations received in response to the notification referred to in subsection 2(a) and to advise the Minister whether or not the intended notice referred to in such notification should be published; and the provisions of the Commissions of Enquiry Act, No. 35 of 1963 shall apply to such enquiry.

### *Municipal or town councils.*

5. (1) In every municipality there shall be constituted by the Minister, by notice published in the Gazette, a municipal or Town Council which shall perform such duties and may exercise such powers as are imposed or conferred on a Council by this or any other law, and it shall generally assist in the maintenance of order and good government, within the area of its authority.

(2) Every Council shall, under the name of the municipal or Town Council of the municipality for which it was constituted, be a body corporate with perpetual succession, and shall by that name be capable of suing and being sued, and subject to the provisions of this

Act and any other law, of doing and performing such acts and things as bodies corporate may by law do and perform.

(3) A Council may subject to section 60 adopt for the municipality a coat of arms, badge or other emblem.

*Composition of councils.*

6. The Minister may from time to time by notice published in the Gazette —
- (a) prescribe the composition of a Council and the number of councillors;
  - (b) provide for the election or appointment of councillors;
  - (c) divide a municipality into territorial wards and vary the boundaries of any such wards;
  - (d) prescribe the number of councillors to be appointed or elected in respect of each ward;
  - (e) provide for the appointment or election from among the councillors of a Chairman of such Council and of a Vice-Chairman, including the method of any such election;
  - (f) subject to any regulation made under section 8, prescribe the terms and conditions of office of councillors and the Chairman and the Vice-Chairman;
  - (g) provide in relation to a municipal or Town Council that the Chairman thereof and the Vice-Chairman shall be known by the title of mayor and deputy mayor, respectively;
  - (h) provide that a Council shall be known as a municipal or Town Council; and
  - (i) provide for any other matter not hereinbefore specified which may be necessary for the proper establishment of a Council.
- (2) Where by a notice published under subsection (1) —
- (a) the number of councillors prescribed to be elected exceeds the number of councillors to be appointed, the Minister shall provide for the Chairman and Vice-Chairman to be elected from among the councillors; and,
  - (b) the Minister has provided that a Council shall be known as a municipal Council, he shall provide for all the councillors to be elected and shall not thereafter vary the composition of the Council except —
    - (i) in terms of a request by the Council; or,
    - (ii) where the Council has been dissolved as provided for in section 107.

*Election or appointment of Chairman and councillors.*

7. (1) Where by notice published under section 6, provision is made —
- (a) for the appointment of a Chairman and Vice-Chairman, or of the appointment of councillors, any such appointment shall be made by the Minister by instrument in writing under his hand; or
  - (b) for the election of councillors, such election shall be held in accordance with regulations made under the provisions of section 8.



(2) If, for any reason, a Council fails to elect a Chairman or Vice-Chairman where required to do so in terms of a notice published under section 6, the Town Clerk shall report that fact to the Minister who shall thereupon appoint a Chairman or Vice-Chairman, as the case may be, to hold office until the Council elects a person to such office in the manner required by the notice.

(3) If for any reason there is a vacancy for an elected councillor, the Minister may appoint as a councillor a person who is qualified to be elected to the Council to fill the vacancy and a Council constituted with one or more councillors so appointed is hereby vested with the same powers and is in all respects in the same position as if those councillors had been duly elected in accordance with the provisions of this Act.

(4) A councillor appointed under subsection (3) shall hold office at the pleasure of the Minister, but only until such time as a councillor is duly elected to fill the vacancy.

(5) The appointment or election of any person as Chairman, Vice-Chairman or as a councillor shall be notified in the Gazette, but an omission so to do shall not invalidate any such election or appointment.

*Election regulations.*

8. The Minister shall make regulations for the regulation and conduct of elections to be held under the provisions of this Act, and without prejudice to the generality of the foregoing, may by such regulations prescribe —

- (a) the qualifications and disqualifications of voters;
- (b) the enrolment of voters in any municipality or in any territorial ward of any municipality, and the framing of voters' rolls for a municipality;
- (c) the method of making and disposing of claims and objections, including appeals, in connection with the enrolment of voters;
- (d) the qualifications and disqualifications of candidates for election as councillors;
- (e) the ascertainment of the qualifications of voters and candidates for election;
- (f) the procedure for nomination of candidates for election as councillors;
- (g) the method of election in any municipality or in any territorial ward of any municipality, and the appointment of a returning officer and other persons to conduct the election;
- (h) when councillors vacate office and the terms and conditions of office of councillors;
- (i) the determination of any question which may arise whether a person has been elected as a councillor or whether having been elected a councillor, the person is disqualified from being or continuing to be a councillor;
- (j) the filling of casual vacancies in the office of councillor;
- (k) the nature of corrupt and illegal practices;
- (l) the manner and circumstances in which revision of an election may take place; and
- (m) such forms as he may think necessary to be used in connection with elections.

*Acceptance of office.*

9. A person elected or appointed a councillor shall, prior to the first meeting of the Council which he attends after his election or appointment, sign and deliver to the Town Clerk a declaration in a prescribed form that he accepts the office of councillor and will faithfully perform the duties thereof.

*Disqualification for election or appointment as councillor.*

10. (1) Subject to subsections (2) and (3), a person shall be disqualified from being elected or appointed or from continuing in office as a councillor if he —

- (a) holds any office or place of profit under or in the gift or disposal of the Council or is the spouse of a person holding any such office or place of profit; or
- (b) holds an office of profit under the Government, unless he has the written approval of the head of the government department in which he is serving; or
- (c) is the spouse of a councillor; or
- (d) is an unrehabilitated insolvent; or
- (e) has been certified insane or otherwise adjudged to be of unsound mind; or
- (f) has been convicted of an offence —
  - (i) relating to corrupt or illegal practices at an election under the provisions of this or any other law; or
  - (ii) under sections 24, 25 or 122; within five years immediately preceding the date of election or appointment, as the case may be, or since his election or appointment; or
- (g) has been convicted of an offence under this or any other law and sentenced to imprisonment, without option of a fine, for a period of twelve months or more, within three years immediately preceding the date of election or appointment, as the case may be, or since his election or appointment, unless he has obtained a pardon; or
- (h) is in default of payment of any rates, charges or other debts due to the Council for a period exceeding three months after the same shall have become due; or
- (i) is barred from membership of the Council as provided in section 107(3)(b); or
- (j) himself or his spouse, partner or business associate has a direct or indirect pecuniary interest (whether by way of participation in the profits or other benefits or otherwise) in a contract with the Council or work being done or to be done for the Council.

(2) Subsection (1)(j) does not apply in respect of —

- (a) any contract entered into or work undertaken by a company, co-operative company, or co-operative society incorporated or registered as such under any law, merely by reason of the fact that such person or his spouse, partner or business associate is a director, shareholder, stockholder, employee or agent of such company, co-operative company or co-operative society, unless such company is a private company as defined in the Companies Act, No. 7 of

1912, or such person either by himself owns, or together with his spouse or minor children or both controls, more than one-half of the shares or stock of such company, co-operative company or co-operative society; or

- (b) the purchase of anything sold by the Council by public competition; or
- (c) the purchase by the Council of anything at a public auction; or
- (d) the supply of goods or services commonly supplied or rendered by the Council to the public at a charge fixed by law or resolution of the Council; or
- (e) the purchase or holding of Council stock; or
- (f) land sold by the Council by private treaty at an upset price and subject to conditions approved by the Minister.

(3) The Minister may, if satisfied that it is desirable in the public interest, exempt a person from the provisions of subsection (1)(j).

*Casual vacancies.*

11. (1) A casual vacancy shall occur when a councillor —

- (a) dies; or
- (b) is found to have been unqualified or disqualified for election or appointment to the Council; or
- (c) ceases to be qualified or becomes disqualified under section 10; or
- (d) resigns in writing by letter addressed to the Town Clerk; or
- (e) fails to sign and deliver the declaration required under section 9; or
- (f) fails throughout a period of three calendar months to attend any meeting of the Council or of any committee of the Council of which he is a member, unless he has obtained the prior permission of the Council to absent himself throughout such period, the Council having authority to grant leave of absence not exceeding six months in any period of twelve months; and

any such vacancy shall be declared by the Chairman within four days of his becoming aware of the occurrence thereof, by the posting of a notice at the offices of the Council.

(2) The Town Clerk shall report to the Chairman whenever he has reason to believe that a casual vacancy should be declared as provided in subsection (1).

(3) Where a casual vacancy occurs in the office of an elected councillor, an election to fill the vacancy shall be held as provided in the regulations made under section 8.

(4) Where a casual vacancy occurs in the office of an appointed councillor the Town Clerk shall report the vacancy to the Minister who shall appoint a person to fill it, provided that where the vacancy occurs within six months preceding the date on which such councillor would ordinarily retire, the Minister is not required to fill the vacancy unless he considers it expedient so to do.

(5) A person elected or appointed under the provisions of this section to fill a casual vacancy shall hold office until the date upon which the person in whose place he is elected or appointed would ordinarily have retired.

*Validity of acts of Council and officers.*

12. All acts of a Council or of any person acting as Chairman, Vice-Chairman, councillor, Town Clerk or other municipal officer, as the case may be, shall notwithstanding that it be discovered that there was some defect in the election or appointment of such person or that he was disqualified for election or appointment, be valid and effectual as if such person had been duly elected or appointed and qualified.

*When election not invalidated.*

13. No election shall be invalid or set aside by reason merely of —
- (a) a defect in the appointment, or want of due appointment or title, of the returning officer or any person assisting him at any election;
  - (b) a mistake or non-compliance with the provisions of this Act, if it appears that the election was conducted substantially in accordance with the principles laid down herein and that the mistake or non-compliance is not likely to have affected the result of the election.

*Effect of invalidity of election as concerns proceedings.*

14. Any action, suit or other proceedings by or against a Council shall not be affected by the invalidity of an election but shall be tried and determined as if no such objection existed.

PART III

MEETINGS OF COUNCILS AND COMMITTEES

*Meetings of the Council.*

15. (1) Every Council shall hold an ordinary meeting for the transaction of business at least once in every month, or such greater period of time, not exceeding six months, that the Minister may in his discretion authorise.

(2) The date, time and place of the first meeting of a Council shall be fixed by the Minister.

(3) Subject to giving such prior notice as may be required by its standing orders, a special meeting of the Council —

- (a) may be convened by the Chairman at any time;
- (b) shall be convened by the Chairman upon a request in writing of not less than one-third of the members of the Council;
- (c) shall be convened by the Town Clerk where he is required by law to do so;

and the notice convening any such meeting shall state the purpose of the meeting, and no other business than that for which the special meeting was convened shall be transacted.

(4) Every meeting of the Council shall be open to the public and representatives of the press, but this subsection shall not apply to any committee of the Council or to the Council when in committee.

(5) The Town Clerk, or another officer deputed by him, shall attend every meeting of the Council and its committees, but he shall not be entitled to vote thereat.

*Standing orders.*

16. (1) Subject to the provisions of this Act every Council shall make standing orders for —

- (a) the regulation, conduct and convening of the meetings of the Council and of its committees;
- (b) preserving order at such meetings, including the power to suspend and exclude a councillor who disregards the authority of the chair or wilfully obstructs the business of the Council or any committee;
- (c) the rescission, alteration or review of resolutions of the Council; and
- (d) such other matters as may be necessary for the purposes of this Act or as may be directed by the Minister from time to time, including the amendment or repeal of any standing order or the punishing by suspension of a councillor who is guilty of a breach of any standing order.

(2) The Town Clerk shall cause a certified true copy of the standing orders of the Council and of all amendments to such standing orders to be forwarded to the Minister for his approval, and no such standing orders or amendments thereto shall have effect until approved by the Minister.

(3) If a Council fails within a reasonable time to make standing orders which have been approved by the Minister under this section, the Minister may direct the Council by letter to make standing orders.

(4) If within sixty days of receipt of such letter the Council has not made such standing orders, the Minister may make standing orders for the Council and such standing orders shall be deemed to be standing orders made under subsection (1).

*Chairman of meetings.*

17. (1) Save as provided in subsection (2) the Chairman, or in his absence the Vice-Chairman shall preside at all meetings of the Council.

(2) In the absence of the Chairman and the Vice-Chairman, the councillors present at any meeting of a Council shall elect one of their number to act as Chairman for the purpose of that meeting.

*Quorum for and voting at meetings.*

18. (1) At any meeting of a Council, one-half of the total membership of the Council shall constitute a quorum for the transaction of business.

(2) All acts of a Council and all questions and matters coming before a Council for decision shall be done or decided by a majority of the councillors present.

(3) Subject to section 24, every councillor shall give his vote on every division at which he is present, and no councillor shall leave the Council chamber at the time the Chairman is putting the question.

(4) In case of an equality of votes, the Chairman has a second or casting vote, in the exercise of which he shall as far as is practical vote in favour of the retention of the *status quo*.

(5) Whenever the Council is required to do any act or to decide any question and the number of councillors disqualified in terms of section 24, or for any other reason, from taking

part in the proceedings of the Council makes it impossible to assemble a quorum in terms of subsection (1), to do such act or decide such question, the Town Clerk shall report that fact to the Minister who may thereupon, for the purpose of such act or question to be done or decided, appoint such number of persons as he deems expedient to be members of the Council in place of the councillors so disqualified whereupon the persons so appointed together with the remaining number of councillors, if any, shall for the purpose of doing the act or deciding the question, be deemed to be the Council.

*Committees.*

19. (1) A Council may from time to time appoint from amongst its members committees for any general or special purposes which in the opinion of the Council would be better regulated and managed by a committee, and may delegate to a committee so appointed, with or without restrictions or conditions as it may think fit any of the powers or duties conferred upon the Council under this or any other law other than —

- (a) the power to levy rates; or
- (b) the power to borrow money; or
- (c) the power to make bye-laws; or
- (d) any other power which by this or any other law is expressly required to be exercised by the Council.

(2) Each committee shall report its proceedings to the Council, and in no case shall any act of any committee of a Council be binding upon the Council until submitted to and approved by the Council except in any case where the Council has, by resolution, delegated absolutely to that committee the power to do the act.

(3) The number of members of a committee, the term of office of its members and the quorum for the transaction of business shall be fixed by the Council, but the Chairman of the Council shall be an *ex officio* member of every committee without the power to vote and shall not be counted in the quorum.

(4) The Chairman of any committee shall be a councillor appointed either by the Council or, in default of any such appointment, by members of the committee from among their number.

(5) The members of any committee may appoint a Vice-Chairman from among their number.

(6) Every councillor shall be appointed by the Council to serve on at least one committee.

(7) Every committee appointed by the Council shall terminate and cease to exist on the 30th day of April in each year, unless previously dissolved at any time, after notice of motion to that effect by the vote of the majority of the whole Council.

*Finance committee.*

20. The Council shall appoint a finance committee for regulating and controlling the finances of the Council.

*Meetings of committees.*

21. (1) Subject to any directions by the Council, every committee appointed by the Council may meet from time to time and may adjourn from place to place as it may think proper, and no business shall be transacted at any meeting of the committee unless the quorum of members fixed by the Council, or if no quorum be fixed, two members be present.

(2) At all meetings of the committee the Chairman of the committee, if present, shall preside and in the event of his absence the Vice-Chairman, if any, and if neither the Chairman or the Vice-Chairman be present one of the members present shall be appointed to preside at the meeting.

(3) All questions shall be determined by a majority of votes of the members present, and section 18(3) and (4) shall apply to committees *mutatis mutandis*.

(4) Subject to subsection (5) and section 105, no person, other than a councillor or the Town Clerk or other officer deputed by him, shall be present at a meeting of a committee except at the request or with the permission of the committee.

(5) Any member of the Council may attend the meetings of any committee, but he shall not vote thereat and may only speak if he is invited to do so by the Chairman.

*Minutes of meetings.*

22. (1) Minutes of the proceedings of every meeting of the Council and any committee thereof, including the names of all councillors present at any such meeting, shall be recorded in a book to be kept for that purpose by the Town Clerk who shall be responsible for the correctness thereof, and the minutes of every meeting shall be confirmed at the same or next ordinary meeting and be signed by the Chairman.

(2) Every minute so recorded when signed by a councillor describing himself as or appearing to be the Chairman of the meeting at which the minute is confirmed shall in the absence of proof of error therein be deemed a correct record of the proceedings of the meeting of which it purports to be a minute, and any extract from the minute book purporting to be certified by writing under the hand of the Town Clerk to be a true copy of any entry in the minute book, shall be received in evidence without further proof.

(3) Unless otherwise required by this Act, copies of all minutes to be kept under the provisions of subsection (1) shall be open for inspection, without payment and during normal office hours, by any member of the public who may obtain a copy or extract certified by the Town Clerk on payment of the fee, if any, prescribed by resolution of the Council.

(4) Notwithstanding the provisions of the immediately preceding section, minutes of a committee or the Council in committee shall not be open to public inspection until they have been received by the Council, and the Chairman may order, for any good reason, that any particular minute shall not be made available for public inspection.

(5) Copies of all minutes shall be sent to the Minister without undue delay.

*Joint committees.*

23. A Council may, with the consent of the Minister, concur with one or more other councils or local authorities in appointing from amongst their respective members a joint committee for any purpose in which they are jointly interested, consisting of such number of

members, with such functions and upon such conditions as the councils, or Council and local authorities, as the case may be, may determine.

*Pecuniary interest of councillors.*

24. (1) Whenever a councillor or his spouse or his partner or employer or the partner or employer of his spouse, has directly or indirectly any pecuniary interest in any matter before any meeting of the Council or any committee, including subcommittee or joint committee thereof, he shall if he is present, disclose to the meeting the fact that he has such pecuniary interest and if there is any discussion or if a division is called for thereon, he shall not participate in such discussion or vote in such division but shall forthwith leave the meeting until such matter has been disposed of by the meeting.

(2) The provisions of the immediately preceding subsection shall not apply —

(a) when a councillor is interested only in common with others as a ratepayer or voter or member of the public; or

(b) to any financial interest which a councillor may have in an allowance, fee, or other remuneration lawfully paid or to be paid to him upon becoming a councillor or Chairman or Vice-Chairman, or in being appointed to or as a member of any deputation, tribunal or the like.

(3) A councillor shall not by himself or his partner or employee act as advocate or attorney in any legal proceedings instituted by, at the instance of, or against the Council, nor shall he act either on behalf of or against the Council in his professional capacity in any matter.

(4) Any person contravening this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeni or to imprisonment for a period not exceeding one year or to both such fine and imprisonment, and in addition his seat on the Council shall become vacant.

*Person acting as councillor when not qualified.*

25. (1) No person who, having been elected or appointed as a councillor —

(a) was not qualified for election or appointment at the time of his election or appointment; or

(b) becomes disqualified from holding office as a councillor; or

(c) ceases to hold office as a councillor, or otherwise vacates his office as councillor;

shall wilfully take part or vote or attempt to take part or vote in the proceedings of the Council or any committee.

(2) Any person contravening this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeni or in default of payment, to imprisonment for a period not exceeding one year.

*Validity of proceedings.*

26. (1) Until the contrary is proved, whenever, a minute of the proceedings of a meeting has been entered and signed, such meeting shall be deemed to have been duly convened and held, and all the councillors at the meeting shall be deemed to have been duly qualified, and in



the case of proceedings so recorded of a committee, the committee shall be deemed to have had power to deal with the matter referred to in the minutes.

(2) No act or proceedings of a Council or committee shall be questioned on account of any vacancy in its body, or of any want of qualification or invalidity of election or appointment of any councillor, provided that the requisite quorum has been maintained.

*Duty of Town Clerk to report unlawful or irregular conduct.*

27. (1) If the Town Clerk is of the opinion that the Council or a committee of the Council or a councillor is responsible for any act or omission which may result in maladministration, he shall forthwith submit a written report in connection therewith to the Council at a special meeting convened by him in terms of section 15 and the Town Clerk shall within seven days after the date for which such meeting was convened, forward the report together with the resolution thereon to the Minister.

(2) For the purpose of considering the report contemplated in subsection (1), the Council shall go into committee of the whole Council and notwithstanding any provision to the contrary, the nature and contents of such report shall only be divulged to the Council in committee of the whole Council.

(3) If the special meeting referred to in subsection (1) cannot be held because a quorum cannot be obtained, the Town Clerk shall, before forwarding the report to the Minister, hand a copy to the Chairman, or in his absence to the Vice-Chairman of the Council.

(4) The Town Clerk shall not be subject personally to any action, liability, claim or demand in consequence of anything done by him in good faith under or for the purpose of this section.

#### PART IV

#### MANAGEMENT COMMITTEE

*Application of this Part.*

28. (1) This Part shall come into operation only when the Minister by notice published in the Gazette, applies it either generally to all councils or to such councils as he may specify in the notice.

(2) The Minister may by similar notice direct that this Part shall cease to apply.

(3) Where this Part does apply in accordance with subsection (1), —

(a) sections 19, 20 and 21 shall not apply except that the provisions of section 21 remain applicable in respect of any committee appointed in terms of section 39 or 40; and

(b) any reference to “finance committee” in this Act shall be construed to mean “management committee”.

*Establishment of management committee.*

29. Subject to the provisions of this Part, there shall be established for each Council a management committee which shall be responsible for the administration of any matters affecting the Council in so far as the provisions of this Part require.

*Election of management committee.*

30. (1) A management committee shall be elected by the Council from amongst its members in the manner prescribed by the Minister and such management committee shall consist of —

- (a) five members, where the total number of members of the Council is fifteen or more; or
- (b) three members, where the total number of members of the Council is less than fifteen.

(2) Subject to the provisions of section 36 the members of the management committee shall continue in office until their successors have been elected as provided in subsection (1), unless before the expiry of his term of office any member —

- (a) ceases to be a member of the Council; or
- (b) resigns his office; or
- (c) fails, without the prior permission of the management committee, to attend three successive ordinary meetings thereof,

and thereupon he shall *ipso facto* cease to be a member of the management committee.

(3) Where a Council is satisfied that the management committee is unable to function temporarily owing to the absence for any reason whatever of a member or members and that there is likely to be difficulty in obtaining a quorum as contemplated in section 34(1), the Council may elect a councillor in the manner prescribed by the Minister to serve temporarily on the management committee in place of any particular member who is absent until such time as the latter again attends a meeting of the management committee.

*Chairman or Vice-Chairman as member of management committee.*

31. (1) Where the Chairman is elected as a member of the management committee, action shall be taken as provided in the notice published in terms of section 6 to appoint or elect another member, who is not a member of the management committee, to exercise the powers of Chairman at meetings of the Council, and that member shall thereafter exercise those powers on behalf of the Chairman for so long as the Chairman is a member of the management committee.

(2) Where the Vice-Chairman is elected as a member of the management committee, similar action shall be taken to appoint or elect another member to exercise his powers for so long as he is a member of the management committee.

(3) If the member appointed or elected to exercise the powers of Chairman or Vice-Chairman, as the case may be, is himself elected to the management committee he shall forthwith cease to exercise those powers, and action shall be taken in accordance with subsection (1) or subsection (2) to appoint or elect another member, who is not a member of the management committee, to exercise those powers.

*Appointment of Chairman and Vice-Chairman of management committee.*

32. (1) Immediately after the result of an election of the committee is known, the Council shall appoint one of the members of the management committee as Chairman and another member as Vice-Chairman thereof.

(2) The Chairman and Vice-Chairman appointed in terms of subsection (1) shall remain in office until the election of the next succeeding management committee unless he vacates his office before his term expires.

(3) Where a casual vacancy occurs in the office of Chairman or Vice-Chairman of the management committee, the Council shall within twenty-one days appoint a Chairman or Vice-Chairman, as the case may be, who shall remain in office for the unexpired period for which his predecessor was appointed.

*Meetings of the management committee.*

33. (1) The management committee shall hold an ordinary meeting at least twice a month at intervals of not more than twenty-one days, unless the Minister consents otherwise.

(2) A special meeting of the management committee —

(a) may be convened by the Chairman after he has given the members at least twenty-four hours' prior notice of the meeting and has stated the purpose thereof or; with shorter notice where all members agree thereto;

(b) shall be convened by the Chairman if requested by the majority of members and the purpose of the special meeting has been stated;

and at such special meeting no other business than that for which the special meeting was convened, shall be transacted.

(3) The Town Clerk, or another officer deputed by him, shall attend every meeting of the management committee.

(4) Subject to section 105, no person other than a member or the Town Clerk or other officer deputed by him, shall be present at a meeting of the management committee except at the request or with the permission of that committee.

*Procedure at meetings of management committee.*

34. (1) Where a management committee consists of five members, three members shall constitute a quorum, and where a management committee consists of three members, two members shall constitute a quorum.

(2) Subject to subsection (3) the management committee shall regulate its own procedure, and all questions shall be decided by an ordinary majority of votes, and where any such question cannot be so decided, it shall be referred to the Council for decision.

(3) The Council may make standing orders relating to the procedure of a management committee, and shall do so if the Minister so directs.

(4) The Town Clerk shall cause a certified true copy of any standing orders and all amendments to such standing orders to be forwarded to the Minister for his approval, and no such standing orders or amendments thereto shall have effect until approved by the Minister.

(5) Save as provided in subsection (6), the Chairman of the management committee, or in his absence the Vice-Chairman of the management committee, shall preside at all meetings of the management committee.

(6) In the absence of the Chairman and the Vice-Chairman of the management committee, the other members present shall, if a quorum is present, elect one of their number to act as Chairman.

*Management committee minutes.*

35. (1) Minutes of all the proceedings of every meeting of the management committee shall be kept in such manner as may be provided for by standing orders contemplated in section 34(3) and such minutes shall, after confirmation in terms of subsection (2), forthwith be tabled for the information of the members of the Council only.

(2) The minutes shall be recorded in a book specially kept for that purpose and shall be confirmed at the same or next ordinary meeting.

(3) Whenever such minutes have been so recorded and signed by the Chairman of the meeting or purport so to have been signed, such minutes shall in absence of proof of error, be deemed to be a correct record of the proceedings of which it is or purports to be the minutes.

*Removal of management committee from office.*

36. (1) Where not less than one-third of the members of the Council request in writing that a special meeting of the Council be convened to discuss a motion of no confidence in the management committee, the Town Clerk shall convene a special meeting for that purpose within twenty-one days of such request.

(2) Where the Council at a special meeting convened as contemplated in subsection (1) resolves by a majority of votes being not less than a majority of the full Council, that it has no confidence in the manner in which the management committee is carrying out its functions it may further resolve that all members of the management committee shall cease to hold office and thereupon all such members shall cease to be members of the management committee.

(3) Immediately after the members of the management committee have ceased to hold office as provided in subsection (2), the Council shall proceed to elect members of the management committee as provided in section 30, and such members shall, unless any member otherwise ceases to hold office, remain in office for the unexpired period of office of their predecessors.

*Functions of management committee.*

37. (1) The functions of the management committee are —

- (a) to ensure that the resolutions of the Council are carried out;
- (b) to consider any matter which is entrusted to the Council in terms of the provisions of any law or which is of a local government nature but excluding any matter which the Council has requested the management committee not to consider, and to advise the Council and to make recommendations to the Council in connection therewith;
- (c) to appoint all staff, other than heads of departments as contemplated in section 44(2), unless the Council directs that any such staff are to be appointed by the Council, and to be responsible for the discipline of staff and, subject to the foregoing, generally to carry out the duties and exercise the powers of the Council in accordance with Staff Regulations made under section 51;
- (d) to prepare estimates of revenue and expenditure in respect of each financial year for consideration by the Council in accordance with section 91;

- (e) to control the expenditure of all moneys by the Council in its approved estimates;
- (f) to take decisions on behalf of the Council which exceed the authority of the Town Clerk or other officer, or to recommend decisions to the Council where authority has not been delegated to it;
- (g) to be generally responsible for the presentation of business to the Council;
- (h) to report regularly to the Council at each ordinary meeting on the carrying out of all its functions.

(2) Notwithstanding the provisions of subsection (1)(c), the Minister may at any time in respect of any particular Council direct that the functions referred to therein shall only be carried out by the Council.

*Delegation of further powers to management committee and officers.*

38. (1) Subject to the provisions of subsection (2), a Council may —
- (a) delegate to the management committee such further functions, duties and powers as it may deem fit other than the power —
    - (i) to levy a rate;
    - (ii) to make bye-laws; and
    - (iii) to borrow money;
  - (b) authorise the management committee to delegate any of the functions, duties and powers delegated to the management committee in terms of this Act, to —
    - (i) a committee appointed in terms of section 40; or
    - (ii) the Town Clerk; or
    - (iii) any other officer of the Council.
- (2) Any delegation in terms of subsection (1) is subject —
- (a) to such conditions or restrictions as the Council may impose; and
  - (b) to the approval of the Minister, who may at any time withdraw his approval by giving written notice to the Council.

*Committees to assist management committee.*

39. The Council or the management committee may from time to time appoint one or more committees whether from its members or otherwise to inquire into any matter falling within the jurisdiction of the Council or of any other proposal or scheme which relates or may relate to the business of the Council, and to report thereon to the management committee.

*Standing committees.*

40. (1) Where a Council is of the opinion that the management committee, owing to the nature and extent of the powers, functions and duties which are or will be delegated to it, is or will be unable to carry out or fulfil such powers, functions and duties satisfactorily, the Council may request the Minister to authorise the appointment of one or more committees

from the members of the Council with such powers, functions and duties as may be determined by the Council for either a general or special purpose.

(2) The Minister may, in his discretion, approve a request referred to in subsection (2) on such conditions as he may determine and the Council may thereafter appoint such committee.

(3) Where a Council appoints a committee in terms of subsection (2), the management committee shall appoint one of its members to be a member of the committee who shall also be the Chairman of the committee.

(4) Every committee referred to in subsection (2) shall appoint a Vice-Chairman from amongst its members.

(5) The provisions of section 21 apply to every committee appointed in terms of this section, and every such committee shall report to the management committee on the matters dealt with by it and the management committee shall forthwith submit all such reports to the Council.

*Remuneration and allowances payable to members of management committee.*

41. The Council may with the consent of the Minister pay such remuneration and allowances to the members of the management committee, including temporary members, as the Council may determine at rates approved by the Minister.

*Appointment of Town Clerk and the Clerk to the Council.*

42. (1) Before or on a date to be determined by the Minister in respect of any Council, steps shall be taken in terms of the provisions of Part V but with due regard to the provisions of this Part, to appoint —

(a) a Town Clerk; and

(b) a Clerk to the Council.

(2) The provisions of Part V apply to any Town Clerk or Clerk to the Council appointed in compliance with subsection (1).

(3) Sections 49(1), 49(3) and 50 shall apply to persons appointed as Clerk to the Council.

*Town Clerk not to be head of any particular department.*

43. (1) Except with the consent of the Minister, a Town Clerk as contemplated in section 42 shall not be the head of any particular department, section or branch of the Council.

(2) Notwithstanding subsection (1), where due to shortage of staff or other reasonable cause the Minister deems it expedient to do so, he may require a Council to combine the office of Town Clerk with such other offices as the Minister, after consultation with the Council, directs.

*Functions, powers and duties of Town Clerk.*

44. (1) In addition to any other function, power and duty conferred or imposed upon him in terms of this Act or any other law, the Town Clerk shall —

- (a) be responsible to the management committee for the proper carrying out of all directions of the Council and the management committee;
- (b) take all reasonable steps to ensure that the management committee is properly supplied with the information which it needs to exercise its responsibilities;
- (c) be responsible for co-ordinating the activities of the Council and the general supervision, control and efficiency of the administration, organization and management of the Council's departments, sections and branches; and
- (d) be responsible for all communication between the management committee and the authority's departments, sections and branches.

(2) Every head of department shall be subordinate and responsible to the Town Clerk for the proper management of the department entrusted to such head, and for the proper exercise of any powers or duties delegated to him in terms of this Act.

(3) For the purpose of subsection (2) the expression "department" includes any section or branch whose head is not directly responsible to any senior official other than the Town Clerk.

*Functions of the Clerk to the Council.*

45. The Clerk to the Council shall —

- (a) be responsible for the preparation of agenda, the submission of documents and recommendations and the minuting of the proceedings of the Council, management committee and any other committee of the Council or management committee;
- (b) ensure that all legal matters of the Council, management committee and any other committee of the Council or management committee receive the necessary attention;
- (c) be responsible for the safe custody of the documents, records and registers of the Council, the management committee and any other committee of the Council or management committee; and
- (d) be responsible for the carrying out of any other duty or directions imposed or given by the Council, management committee or the Town Clerk.

*Saving in respect of Town Clerk in office on application of this Part.*

46. (1) Any person holding office as Town Clerk at the time this Part comes into operation shall, unless he is appointed in terms of section 42, cease to hold office as Town Clerk on the date preceding the date on which the Town Clerk appointed in terms of section 42 assumes office.

(2) Every person occupying the office of Town Clerk on application of this Part and who is not appointed a Town Clerk in terms of section 42, shall, subject to the provisions of subsection (3), remain in the service of the Council without reduction in salary, allowances and other emoluments and without loss of any other privileges unless such reduction or loss occurs in accordance with his conditions of service or appointment.

(3) Where a Council is unable to offer the person referred to in subsection (2) suitable alternative employment, the Minister may on application of the Council or the person

authorise or direct the Council to terminate his services subject to such conditions relating to the payment of a pension or other retirement benefit as he may determine.

(4) When determining the conditions referred to in subsection (3), the Minister shall not place any greater burden on any pension fund or other pension scheme arranged as provided in section 54 or on the Council than that which would have been payable if such person had remained in the service and retired at the proper time.

## PART V

### STAFF

#### *General power to employ staff.*

47. (1) Subject to the provisions of this Part, section 42 where applicable, and any regulations or standing orders made under the provisions of section 51, a Council may employ such persons and engage such agents as it considers necessary for the efficient discharge of its duties and functions upon such terms and conditions as it may determine.

(2) A Council may with the approval of the Minister and with the consent of the person concerned, appoint to any position in its service a Government officer seconded to the Council's service for that purpose, for such period and on such conditions as the Minister may approve.

(3) No person may be employed by a Council who is a member of the Council or who has been a member at any time during the six months prior to his appointment to the service of the Council.

(4) Where a Council refuses, fails or neglects to comply with any provision requiring it to appoint certain staff, the Minister may after having given the Council not less than fourteen days' prior notice of his intention so to do, exercise on behalf of the Council and on such terms and conditions as he deems expedient, the powers of appointment conferred upon the Council by this Act.

#### *Town Clerk.*

48. (1) A Council shall appoint a fit person to be Town Clerk upon such terms and conditions as it may determine.

(2) The Town Clerk is the chief executive and administrative officer of the Council and unless otherwise provided, shall have the charge and custody of and be responsible for all books, deeds, records and other documents of the Council.

(3) The appointment of a person as Town Clerk and the terms and conditions of such appointments is in all respects subject to the approval of the Minister.

(4) The Town Clerk shall not, except with the consent of the Minister, perform the duties or exercise the powers of the Town Treasurer.

#### *Other officers.*

49. (1) A Council may, or if so directed by the Minister, shall, appoint fit persons respectively to be Town Treasurer, Medical Officer of Health and Town Engineer upon such terms and conditions as it may determine.



(2) The appointment of a person to one of the offices mentioned in subsection (1) and the terms and conditions of service of such appointment shall in all respects be subject to the approval of the Minister, and no person may be appointed to the office of Medical Officer of Health unless he is a person duly registered as a medical practitioner in Swaziland.

(3) The Town Treasurer shall not, without the consent of the Minister, perform the duties or exercise the powers of Town Clerk.

*Termination of appointment of certain officers.*

50. (1) No person holding the office of Town Clerk, Town Treasurer, Medical Officer of Health or Town Engineer shall be removed from office unless and until such removal shall have been decided upon by a majority of councillors present at a meeting specially convened for the purpose and the number of members voting in the majority is at least one-half the membership of the full Council.

(2) The removal from office of a person holding any of the offices mentioned in subsection (1) is subject to the approval of the Minister.

*Staff regulations and standing orders.*

51. (1) Subject to the provisions of this Act and the Employment Act, No. 51 of 1962, and after consultation with any councils duly established under this Act, the Minister may make regulations, to be known as "Staff Regulations", for all or any of the following matters relating to persons employed by a Council —

- (a) the procedure for the appointment, promotion and termination of appointment, including dismissal and termination of appointment on abolition of office;
- (b) the maintenance of discipline, including suspension from duty and the payment of salary or wages during such suspension;
- (c) the breaches of discipline that are to constitute disciplinary offences, and the punishments which may be awarded;
- (d) the regulation, manner of and the procedure for inquiries into conduct; and
- (e) such other matters incidental to or connected with the appointment, termination of appointment and the maintenance of discipline as the Minister considers necessary.

(2) Subject to the provisions of this Act and the Employment Act, No. 51 of 1962, every Council shall make standing orders, to be known as "Staff Standing Orders" with respect to the following matters relating to its staff —

- (a) the division into grades;
- (b) salary and wages, including scales of salary and of wages;
- (c) the payment of salary and wages and the granting of advances or loans;
- (d) leave;
- (e) the terms and conditions of service generally, including matters relating to departmental procedure and the duties and responsibilities of all persons employed by the Council; and

(f) any of the matters contained in subsection (1) in so far as they are not included in any regulations made by the Minister.

(3) In so far as any standing order made under subsection (2) may conflict with any regulation made under subsection (1) it is, to the extent of such conflict, void and of no effect.

(4) Staff Standing Orders made under subsection (2) are subject to the approval of the Minister and section 16 (2), (3) and (4) apply *mutatis mutandis*.

(5) Staff Regulations and Staff Standing Orders made under this section do not apply to Government officers seconded for service with a Council except in so far as the terms of the secondment may provide.

*Joint appointments.*

52. (1) Subject to the approval of the Minister, a Council may agree with any other Council or authority, or the Government to share the services of any person on such terms and conditions as are mutually acceptable.

(2) Where due to a shortage of staff or other reasonable cause the Minister deems it expedient to do so, he may require a Council to concur in the joint employment of any staff or to sharing the services of any person in the manner contemplated in subsection (1), and if a Council fails to comply with such requirement the Minister may exercise, on behalf of the Council, and on such terms and conditions as he deems expedient, the powers of employment and appointment conferred upon the Council by this Act.

*Security by persons handling Council property.*

53. The Council may require from any person entrusted by it with handling of money or stores on its behalf security to the satisfaction of the Council and may, if it deems fit, defray from its funds any fidelity premium considered reasonable for this purpose.

*Pensions and gratuities.*

54. (1) A council may —

- (a) establish and maintain or join other councils or authorities in establishing and maintaining a pensions or superannuation scheme; or
- (b) contribute to a pensions or superannuation scheme established and maintained by the Government; or
- (c) make other arrangements;

for the payment of pensions or superannuation benefits to persons retiring from the service of the Council, or to any dependant of any deceased person who at the time of his death was in or had retired from the service of the Council.

(2) A scheme or arrangement established or made, or in the establishment and maintenance of which a Council has joined, or to which a Council contributes under subsection (1), may make provision for a contribution by the Council or by persons in the service of the Council to whom such scheme or arrangement applies or by both the Council and such persons to a fund controlled by the Council or some other person approved by the Minister for such purpose.

(3) A Council may establish and maintain or join with other councils or authorities, including the Government, in establishing and maintaining or otherwise arrange for a

provident fund scheme for the benefit of persons retiring from the service of the Council who are not entitled or eligible for payment of a pension or superannuation benefit under subsection (1).

(4) A Council may establish and maintain a scheme for the payment of gratuities, retiring allowances or other benefits to persons who retire from the service of the Council or to any dependants of any deceased person who at the time of his death was in or had retired from the service of the Council, and any such scheme may be in addition to or in lieu of any scheme or arrangement made under subsections (1) or (3).

(5) A scheme established under the provisions of subsection (4) may in addition to any other provisions, provide for the payment of compensation for loss or abolition of office arising out of any re-organization, redundancy or other cause, not being dismissal on disciplinary grounds.

(6) Every scheme or arrangement under the provisions of this section shall be subject to the approval of the Minister.

(7) No pension, provident fund payment, gratuity or other allowance or benefit payable under the provisions of this section shall be assignable or transferable or liable to be attached or levied upon for or in respect of any debt or claim except a debt due to or claim made by the Council.

## PART VI

### DUTIES AND POWERS OF COUNCILS

#### *General duties.*

55. (1) Subject to and in accordance with the provisions of this Act and any other law relating to the duties of a Council, the Council shall so far as is reasonably practicable —

- (a) control, manage and administer the municipality;
- (b) maintain and cleanse all public streets and open spaces vested in the Council or committed to its management;
- (c) abate all public nuisances;
- (d) safeguard public health, and provide sanitary services for the removal and disposal of night soil, rubbish, carcasses of dead animals and all kinds of refuse;
- (e) establish or take over and maintain, subject to the extent of its resources, any public utility service which it is authorised or required to maintain under any law and which is required for the welfare, comfort or convenience of the public;
- (f) develop, control and manage any land vested in, owned or leased by the Council;
- (g) establish or take over and administer, subject to the extent of its resources, housing schemes for the inhabitants of the municipality; and
- (h) generally promote the public health, welfare and convenience, and the development, sanitation and amenities of the municipality.

(2) If the Minister is satisfied that a Council is incapable, by reason of insufficiency of staff or facilities, of administering any of the services referred to in subsection (1) he may, by notice published in the Gazette, direct the Council to appoint the Government as its agent for the purpose of administering the service concerned, and that service shall thereafter be administered by the Government at the expense of the Council.

*General powers.*

56. (1) Subject to and in accordance with any law specifically providing for any matter, a Council may, in addition to any powers or duties for which specific provision is made by this or any other law, exercise all or any of the powers contained in the Schedule to this Act.

(2) Notwithstanding subsection (1), the Minister may, in relation to a particular Council, by notice published in the Gazette, restrict the exercise of powers contained in the Schedule.

(3) The Minister may, by notice published in the Gazette, vary the Schedule or confer additional powers on a particular Council.

*Fees and charges.*

57. (1) Subject to subsection (2) a Council may charge fees for any service or facility provided by it or for any licence or permit issued by it.

(2) All fees authorised by subsection (1) shall be regulated by bye-laws except where specific provision is made in respect of any fee in this or any other law.

(3) The Council may also frame tariffs of charges for special facilities supplied or services or work rendered in connection with any of its powers to individual persons or done upon private premises, unless they are such as are ordinarily provided at the cost of the Council.

(4) With the consent of the Minister, a Council may for good cause authorise the remission of any fees or other charges imposed by it.

*Contracts.*

58. (1) A Council may subject to any regulations made under section 93 in the name and on behalf of the municipality enter into contracts for any purpose authorised by law, and may require and take security for the due performance of any such contract.

(2) Any contract resolved upon by the Council shall, if in writing, be duly executed on behalf of the municipality if —

(a) it is signed by the Chairman or Vice-Chairman, or in their absence by another councillor, and certified by the Town Clerk to be in accordance with a resolution of the Council; or

(b) it is signed by an officer of the Council duly authorised in that behalf by any resolution or standing order of the Council.

*Tenders.*

59. (1) Save in so far as may be permitted by subsections (5) and (6), a Council shall not enter into any contract for —

- (a) the supply of any goods or materials; or
- (b) the execution of any works; or
- (c) the provision of any service, other than professional services, to or for the Council;

involving an amount of one thousand emalangenzi or more, except after publicly calling for tenders by notice published in a newspaper circulating in Swaziland and posted at the office of the Council.

(2) The notice calling for tenders shall —

- (a) state the purpose of the proposed contract and give such particulars as the Council deems fit; and
- (b) fix the closing time for receipt of tenders on a date which shall be not less than twenty-one days after publication of the notice; and
- (c) set out the manner in which the tenders shall be submitted.

(3) The Council may accept the tender, or any portion of a tender, which in all the circumstances appears to it to be most advantageous to the Council, or it may refuse to accept any tender, but if any other than the lowest tender is accepted the Council shall cause the reasons for its decision to be recorded in the minutes of its proceedings.

(4) The tender of any person who canvasses or solicits or causes to be canvassed or solicited the support of any member of the Council or officer of the Council in favour of his tender shall not be considered.

(5) Where a Council wishes to purchase a proprietary article which is obtainable from only one source or supplier, it may call for a quotation of the cost instead of calling for public tenders as provided in subsection (1), but the reason for preferring such article shall be recorded in the minutes of its proceedings.

(6) The provisions of subsection (1) do not apply to —

- (a) a contract in regard to any matter of such urgency that the Council, with the consent of the Minister, considers it would be against the interest of the Council to delay by calling for public tenders;
- (b) a contract with regard to the publication of notices and advertisements of the Council;
- (c) such orders as the Council, with the consent of the Minister, considers expedient to place outside Swaziland and the Republic of South Africa;
- (d) purchases on behalf of the Council at public auction sales or by competitive tender;
- (e) any works undertaken by the Government on behalf of the Council, or the supply of any goods or the provision of any service by the Government; and
- (f) the supply of water, electricity or other public utility services where the charges are fixed by law.

(7) Movable assets of a Council shall not be disposed of except by way of sale at a public auction or by tender in accordance with subsections (1) and (2) unless —

- (a) the estimated value of the asset does not exceed two hundred emalangenzi; or
- (b) the Council determine that it shall be disposed of by destruction;

and in either case the Council shall cause the facts to be recorded in the minutes of its proceedings.

*Coat of arms.*

60. (1) A Council which has adopted a coat of arms, badge or other emblem, as provided in section 5(3), may with the prior approval of the Minister, publish a notice in the Gazette setting forth a pictorial representation, together with a description of the colours to be used, of such coat of arms, badge or emblem and giving notice of its adoption.

(2) After a notice has been published in the terms of subsection (1) the Council shall have the sole and exclusive right to use the coat of arms, badge or emblem referred to therein and no other person shall use such coat of arms, badge or emblem or any part thereof or any other coat of arms, badge or emblem resembling such coat of arms, badge or emblem, unless such use has first been authorised in writing by the Council.

(3) Any person contravening the provisions of subsection (2) shall be guilty of an offence, and on conviction be liable to a fine not exceeding one hundred emalangeni, or in default of payment to imprisonment for a period not exceeding three months.

*Agency for Government.*

61. At the request of the Minister, a Council may —

- (a) act as the agent of the Government for the collection of Government revenue upon such terms and conditions as to payment of commission or otherwise as may be agreed; or
- (b) perform and do such other acts on behalf of the Government and on such terms as may be agreed.

*Insurance.*

62. A Council may insure itself and all or any of its property against risks of any type and all or any of its officers and employees or third parties against risks of injury or loss.

PART VII

LAND, STREETS AND PUBLIC PLACES

*Acquisition of immovable property.*

63. (1) A Council may, with the consent of the Minister, by agreement acquire, purchase or take on lease any land, right of way, water-right or any property or servitude within or without the municipality for the purpose of any of its functions under this or any other law.

(2) The Minister may impose such conditions on the acquisition as he thinks fit.

*Compulsory acquisition of immovable property.*

64. (1) If a Council needs to acquire any immovable property for the purpose of any of its functions under this or any other law, and is unable to do so by agreement with the owner thereof in accordance with section 63, it may with prior approval of the Minister effect a compulsory acquisition thereof, and the provisions of the Acquisition of Property Act, No. 10

of 1961 shall *mutatis mutandis* apply to such compulsory acquisition and to the payment of prompt and full compensation thereon.

(2) The functions mentioned in subsection (1) are deemed to fall within the definition of “public purposes” in section 2 of the Acquisition of Property Act, No. 10 of 1961.

*Alienation of immovable property.*

65. (1) A Council may, with the approval of the Minister, let, sell or in any other way alienate or dispose of any immovable property owned by or vested in the Council, the alienation of which is not prohibited by law or by the conditions under which it was acquired by the Council.

(2) Whenever a Council proposes to exercise any of the powers conferred by subsection (1), it shall cause a notice of the resolution to that effect to be posted at sufficient conspicuous places on or near the property to be alienated, for a period of fourteen days and to be published at least once during the same period in a newspaper circulating in the municipality, and the notice shall call on any person who objects to the exercise of any such power to lodge his objection in writing with the Council within the stated period, not being less than one month from the date of the first publication of such notice.

(3) The approval of the Minister shall not be required and the provisions of subsection (2) shall not apply —

(a) in respect of the leasing or selling of dwelling houses, or premises constructed for business or professional purposes; or

(b) in respect of a lease for a period not exceeding two years.

(4) Where any immovable property of a Council is sold or exchanged, the net proceeds of the sale or exchange shall be credited to such capital account of the Council or otherwise applied in such manner as the Minister may approve.

*Diversion of water courses.*

66. Subject to the provisions of any law relating to water rights, a Council may divert, straighten, define or canalise the course of any stream or water course within the municipality after giving notice to the owner or occupier of any land affected by any such action.

*Control and management of public streets and places.*

67. (1) The Council shall have the general control and management of all —

(a) roads, including streets and bridges, other than roads declared under section 7 of the Roads and Outspans Act, No. 40 of 1931;

(b) squares and other open spaces, gardens, parks and other enclosed spaces;

(c) culverts and ferries;

(d) dams, canals, reservoirs, water-courses and furrows;

which have been or shall be at any time set apart and appropriated by the proper authority for the use and benefit of the public, or to which the inhabitants of the municipality shall at any time have or acquire a common right, and shall be vested in the Council in trust to keep open, save as is otherwise provided in this Act, and in repair, so far as the finances of the Council will permit, for the use and benefit of the inhabitants.

(2) For the purpose of this section —

- (a) the expression “set apart and appropriated by the proper authority” means the filing in the Deeds Office or other registration office of any township plan or any alteration, addition to or amendment thereof approved by the Surveyor-General on which are marked, the things mentioned in subsection (1)(a) to (d) to which the public have a common right of use;
- (b) the term “vested in the Council” shall mean the statutory grant to the Council of a servitude for the purposes mentioned in this section over the property so vested but shall not include the dominium in such property, except when by any law such dominium expressly passes to the Council;
- (c) the Town Clerk shall maintain and keep up to date a plan of the municipality on which shall be marked all areas vested in the Council as provided in subsection (1), and such plan shall be open to inspection by any member of the public at any time during normal office hours without charge.

(3) With the agreement of the Council, the Minister responsible for the administration of the Roads and Outspans Act, No. 40 of 1931 may from time to time by notice published in the Gazette declare that all or any of the roads declared under section 7 of that Act and which lie within a municipality shall be under the control and management of the Council and thereupon such roads shall be vested in the Council for the use and benefit of the inhabitants of the municipality.

(4) A Council may —

- (a) make, construct, alter, repair, maintain, improve or widen all roads, streets, bridges, public open spaces, gardens, parks and recreation grounds, ferries or sewers, drains and culverts vested in the Council or under its control;
- (b) make new roads, streets, bridges, tunnels, open spaces, ferries, dams, sewers, drains and culverts within the municipality; and
- (c) if necessary for any of the purposes mentioned in paragraph (b) of this subsection, carry sewers and drains through and across land which is not vested in the Council, after giving notice to the owner or occupier of the land.

(5) Notwithstanding the provisions of subsection (1)(a), roads declared under section 7 of the Roads and Outspans Act, No. 40 of 1931, which lie within a municipality and which have not been vested in the Council in terms of subsection (3), are excluded from the authority of the Council only in so far as relates to the layout of their course and to such construction, maintenance, repair and incidental work as is undertaken by the Government, but otherwise the Council may exercise its lawful authority and powers in and upon such roads, provided always that no permanent work or work involving the stoppage or diversion of traffic shall be begun upon any such road without the consent of the Minister responsible for administering the Roads and Outspans Act, No. 40 of 1931, and that such work is carried out to the satisfaction of the Director of Public Works and in such manner as he may approve.

(6) Subject to the provisions of section 72 a Council may, with the consent of the Minister, appropriate and use any public place or any portion thereof for the erection of public buildings or for the purpose of any function of the Council under this or any other law.

(7) No person shall without the prior written consent of the Council excavate or remove from any public place any soil, sand, stone or other material or any tree or plant.



(8) A person who contravenes subsection (7) shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangenzi or in default of payment to imprisonment for a period not exceeding three months.

*Construction and improvement of public streets.*

68. (1) This section shall only apply to such areas as the Minister may by notice in the Gazette specify:

Provided that before specifying such area the Minister shall by notice in the Gazette notify his intention to apply the provisions of this section to such area, and call upon any persons affected thereby to make any submissions thereon in writing to him by a date specified in such notice.

(2) Where a public street or part thereof has not previously been graded, drained and laid with road metal by the Council or to the satisfaction of the Council, or where a street or part thereof has been graded, drained and laid with road metal but has not previously been constructed to a tarmacadamised standard with or without kerbing, guttering and drainage, the whole of the costs, charges, and expenses incurred by the Council in so grading, draining or laying with road metal or so constructing the street or part thereof, as the case may be, shall, unless the Council otherwise directs as provided in subsection (6), be paid and reimbursed to the Council by the owners of the land or premises fronting or abutting on such street or part thereof as provided in subsection (7).

(3) Where, in the opinion of the Council, it is not expedient to construct a street to the full extent provided in subsection (2), it shall be lawful for the Council to cause any such street to be put in order temporarily, and in carrying out this provision the Council may cause all or any of the following work to be executed, namely —

- (a) the carriageway to be properly levelled and laid with road metal or such other material as it deems fit;
- (b) lines of kerb to be laid in such position, to such level and of such size, shape and material as it may determine; and
- (c) channels or gutters to be made to carry off water;

and any such work shall not preclude the Council from time to time doing additional work to construct the street to the full extent contemplated in subsection (2), and recovering the costs in the manner provided in this section.

(4) Anything herein notwithstanding a Council shall not be entitled to recover the costs, charges and expenses referred to in subsection (2) or (3) unless it carries out the work at the request or with the consent in writing of the owners representing more than one-half the value of the properties fronting or abutting on the street or part thereof.

(5) Before executing any works under subsection (2) or (3) the Council shall serve upon the owners of all properties affected thereby a notice —

- (a) indicating the works of construction proposed to be undertaken and the estimated cost thereof; and
- (b) stating a place at which the plans and particulars of the proposed works, together with a provisional apportionment of the cost thereof, may be inspected by any person so served, or by any person authorised by him in that behalf;

and shall afford an opportunity for the hearing of any objection to the proposed works or to the proposed apportionment of the cost thereof, in such manner as the Minister may prescribe, or otherwise as may be determined by the Council.

(6) The Council may resolve to contribute any proportion of the expenses of the work which would otherwise be recoverable from the owners and where a road is required to serve other areas, or to be constructed to a higher standard than is necessary to serve the adjoining properties, the Council shall contribute a reasonable proportion of the cost.

(7) The recoverable expenses of the work shall be apportioned between the owners of the properties affected according to the frontage or area, as the Council may decide, of their respective properties, but the Council may have regard to the greater or lesser degree of benefit to be derived by any property from any work so undertaken.

(8) Notwithstanding any other provisions contained in this section, the Council may include in any apportionment the owner of any property which does not front, adjoin or abut on the street or part thereof, but access to which is obtained from the street by means of a lane, passage or otherwise, and which in the opinion of the Council benefits by the work undertaken, and fix the sum of the apportionment accordingly.

(9) A notice of apportionment made by the Council shall be served on the owners affected, and the amounts due are recoverable from the owners in the same manner and by the same process as a rate levied on such owner under the Rating Act, No. 4 of 1995:

Provided that where payment by instalments is permitted the period may be extended to ten years or such longer time as the Minister may approve in writing.

(10) Any person who is liable to be required to contribute to the cost of carrying out any works under this section or whose property may be affected and who feels himself aggrieved by any order or resolution made by the Council in exercise of its powers under this section may give notice of appeal to the Minister within thirty days after service of the notice referred to in subsection (5) or (9) as the case may be, and such notice of appeal shall state the grounds of the appeal and be signed by the appellant or his agent.

(11) The appellant shall at the same time serve a copy of the notice of appeal on the Council.

(12) Upon receipt of such notice of appeal and upon being satisfied that fourteen days have elapsed since the service of such notice upon the Council, the Minister may, after such enquiry as he considers necessary, approve or vary the effect of any order or resolution referred to in subsection (10) in such manner as he deems fit.

(13) For the purpose of this section the value of the properties referred to shall be —

- (a) where the property has been valued under the provisions of the Rating Act, No. 4 of 1995, the value shown in the valuation roll; and
- (b) where the property has not been so valued, the value determined in such manner as the Minister may direct.

*Access to public street.*

69. (1) No person shall construct any access to or across a public street unless he has first obtained the approval in writing of the Council.

(2) An access approved by the Council shall be constructed to the satisfaction of the Council at the expense of the person requiring such access.

(3) The Council shall maintain such access in so far as it forms part of the street, and where the Council carries out any works which interfere with an existing access, the Council shall make good any damage to and restore such access at its expense.

*Traffic control.*

70. Subject to the provisions of the Road Traffic Act, No. 6 of 1965 a Council may —

- (a) 'erect, place and maintain upon any public road, street or bridge, such refuges, shelters, islands, fences, posts, notices, signs, markings or lights as it considers necessary for the safety, guidance and direction of vehicular traffic or pedestrians;
- (b) set aside, use, authorise for use or forbid as a parking or stopping place for vehicles, any street or part of a street or any open space;
- (c) determine the routes to be followed by public service vehicles, fix their stopping places and stands, and alter or cancel such routes, stopping places or stands and "public service vehicle" shall have the same meaning as in the Road Transportation Act, No. 37 of 1963.

*Temporary closure of streets and public places.*

71. (1) Subject to any other law a Council may at all times, and upon such notice as it deems fit, for the purpose of repairing any street or carrying out any necessary work, or of regulating and controlling any procession, festivity or function, or of preventing tumult or preserving peace and order in such street, temporarily close or divert the street either for all traffic or particular kinds of traffic.

(2) Subject to any other law a Council may for the purpose of carrying out any necessary work temporarily close to the public, any public open space, garden, park or other enclosed space, vested in the Council, and in addition may on such days, not exceeding twelve days in any one year, nor seven consecutive days on any one occasion, as it deems fit —

- (a) use, or permit the use of gratuitously or for payment by any other person of such place for any agricultural, charitable, educational, horticultural, or public purpose or for any trade exhibition; and
- (b) charge for admission to any such place or authorise any such person permitted to use such place so to charge.

*Permanent closure of streets and public places.*

72. (1) Subject to subsection (2), a Council may permanently close or divert any street or any public open space or garden, park or other enclosed space vested in the Council, or any portion thereof.

(2) The following provisions shall apply to the exercise by the Council of the powers contained in subsection (1) —

- (a) notice of the intention to move that steps be taken for the closure or diversion shall be given at a meeting of the Council at least fourteen days prior to the meeting at which the motion is to be considered;

- (b) if the motion is agreed the Council shall cause a plan to be prepared showing the position of the boundaries of the street, public open space, garden, park or other enclosed space, or portion thereof, which is to be closed or diverted;
- (c) on completion of the plan mentioned in paragraph (b) the Council shall publish in the Gazette and at least one newspaper circulating in the municipality, a notice setting out briefly the nature of the Council's proposals, stating that the plan is open to inspection at a place and during the hours specified in the notice and calling upon any person who has any objection to the proposed closure or diversion to lodge his objection with the Council in writing not later than a specified date which shall be at least sixty days from the date of publication in the Gazette or newspaper in which the notice is published last;
- (d) at least sixty days before the time for lodging objections expires, the Council shall cause copies of the notice published in terms of paragraph (c) to be —
  - (i) posted in a conspicuous manner on or near the place to which the proposals for closure or diversions relate, and shall cause such copies to remain posted until the time for lodging objections has expired; and
  - (ii) served on the owners and occupiers of all properties abutting upon the street or public place, or portion thereof, to which the proposals relate; and
  - (iii) sent to the Minister;
- (e) after the time for lodging objections has expired, the Council shall consider any objections received and the likely cost of any compensation that may be payable in accordance with section 73;
- (f) the Council, having considered the objections, if any, or if it finds the amount of compensation is likely to be too costly, may resolve not to proceed with the closure or diversion;
- (g) if the Council decides that it wishes to proceed with the closure or diversion it shall forward to the Minister —
  - (i) full particulars of the proposed closure or diversion;
  - (ii) certified true copies of the objections, if any, lodged in terms of paragraph (c) of this subsection;
  - (iii) a copy of the plan referred to in paragraph (b) of this subsection; and
  - (iv) a certificate signed by the Town Clerk to the effect that the provisions of this subsection have been complied with;
- (h) on receipt of the documents referred to in paragraph (g) the Minister may in his discretion appoint a commission consisting of one or more persons to enquire into the propriety of the proposed closure or diversion and any objections thereto and to report to him on the matter;
- (i) the Minister may disallow the proposed closure or diversion or approve it with such modification and on such conditions as he deems fit, but if a commission has been appointed under paragraph (h) the Minister shall not arrive at a decision before the report of the commission has been considered by him;

- (j) as soon as the proposed closure or diversion has been carried out the Council shall notify the Minister who shall, after having satisfied himself that the closure or diversion has been properly effected, notify the Surveyor-General and Registrar of Deeds that the closure or diversion has been properly effected under this Act;
  - (k) the Council shall supply the Surveyor-General with a diagram framed by an admitted Land Surveyor showing all the details of the closure or diversion, and subject to receiving the Minister's notification under paragraph (j), the Surveyor-General shall cause such amendments to be made in the general plan of the municipality as are necessary to show such closure or diversion and the Registrar of Deeds shall make corresponding entries in his registers.
- (3) The provisions of this section shall not apply to any closure or diversion which is the subject of a scheme under the Town Planning Act, No. 45 of 1961.
- (4) Nothing in this section shall be construed so as to confer upon a Council —
- (a) any power for the compulsory acquisition of land, other than in accordance with section 64;
  - (b) any power to undertake works in contravention of any scheme under the Town Planning Act, No. 45 of 1961.

*Compensation.*

73. (1) Subject to subsection (2) any person who is the owner of any immovable property which is injuriously affected by the execution of any works under sections 66, 72 or section 67(4)(b) or (c) shall be entitled to recover as compensation from the Council executing such works the amount by which the value of such property has diminished or the amount of any damage suffered by the owner not amounting to a diminution in value.

(2) No person shall be entitled to receive any compensation under subsection (1) unless he lodges his claim with the Council within six months of the date of completion of the works.

(3) In default of mutual agreement as to the amount due in terms of subsection (1) the matter shall be determined by a magistrate appointed by the Chief Justice as a commissioner for the purposes of this section.

(4) Any person dissatisfied with a decision of the commissioner appointed under subsection (3) shall be entitled to appeal against such decision to the High Court within a time prescribed.

*Private streets.*

74. (1) The owner of the land which is sub-divided or developed for building shall set apart and lay out such streets and back lanes as may be necessary, to provide access to each plot, and construct such streets to the satisfaction of the Council.

(2) No person shall —

(a) lay out or open a street on any land; or

(b) sub-divide or dispose of any land upon which he proposes to lay out or open a street;

unless he first submits to the Council plans and sections, in duplicate, showing the intended construction details, direction, width and means of drainage of such street and the level of the buildings to be built abutting upon it, and obtained the approval of the Council.

(3) The Council may require any person who has obtained approval as provided in subsection (2) to execute a bond for such amount as it considers reasonable to cover the cost of construction of such streets, before the work is commenced.

(4) The powers of the Council in terms of this section shall be exercised subject to the provisions of the Private Townships Act, No. 17 of 1961, in so far as that Act applies to the development.

*Construction of private streets.*

75. (1) Where any street or any part thereof, which is not vested in the Council is not framed, hardened, paved, kerbed, guttered or otherwise constructed in or maintained to the satisfaction of the Council, the Council may resolve to do any works necessary to bring the street or part thereof to a satisfactory standard and recover the expenses incurred by it from the owners of the properties fronting, adjoining or abutting upon the street or part thereof.

(2) Where a Council passes a resolution as provided in subsection (1), the provisions of section 68 shall *mutatis mutandis* apply.

*Taking over private street as public street.*

76. (1) Whenever any private street referred to in sections 74 and 75 has been constructed or made good to the satisfaction of the Council, on application in writing of the owner of the land, or of the owners representing more than one-half of the value of the properties abutting upon such street, the Council shall take over such street as a public street.

(2) The Council may with the consent in writing of the owners representing more than one-half of the value of the properties abutting upon any private street, take over the street as a public street.

(3) Whenever the Council takes over a private street as a public street as provided in this section, such street shall vest in the Council, but it shall not be necessary for it to be transferred to the Council, the Registrar of Deeds and the Surveyor-General being hereby authorized to make such entries in the records of their respective offices as may be necessary to give effect to the provisions of this subsection:

Provided that they, or either of them, may require the production of such proof or other information as they, or he, may deem necessary, including any plan or plans; and

Provided further that the title deeds of any property concerned shall be produced to the Registrar of Deeds, whenever they are available, for endorsement in terms of such vesting as aforesaid.

(4) No transfer duty shall be payable in respect of the vesting of any street in the Council in terms of this section.

(5) For the purpose of this section, the value of the properties referred to shall be —

(a) where the property has been valued under the provisions of the Rating Act, No. 4 of 1995, the value shown in the valuation roll; and

(b) where the property has not been so valued, the value determined in such manner as the Minister may direct.

PART VIII  
BYE-LAWS

*Power to make bye-laws.*

77. (1) Subject to the provisions of this Part, a Council may from time to time make bye-laws in respect of all such matters as are necessary or expedient for —

- (a) the maintenance of the health, well-being and safety of the inhabitants of the municipality; or
- (b) for the good order and government of the municipality; or
- (c) for the prevention and suppression of nuisances in the municipality.

(2) In particular, and without prejudice to the generality of subsection (1), a Council may make bye-laws necessary for carrying out the powers conferred upon the Council by this or any other law and for such additional purposes as may be prescribed by the Minister by notice published in the Gazette.

(3) Bye-laws made under the provisions of this section may apply to the whole or any part of the municipality.

*Bye-laws not to conflict with laws.*

78. Nothing in this Act shall be deemed to empower a Council to make any bye-law which is in conflict with or derogates from the provisions of any other law for the time being in force in Swaziland and to the extent that any bye-law conflicts with or derogates from any such law it shall be void and of no effect.

*Procedure relating to bye-laws.*

79. (1) The following provisions of this section shall apply to all bye-laws of a Council made in exercise of the powers conferred by this or any other law.

(2) The Council shall —

- (a) publish in the Gazette and at least one newspaper circulating in the municipality a notice of its intention to make a bye-law and by such notice invite representations in writing from any person who objects to the making of such bye-law;
- (b) cause a copy of such notice and of the proposed bye-law to be exhibited for a period of one month in a prominent place at or near the main entrance to the offices of the Council.

(3) At any time after the expiration of one month from the date on which the copy of the proposed bye-law was first exhibited in accordance with subsection (2)(b) the Council shall consider any representations received and decide whether or not to proceed with making the bye-law.

(4) If the Council decides to proceed it shall forward to the Minister —

- (a) a copy of the proposed bye-law;
- (b) a copy of any written representations from any person who objects to the making of the bye-law together with the comments of the Council thereon, or

where no representations have been received a statement to that effect signed by the Town Clerk; and

(c) a certificate signed by the Town Clerk that the provisions of subsection (2) have been complied with.

(5) The Minister may approve, alter or reject any proposed bye-law as he may think fit.

(6) Where the Minister approves, whether with or without alteration, a proposed bye-law, the Council shall make such bye-law in accordance with the terms of such approval and not otherwise.

*Publication of bye-laws.*

80. (1) Every bye-law shall be published in the Gazette and shall have the force of law in the municipality as from the date of such publication or, if a later date is provided in such bye-law, as from that date.

(2) A copy of the Gazette containing any bye-law of the Council shall be evidence of the due making of such bye-law and of the contents thereof.

(3) A copy of all bye-laws of a Council shall be deposited in the offices of the Council and shall at all reasonable hours be open to public inspection without payment.

*Penalties for breach of bye-laws.*

81. (1) In any bye-law provision may be made for any or all of the following penalties for any breach thereof:

(a) a fine not exceeding one hundred emalangeni;

(b) a fine not exceeding one hundred emalangeni or, in default of payment, imprisonment for a period not exceeding six months;

(c) imprisonment for a period not exceeding six months.

(2) Subject to subsection (1), different penalties may be provided in case of successive or continuous breaches of any bye-law and it may be provided that any expense incurred by the Council in consequence of a breach of any bye-law or in the execution of any work directed by any bye-law to be executed by any person and not executed by him, shall be paid by the person committing such breach or failing to execute such work.

*Powers to enforce making of bye-laws.*

82. (1) If the Minister is satisfied that a Council is failing to make adequate bye-laws under section 77 of this Act, he may direct the Council to make such bye-laws as he shall specify.

(2) If a Council having received a direction under subsection (1) fails, within such time as the Minister considers in the circumstances to be reasonable, to obey such direction, the Minister may, subject to subsection (3) make bye-laws to the effect specified in such directions and for that purpose he may exercise all the powers conferred upon the Council under section 77.



(3) Bye-laws shall not be made under subsection (2) unless the Minister has given to the Council an opportunity to make representations to him in respect of its failure to comply with any directions given under subsection (1).

(4) Sections 78, 80 and 81 apply to bye-laws made under subsection (2) as they apply to bye-laws made by a Council.

*Bye-laws applicable to sub-divided municipality.*

83. Whenever an area is severed from a municipality and established as a separate municipality or town, the Minister may by notice published in the Gazette declare that all or any of the bye-laws in force in such area prior to such severance shall continue to apply to such area until such time as other provision is made in respect of such area.

## PART IX MUNICIPAL FUNDS

*Municipal account.*

84. (1) Every Council shall establish a municipal account for its general financial purposes.

(2) Subject to section 96(1), the revenues of a Council shall be credited and paid to the municipal account and all expenditure shall be discharged from such account.

*Financial year.*

85. The financial year of the Council shall be the twelve months ending on and including 31st March in each and every calendar year, or such other date as the Minister may by notice in the Gazette either generally, or in respect of any Council, appoint.

*Revenues of the Council.*

86. The revenues of a Council shall consist of —

- (a) all rates lawfully levied by the Council;
- (b) such part as the Minister may determine of any fees and charges payable in respect of licences and permits which have been lawfully issued or authorized for issue by the Council, whether under this Act or any other law;
- (c) all other fees, charges, rents and dues payable to or recoverable by the Council or to which the Council is entitled under the provisions of this or any other law;
- (d) one-half of all fines imposed by a court of competent jurisdiction within the municipality in respect of any contravention or failure to comply with the provisions of this Act, the Public Health Act, No. 5 of 1969, or of any other law specified by the Minister by notice in the Gazette and of any subordinate legislation made hereunder or thereunder;
- (e) except as may be otherwise prescribed by the Minister, all charges or profits arising from any trade, service or undertaking carried on by the Council in exercise of the powers vested in it;

- (f) interest on moneys invested by the Council except where other provision is made in respect thereof under the provisions of this or any other law;
- (g) all moneys paid to the Council by the Government as contributions, grants, endowment or otherwise, except where such moneys are paid with a condition as to the purpose for which such moneys are paid;
- (h) all sums realised by sales, leases or other transactions of the Council;
- (i) all revenue derived by the Council from any property vested in the Council, or by the administration of any public service;
- (j) all sums otherwise accruing to the Council in the course of the exercise of its powers and duties;
- (k) such other revenues as the Minister, after consultation with the Minister of Finance, may declare in writing to be revenues for the purposes of this section.

*Expenditure.*

87. (1) A Council may, subject to the provisions of this or any other law expend moneys in the proper exercise of its duties and powers and in the proper performance of matters necessarily incidental thereto or arising therefrom and for the purpose of meeting its lawful debts and obligations.

(2) Every payment from the funds of the Council shall be made by the Treasurer at the direction of the finance committee, or an accounts sub-committee appointed by the finance committee.

(3) The Treasurer shall submit to the finance committee each month a schedule of all payments made by him, in terms of subsection (2), during the immediately preceding month.

*Capital and renewals funds.*

88. (1) Every Council shall keep such capital, renewals and other special accounts as it may consider necessary, or as the Minister may, after consulting the Council, direct, and make provision to the satisfaction of the Minister for the annual setting aside by it of amounts necessary to create adequate funds in such accounts.

(2) Every Council shall transfer each year out of its general revenues into the accounts established under the provisions of this section such contributions as are required to be made under this section.

(3) Moneys standing to the credit of such accounts may with the consent of the Minister be used for any capital purpose in respect of which the Council has received the consent of the Minister to raise a loan under section 94, or in respect of which the Council is empowered to raise a short-term loan under section 98, but any such use is subject to the Council making prior arrangements for the moneys so used to be repaid to the relevant accounts before such date as they are required for the purpose for which they were originally contributed.

(4) The Treasurer shall maintain such records of the movable assets and plant of the Council as may be required, so that the sum payable to the renewals fund can be ascertained.

*Investment of funds.*

89. Any funds of a Council which are not required for immediate use, may be —
- (a) placed on deposit with any commercial bank or the Swaziland Credit and Savings Bank; or
  - (b) with the consent of the Minister, invested by way of loan to the Government, any other Council, the Swaziland Electricity Board, the Swaziland Railway or any Building Society registered in Swaziland; or
  - (c) invested in such other manner as the Minister may approve.

*Bad debts.*

90. (1) A Council shall take all necessary and reasonable steps for the recovery of all rates, fees, charges and other revenue due and payable to it under this or any other law.
- (2) Subject to any regulation made under section 93 a Council may authorise the Treasurer to write off any revenue which is irrecoverable or the recovery of which is considered not to be reasonably practicable.

*Annual estimates.*

91. (1) Every Council shall on a date which, in default of appointment by the Minister, shall be not later than two months before the commencement of the financial year, pass detailed estimates, in such form as the Minister may approve, of the revenue and expenditure of the Council for the ensuing financial year.
- (2) The estimates as passed by the Council shall be signed by the Chairman and a notice shall be published in a newspaper circulating in the municipality, and at the offices of the Council, stating that the estimates have been passed and are open to public inspection without payment at all reasonable times at the office of the Council.
- (3) Within seven days of the date of publication of the notice the estimates of the Council shall be submitted to the Minister, who subject to subsection (4) may —
- (a) approve such estimates without amendment; or
  - (b) disallow or amend any item or any part of any item therein which, in his opinion, is unlawful, excessive or unnecessary; or
  - (c) disapprove such estimates.
- (4) The power of disallowance, amendment or disapproval conferred on the Minister by subsection (3) shall not be exercised by the Minister until he has allowed the Council the opportunity of making representations on any proposed disallowance, amendment or disapproval.
- (5) Where additional financial provision is required during the course of any financial year supplementary estimates shall be passed, submitted and otherwise dealt with in the same manner as the estimates except that subsection (2) shall not apply in respect of supplementary estimates.

*Incurring expenditure not in accordance with the approved estimates.*

92. (1) No expenditure shall be incurred by a Council unless it can be properly charged to an item in the approved estimates or in approved supplementary estimates.

(2) Subject to subsection (3) and any regulations made under section 93 and notwithstanding subsection (1) of this section and section 91(5), a Council may by resolution reallocate funds appropriated for any one purpose in the approved estimates to another purpose contained therein:

Provided that the amount so re-allocated shall not exceed —

- (a) one thousand emalangeni;
- (b) in respect of any amount exceeding two hundred emalangeni, 25 per centum of the amount originally appropriated for such last mentioned purpose;

whichever is the lesser.

(3) No expenditure on such reallocation shall take place without the consent of the Minister —

- (a) for any purpose in respect of which provision has not been made in the approved estimates; or
- (b) for any purpose the proposed expenditure on which has been reduced by the Minister.

(4) Notwithstanding the provisions of subsection (1) a Council may —

- (a) prior to the approval of its estimates, authorise expenditure on recurrent items to an amount not exceeding one-third of that provided in the approved estimates for the preceding year; and
- (b) prior to the approval of its estimates or any supplementary estimates, grant to its officers, servants and employees any normal increase of salary or wages in accordance with approved scales.

#### *Financial regulations.*

93. The Minister may make regulations, to be known as “Financial Regulations”, for the purpose of —

- (a) controlling and managing the financial business of councils;
- (b) regulating the procedure and duties of the Treasurer and accounting staff of councils;
- (c) providing for the receipt, safe handling, recording, safe custody and disposal of cash or stores;
- (d) matters relating to the keeping of the accounts of the Council and prescribing the form in which they shall be kept;
- (e) regulating the procedure and prescribing any conditions or limitations in respect of contracts made under section 58;
- (f) regulating the procedure in calling for and dealing with tenders under section 59;
- (g) generally carrying Parts IX, X and XI of this Act into effect.

## PART X

### BORROWING POWERS

*Power to borrow.*

94. A Council may, by a majority of the councillors present and provided that the number of councillors voting in the majority is equal to a majority of the full Council, from time to time apply to the Minister for authority to borrow such sums as may be required for any period not exceeding thirty years and for any purpose approved by the Minister.

*Raising loans.*

95. (1) Where in terms of section 94 a Council is authorised to borrow, it may raise money by way of mortgage, issue of stock or any other method in such amounts and on such conditions as the Minister, in each case, may approve.

(2) Every sum borrowed under this section shall be repaid within such period and in such manner as the Council, with the sanction of the Minister, may determine.

(3) All loans and interest thereon made to a Council shall, subject to any prior charge or hypothecation, be a first charge upon the revenues and assets of the Council.

*Application of loan moneys.*

96. (1) The Council shall cause to be kept a separate loan account at its bank into which shall be paid all loan moneys received by it in respect of loans raised under section 95.

(2) Subject to subsection (3), loan moneys may be used solely for the purpose for which they were borrowed.

(3) A Council may with the consent of the Minister —

(a) temporarily use for other purposes such portion of the moneys as is not immediately required for the purpose of the loan, and the amount so used shall be deemed to be a short term loan within the meaning of section 98; or

(b) use the balance of any loan moneys which are not required for the purpose for which the loan was raised for any other purpose.

*Repayment of loans.*

97. (1) If at any time any interest or repayment of capital due on a loan raised under this Part remains unpaid for three months after a written demand therefor has been lodged with the Town Clerk by the person entitled thereto, application may be made by such person or his representative to any competent court for the appointment of a receiver of the property and revenue on which the loan is secured.

(2) On the hearing of such application the court may —

(a) order that a rate or rates of such amount or amounts as it may fix be levied upon all rateable property within the municipality, and any rate so ordered to be levied shall have the same incidence as any rate imposed by the Council, and may be enforced in like manner; or

(b) if the application is in respect of default in the repayment of capital, order the sale of any property on which the loan may be secured, subject always to the provisions of any law as regards the alienation of any lands vested in the Council under such law.

(3) The proceeds of any rate or the sale of any property shall be paid into court or otherwise as the court may direct.

*Short-term loans and overdrafts.*

98. (1) A Council may obtain advances of money by way of overdraft or by way of short-term loan including loans at call in such amounts and on such conditions as the Minister may approve, either from a bank or from any other person, for the purpose of temporarily financing —

- (a) expenditure on revenue account lawfully incurred in accordance with the estimates, pending the receipt of revenues receivable by the Council in respect of the period of account in which that expenditure is chargeable; or
- (b) expenditure intended to be financed by a loan for which approval has been given under section 94.

(2) An advance made in accordance with subsection (1) and the interest thereon shall constitute a debt due by the Council and be charged on the revenues and assets of the Council and until repaid shall rank as if it were a loan raised under section 95.

*Illegal borrowing.*

99. (1) No person or bank lending money to a Council shall have any remedy or right whatsoever to recover any loan or advance from the Council, unless such loan or advance has been authorized as required by this Act.

(2) If a Council borrows any money which it is not legally bound to repay, all the members who have joined in authorising the borrowing of such money shall be jointly and severally liable to repay the sum and all interest thereon.

(3) For the purposes of this section, any loan or advance shall be deemed to have been authorized on production of a certificate signed by the Minister's Permanent Secretary, certifying that the provisions of this Act relating to such loan or advance have been observe.,

(4) The provisions of this section shall not apply to any loan or advance made to the Council before the date on which the Act comes into operation.

PART XI

ACCOUNTS AND AUDIT

*Accounts.*

100. (1) A Council shall cause proper books and accounts to be kept and true regular records entered therein of all financial transactions of the Council.

(2) Immediately after the end of each financial year, the Council shall cause its accounts for that year to be made up and brought into balance.

(3) Subject to any directions of the Minister, such books and accounts shall be kept in such form and by such method as the Council may approve.

*Appointment of auditor.*

101. (1) Every Council shall, subject to the approval of the Minister, appoint a fit and proper person from time to time to audit the accounts and records of the Council.

(2) Notwithstanding subsection (1), the Minister may direct a Council to appoint the Director of Audit to be its auditor, and require the Council to reimburse to the Government such sum in respect of the Auditor-General's expenses as the Minister may fix.

*Audit of accounts.*

102. (1) Every Council shall send its accounts duly made up and balanced to its auditor within three months of the end of the financial year to which they relate, or by such later date as the Minister may specify in writing.

(2) For the purposes of any audit contemplated under this section the Council shall —

- (a) cause to be produced to the auditor all books and statements of accounts and balance sheets of the Council, together with all vouchers in support thereof, and all books, papers, writings, minute books and any other documents relating thereto that he may wish to see, but these may not be removed from the offices of the Council without its express sanction;
- (b) permit the auditor to inspect all stores and other assets of the Council as he may require;
- (c) give to the auditor such information, explanations and facilities as he may require to be given to enable him to perform the duties of an auditor.

(3) The auditor shall report in writing to the Council in respect of each financial year, certifying whether or not in his opinion —

- (a) the Council had kept proper books and records;
- (b) the accounts of the Council are in order and present a true view of the financial position of the Council and of its transactions;
- (c) separate accounts of trading undertakings and any other special accounts prescribed by the provisions of this Act or any other law, have been kept;
- (d) payments due in respect of moneys borrowed have been made on due date, and adequate provision has been made for the redemption and repayment of all moneys borrowed by the Council;
- (e) the amount set aside for the renewal of plant or other assets is adequate and in accordance with the requirements of this Act;
- (f) the amounts set aside for working balance and reserve accounts required to be established are adequate;
- (g) the provisions of any law relating to the transactions of the Council, as disclosed in its accounts and records, have been complied with;
- (h) he has obtained all the information, explanations and facilities as he may have required to be given to enable him to perform the duties of auditor;
- (i) all his requirements and recommendations as auditor have been complied with and carried out.

(4) In addition to the report required under subsection (3), the auditor shall report to the Minister and to the Council any matter or thing which is discovered during the course of

an audit and which appears to have been done or performed without due authority in that behalf, and shall make such recommendations as he sees fit.

*Submission of audited accounts.*

103. (1) Within thirty days of the receipt of the auditor's report on the accounts of the Council for any financial year, the Town Clerk shall —

- (a) lay a copy of the accounts duly certified by the auditor, together with the auditor's report before the finance committee and subsequently before the Council; and
- (b) submit a copy of the accounts, duly certified by the auditor, together with the auditor's report to the Minister.

(2) The Minister may call upon the Council for an explanation in regard to any matter referred to in the auditor's report.

(3) After submission of the accounts and auditor's report to the Council and to the Minister, a copy of each, or such extracts as the Minister may approve, shall be deposited in the offices of the Council and shall be open to public inspection without payment during normal office hours, and a notice to this effect shall be displayed at the Council's offices and published in a newspaper circulating in the municipality.

*Independent audits.*

104. (1) It shall be lawful for the Minister or a Council at any time to direct the auditor to examine or audit the accounts or records of the Council, or any part thereof and to make a report, but this shall not affect the holding of the annual audit as provided in section 102.

(2) Section 102(2) and (4) shall apply to any examination or audit undertaken in the terms of subsection (1).

PART XII

CENTRAL CONTROL

*Inspections.*

105. (1) The Minister may at any time, by notice published in the Gazette, appoint any person to be an inspector for the purpose of inspecting the observance and performance of a Council of the duties and powers imposed or conferred upon it by the provisions of this or any other law.

(2) An inspector may —

- (a) attend any meeting of the Council or any committee of the Council;
- (b) upon giving due notice to the Town Clerk of his intention so to do, inspect any books, records, documents, contracts, stores or other assets and any undertaking of the Council.

(3) An inspector shall report to the Minister the result of an inspection made by him.



*Disallowance and surcharge.*

106. (1) If, on receipt of the report of the auditor or an inspector, the Minister is satisfied that any expenditure has been incurred without proper authority in that behalf, he may either sanction or disallow such expenditure, and if he disallows such expenditure, he may, subject to section 121, by order in writing surcharge any person responsible for such expenditure for the whole or any part thereof.

(2) If, on receipt of the report of the auditor or an inspector, the Minister is satisfied that —

- (a) any failure to collect money due to the Council; or
- (b) any loss of money or property; or
- (c) any damage to property; or
- (d) any wasteful expenditure;

has occurred by reason of any wilful or wrongful act or any negligence by any councillor or person in the service of the Council, the Minister may, subject to section 121, by order in writing surcharge such councillor or person for the whole or any part thereof.

(3) Before making any disallowance or surcharge against any person, the Minister shall afford an opportunity to such person to be heard or to make any representations with regard to the matter which he may think fit, and shall in the event of his making such disallowance or surcharge furnish such person in writing, on application being made to him for that purpose, with the reasons for his decision in respect of such disallowance or surcharge.

(4) Any sum surcharged on any person under the provisions of this section shall be a debt due to the Council and shall be payable by such person within one month, or such longer period as the Minister may approve, of the date of service upon him of the order of the Minister.

(5) Any person aggrieved by an order of surcharge may appeal to the High Court which may confirm, set aside or vary such order and the decision of which shall be final.

(6) The Chief Justice may make rules providing for the manner in which appeals under this section shall be made and the procedure on the hearing of any such appeals.

*Commission of inquiry.*

107. (1) If the Minister —

- (a) has cause to suspect that a Council has failed to observe and perform any of the duties and powers conferred or imposed upon it by the provisions of this or any other law; or
- (b) has cause to suspect that a Council has done or performed any act, matter, or thing without due authority in that behalf; or
- (c) has cause to suspect that any present or former member of a Council has abused his position as a member or neglected to perform his duties as a member; or
- (d) is otherwise of the opinion that an investigation should be made into the affairs of a Council;

he may, in his discretion, appoint a commission of one or more persons to enquire into and report to him the findings of fact on such matter and any recommendations they may feel disposed to make thereon.

(2) Save that the Chairman of the commission shall be the Attorney-General or a law officer appointed by him, the Commissions of Enquiry Act, No. 35 of 1963 shall apply to an enquiry under this section.

(3) On receipt of the commission's report, the Minister may —

- (a) make such order as he may deem just or expedient in the light of the facts found by the commission and the Council shall without delay comply with the requirements of such order;
- (b) if satisfied on the facts as determined by the commission that any present or former member of the Council is not a fit or proper person to hold office as a member, serve notice upon him declaring his seat to be vacant, if he is a present member, and declaring, whether he is a present or a former member, that he shall not be eligible for re-election or re-appointment for any period stated in such notice, and advise the Council accordingly;
- (c) require the commission to enquire into, determine and report upon, either such new or additional matters, or more fully upon matters already considered by the commission, as he may specify in writing.

(4) The Minister may, pending the report of the commission, or if a Council fails to comply with the terms of an order made by him under subsection (3)(a), in addition to any other powers conferred upon him under this Act —

- (a) suspend the exercise by the Council of any of the powers conferred upon it by this Act or any other law for such period as he may think fit; or
- (b) dissolve the Council and, in his discretion, appoint or direct the election of new councillors;

and during such period, or, as the case may be, pending the appointment or election of new councillors, confer upon any person or persons the right to exercise any powers so suspended or the powers of the Council so dissolved.

(5) The expenses incidental to —

- (a) any enquiry under this section; or
- (b) the exercise of any of the powers of the Council under this section;

shall be a debt due by the Council to the Government, and shall be paid and discharged out of the funds or revenue of the Council in such manner as the Minister shall direct and any such direction may include a direction that the expenses shall be deducted from any grant or rates payable by the Government to the Council.

*Minister's powers to enforce performance of duties.*

108. (1) Notwithstanding section 107, if at any time it appears to the Minister on receipt of a report from an inspector appointed under section 105 or an auditor that the Council is —

- (a) failing to perform any duty, function or responsibility; or
- (b) performing any duty, function or responsibility in such a manner as to be prejudicial to the orderly or efficient administration of the municipality;

he may determine what duty, function or work shall be done or executed, and make an order requiring the Council, within a time to be specified in such order, to perform such duty or function or carry out such work.

(2) Where any Council fails to comply with any order made under subsection (1) within the time specified therein, the Minister may direct the Town Clerk or appoint any other person to perform such duty or function or carry out the work, and may direct that such remuneration and the cost of such work be defrayed out of the municipal account.

*Power to direct the levy of a rate or raising of a loan.*

109. (1) For the purposes of performing any duty or function or carrying out any work referred to in sections 107 and 108, the Minister may direct a Council to raise funds by the levy of a rate or the raising of a loan.

(2) Where the Minister by virtue of the powers conferred by subsection (1) directs a Council to raise a loan, the provisions of Part X apply to such a loan in like manner and to the same extent as they apply to a loan raised under that Part.

(3) Where the final accounts of a Council in any financial year reveal an aggregate deficit on revenue account, the Minister may direct the Council to make and levy a rate sufficient to liquidate the deficit.

*Effect of dissolution of Council*

110. (1) Where the Minister in pursuance of section 107 dissolves any existing Council and directs that it shall be replaced by a new Council to be constituted in accordance with the provisions of this Act, the existing Council shall, without prejudice to anything already done by it, be dissolved from such date as may be specified by the Minister and shall, from date, cease to have, exercise, perform and discharge any of the rights, privileges, powers, duties and functions conferred or imposed upon it or vested in it, by this Act or by any other law.

(2) The Minister in an order under section 107 dissolving the existing Council or in any subsequent order under that section give such directions as may be necessary for the purpose of giving effect to the order and such direction shall, on publication in the Gazette, have the force of law.

(3) During the period that elapses between the dissolution of a Council under section 107 and the constitution of a new Council in its place, the Town Clerk or such other person or persons whom the Minister may appoint shall have, exercise, perform and discharge all the rights, privileges, powers, duties and functions vested in or conferred or imposed on the Council or the Chairman of the Council by this Act or by any other law.

(4) The new Council shall, from the date of the constitution thereof, be the successor of the dissolved Council for all purposes relating to the municipality.

*Vacancy in the office of councillors pending constitution of a new council.*

110bis.(1) In the event of a vacancy occurring in the office of councillors in a municipal or town council, other than by the operation of section 107, the Minister, pending the constitution of a new council in accordance with regulations made under section 8, may appoint a person, persons or an interim council for the management of the business of the municipal or town council whilst the processes or the provisions of constituting a new council are being effected.

(2) The exercise of the Minister's powers conferred under subsection (1) shall be published by notice in the Gazette.

(3) The Minister may make regulations for purposes of this section to be included in the regulations made under section 8 and shall include the circumstances for the application of this section.

(Inserted A.3/2001.)

### PART XIII

#### TOWNS

##### *Declaration of towns*

111. (1) Subject to the provisions of this section the Minister may by notice published in the Gazette —

- (a) declare any area to be a town;
- (b) assign a name to a town;
- (c) define the boundaries of a town and alter such boundaries;
- (d) declare that any area shall cease to be a town.

(2) Section 4(2) and (3) apply *mutatis mutandis* before the Minister publishes a notice under subsection (1).

##### *Town Boards*

112. In every town there shall be established by the Minister, by notice published in the Gazette, a Town Board which shall perform such duties and may exercise such powers as are imposed and conferred on such Boards by this Act or any other law.

##### *Application of provisions of Act*

113. (1) The provisions of sections 6 to 19 (inclusive), 21 to 27 (inclusive), 48, 63 to 76 (inclusive), and Part XIV apply to a town or Board established under this Part as they apply to a municipality or Council.

(2) The Minister may, by notice published in the Gazette, apply with or without modification all or any of the remaining provisions of this Act to a town or Board established under this Part.

(3) In any section of this Act applied to a town or Board under subsections (1) or (2) —

- (a) any reference to a municipality or a Council shall be construed as reference to the town or Board to which the section has been applied; and
- (b) there shall be substituted for the title "Town Clerk" the title "Clerk to the Board".

### *Rating*

114. (1) Until such time as the Rating Act, No. 4 of 1995 is applied to a town, an annual general rate upon all immovable property within the town may be assessed, levied and collected by the Board in accordance with regulations made by the Minister.

(2) No Board shall exercise its powers under subsection (1) except with the prior consent of the Minister, and any rate assessed shall be subject to the approval of the Minister.

(3) Until such time as the provisions of Part IX have been applied to a Board, the proceeds of any rate levied shall be payable into the revenues of the Government, but shall be used solely for the benefit of the town from which they have been collected.

### *Regulations*

115. (1) The Minister may, in respect of any town or towns to which section 77 does not apply, make regulations for all such matters as those for which a Council is empowered under that section to make by-laws.

(2) Upon the application of section 77 to any town or upon a town becoming a municipality any regulations made under subsection (1) shall continue to apply to such town until such time as the same are revoked or replaced by by-laws made under section 77.

## PART XIV MISCELLANEOUS

### *Limitation of actions*

116. (1) No legal proceedings of any nature shall be brought against a Council in respect of anything done or omitted by it after the commencement of this Act, unless such proceedings are brought before the expiry of twelve months from the date upon which the claimant had knowledge or could reasonably have had knowledge of the act or omission alleged.

(2) No such action shall be commenced until thirty days' written notice of the intention to bring such proceedings have been served on the Council, and particulars as to the alleged act or omission shall be clearly and explicitly given in such notice.

(3) The High Court may, on application by a claimant debarred under subsection (1) or (2) from instituting proceedings against a Council, grant special leave to him to institute such proceedings if it is satisfied that —

- (a) the Council against which the proceedings are to be instituted will in no way be prejudiced by reason of the failure to institute the proceedings within the stipulated period or by reason of the failure to give or the delay in giving the required notice; or
- (b) having regard to any special circumstances, the person proposing to institute the proceedings could not reasonably be expected to have complied with the requirements of subsection (1) or (2).

*Right of entry to premises.*

117. The Town Clerk and any officer of a Council authorised by him in writing may enter any premises within the municipality between the hours of 8 o'clock in the morning and 6 o'clock in the evening or in the case of emergency at any time —

- (a) for the purpose of inspecting any premises licensed under the provisions of this Act; or
- (b) generally for the purpose of carrying out any of the duties or powers imposed or conferred upon such Council.

*Service of notice and documents.*

118. (1) Any notices or other documents required to be served on a person under this Act may be served in any of the following ways —

- (a) on the person personally; or
  - (b) by delivering the notice or document to his place of business or his place of residence; or
  - (c) by posting a prepaid letter, containing the notice or document and addressed to the person on whom the notice or document is to be served to his last known place of residence or his last known place of business, or to his Post Office Box number; or
  - (d) if he has no address in Swaziland or if his address in Swaziland is unknown, by fixing the notice or document in a conspicuous place on the immovable property (if any) to which it relates, and by publication in such newspaper and such manner as may be prescribed.
- (2) Service in terms of subsection (1)(c) shall be deemed —
- (a) to be effected by properly addressing, prepaying and posting a letter containing the notice or document, unless it is proved that the letter was not delivered at the place to which it was addressed; and
  - (b) unless the contrary is proved, to have been effected at the time when the letter would be delivered in the ordinary course of post.

*Service of legal process.*

119. Any legal process to be served on a Council is deemed to have been effectively and sufficiently served when it has been handed to the Town Clerk.

*Authentication and execution of documents.*

120. Except where otherwise expressly provided, every document requiring authentication on behalf of a Council or Board shall be deemed to be duly authenticated when signed by the Chairman and Town Clerk, or in the absence of the Chairman by any two councillors and the Town Clerk.

*Protection of individuals.*

121. No act, matter or thing done or omitted by —

- (a) any councillor; or
- (b) any officer or other person in the service of a Council or Board; or
- (c) by any person acting under the directions of a Council or Board;

shall, if such act, matter or thing were done in good faith in the execution of his duty, render any such councillor, officer or person personally liable to any action, liability, claim or demand whatever.

*Bribery.*

122. (1) Any councillor, officer or servant of a Council or Board, including any person carrying out on behalf of a Council or Board any statutory duty or power, who directly or indirectly exacts or accepts or agrees to accept or attempts to obtain for himself or for any other person, any gift, reward or other consideration whatever, other than the allowance or payments to which he is lawfully entitled, for or on account of his services as a councillor, officer or servant or his doing or refraining from doing, anything in his capacity as a member, shall be guilty of an offence, and liable on conviction to a fine not exceeding one thousand emalangeneni or, to imprisonment for a period not exceeding two years, or both.

(2) Any person who directly or indirectly gives, offers, or promises to a councillor or to any officer or servant of a Council or Board, or any person carrying out on behalf of a Council or Board any statutory duty or power, any gift, reward or other consideration whether for the benefit of such person or of another person as an inducement to or in consideration of or otherwise on account of such person doing or forbearing to do anything in respect of any matter or transaction in which the Council or Board is concerned shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand emalangeneni, or to imprisonment for a period not exceeding two years, or both.

*Minister's power to give effect to intent and purpose of Act.*

123. If in the opinion of the Minister, through any error, accident or omission anything required to be done in terms of the provisions of this Act is omitted to be done or is not done in the manner or within the time determined therein, the Minister may order all such steps to be taken as in his opinion may be necessary to rectify any such error, accident or omission or he may validate anything which may have been irregularly done as aforesaid so that the intent and purpose of this Act shall be given effect to.

*Minister's powers to make regulations.*

124. (1) The Minister may make regulations not inconsistent with the provisions of this Act —

- (a) in respect of any matter contemplated, required or permitted to be prescribed under this Act; and
- (b) for the better carrying out generally of the objects and purposes of this Act.

(2) Any regulations made under subsection (1) may provide for the punishment, by means of a fine not exceeding two hundred emalangeneni or imprisonment for a period not exceeding six months or both, of any person guilty of an offence under the regulations.

(3) The regulations shall specify the contraventions thereof which are offences and the punishment that may be imposed, within the limits in this section prescribed, for different

offences, and in the case of a continuing offence, the regulations may impose an additional fine not exceeding four emalangeni for every day during which the offence continues after a date set by the court for the contravention to be corrected.

*Delegation of powers to officers.*

125. (1) Subject to the provisions of this section, anything required or authorised under this Act or any other law to be done by a local authority may be done by an officer of the local authority authorised in that behalf by resolution of the Council or Board either generally or specifically, and subject to such conditions as the Council or Board deem fit to impose.

(2) A resolution so authorising an officer to act shall not have effect until approved by the Minister.

(3) Nothing in this section shall permit a Council or Board to confer upon an officer the power to —

- (a) levy a rate;
- (b) borrow money; or
- (c) make bye-laws.

*Want of form.*

126. Except where expressly provided to the contrary in this Act, no order or thing made or done relating to the carrying out of the provisions of this Act, shall be deemed invalid, or set aside merely by reason of want of form.

*General offences and penalties.*

127. (1) Any person who contravenes or fails to comply with any of the provisions of this Act or of any regulation or order made thereunder shall be guilty of an offence and, except where any other penalty is specifically provided, is liable on conviction to a fine not exceeding two hundred emalangeni or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(2) Where any person is convicted of an offence under subsection (1), and where such offence consists of —

- (a) failing to obtain a licence or permit; or
- (b) contravening or failing to comply with any condition subject to which a licence or permit has been issued to such person;

under the provisions of this Act or of any regulation or bye-law made thereunder, the court may in addition to or in substitution for any other penalty which it may impose, cancel the licence or permit in respect of which such offence was committed and may order that such person shall, for a period not exceeding twelve months from the date of such conviction, be disqualified from holding or obtaining any such licence or permit.

*Saving.*

128. (1) A Board area and a Town Management Board established under the Town Management Act, No. 4 of 1964, are deemed to be municipalities and town councils respectively established under this Act and —



- (a) the members of every such town management Board and the Chairman and Vice-Chairman thereof shall continue in office as if they had become members under this Act, or until the composition of the Council is altered by notice under section 6;
- (b) all appointments made under such Proclamation are deemed to have been made under this Act and the office of Secretary is deemed to be the office of Town Clerk;
- (c) all subsidiary legislation made under such Proclamation is deemed to have been made under this Act and shall continue in force as far as the same may not be rendered inapplicable by this Act, until revoked or replaced, in whole or in part, by notice, regulations or bye-laws made under this Act or any other law;
- (d) all licences and permits granted or issued under that Proclamation shall remain in force for the period of validity stated therein.

(2) All Urban Areas declared under the Urban Areas Act, No. 2 of 1912, not being part of a Board area referred to in subsection (1), are deemed to be towns declared under this Act.

(3) Where a municipality or town is established in any area to which the Urban Areas Act, No. 2 of 1912 applied —

- (a) all subsidiary legislation made under such Proclamation is deemed to have been made under this Act and shall continue in force, so far as the same may not be rendered inapplicable by this Act, until revoked or replaced, in whole or part, by notices or regulations made under this Act, or under any other law;
- (b) all licences and permits granted or issued under such Proclamation shall remain in force for the period of validity stated therein.

#### SCHEDULE

(Section 56)

#### POWERS

##### *General.*

1. Generally to do and perform all such matters and things as are necessary for carrying out the duties imposed on a Council by this Act.

##### *General public services.*

2. To establish, acquire, erect, maintain, promote, assist and control —

- (a) cemeteries, crematoria, mortuaries and ancillary services, and to provide for the burial of bodies of destitute persons and unclaimed bodies;
- (b) omnibus stations and related office accommodation, cafes, restaurants, refreshment rooms and other buildings;
- (c) health centres and crèches;
- (d) public halls, libraries, art galleries and museums;

- (e) slaughter houses, cold storage facilities and premises for the inspection or processing of milk, meat or hides and skins;
- (f) markets;
- (g) botanical and zoological gardens;
- (h) public baths and swimming pools;
- (i) laundries and other places for washing clothes;
- (j) canteens, social centres and clubs including such facilities for employees and staff;
- (k) public lavatories and urinals;
- (l) pounds for stray animals and clinics for the treatment of sick animals;
- (m) camping and grazing grounds;
- (n) lairages and dipping tanks;
- (o) public weighing machines; and
- (p) public monuments.

*Public streets and places.*

3. To preserve public decency, and to prevent offences against public order in streets and public places, and to prevent damage to or defacement of property of the public or of the Council.
4. To establish, maintain or control public parks, gardens and recreation grounds on any land vested in the Council and in connection with or for the purposes of any such public park, garden or recreation ground to —
  - (a) establish, erect, maintain and control aquariums, aviaries, piers, pavilions, cafes, restaurants, refreshment rooms and such other buildings or erections whatsoever as the Council may deem necessary;
  - (b) reserve any portion of such public park, garden or recreation ground for any particular game or for any other specific purpose, and exclude the public from such portion and provide for the renting and hiring thereof to the public, club or other organisations;
  - (c) provide or permit any other person to provide any apparatus, equipment or other amenity.
5. Subject to Part VII —
  - (a) to light public streets and public places and erect street signs;
  - (b) to clear, level and maintain public places, unoccupied land, and to plant, trim, protect and remove flowers, trees and shrubs in or from any public place;
  - (c) to lay out and adorn any street, square or open space vested in the Council by the erection of statues, fountains or other structures or in any other manner whatsoever;
  - (d) to decorate streets and public buildings, erect shelters, temporary buildings, platforms, seats and other structures on public places.

- (e) to name and alter the names of public streets and places, and to cause such names to be painted or otherwise exhibited on any building or other erection fronting thereon;
- (f) to take measures for the prevention of damage or removal of obstruction to public streets and places.

*Private works and services.*

- 6. To undertake private works and services and to charge and recover costs thereof.
- 7. At the request of the owner or occupier of premises fronting a street and at his cost, construct and maintain accesses and culvert crossings, and upon similar request construct and pave the pathway fronting the premises or any part of its width, in a special manner desired by him, and approved by the Council, and at his cost or at his cost in so far as the cost exceeds that of construction and pavement in ordinary course.

*Numbering of houses.*

- 8. To number or otherwise identify any buildings fronting on any street or other public place, and cause such identification to be exhibited on any such building or require the owner thereof, at his own expense, to cause such identification to be exhibited on the building.

*Removal of obstructions.*

- 9. To require the owner or occupier of any premises to remove or lower any fence or wall or to remove, lower or trim any tree, hedge or shrub overhanging any street or interfering with the passage of traffic or pedestrians thereon, or any wires or other works, or to require any such owner or occupier to perform any such removal, lowering or trimming which may be necessary for the maintenance of public safety and amenity.

*Fencing.*

- 10. To require the fencing or enclosing of plots and restrict the use of barbed wire, broken glass or any similar substance on fences and walls.

*Fires.*

- 11. To prevent and extinguish fires, to remove buildings in order to prevent the spread of any fire and to compensate the owner of any building so removed.
- 12. To establish, maintain and administer fire brigades and equip the same and prescribe charges for the services of such brigades and other use of their equipment and appliances and for water used at fires, with authority —
  - (a) to take any necessary precautions for the preservation of life or property during or after fires; and
  - (b) to enter by any brigade or other officer any premises for any purpose mentioned in paragraph (a) or for the purpose of obtaining access to and the use of water.

*Municipal buildings.*

13. Subject to Part VII —

- (a) to acquire, hire, erect and maintain buildings for offices, stores, workshops, depots or any other purpose of the Council, equip the same and to let any such building or portion thereof, subject to such conditions and charges as may be prescribed by bye-laws;
- (b) to erect, acquire, lease and maintain dwellings for the accommodation of officers and servants of the Council.

*Housing schemes.*

14. Subject to the approval of the Minister to establish, acquire or take over and administer housing schemes for the inhabitants of the municipality and for such purpose to —

- (a) lay out and provide and maintain necessary public services;
- (b) erect and maintain dwelling houses, flats and out-buildings appertaining thereto;
- (c) convert buildings into dwelling houses or flats and to alter, enlarge, repair and improve the same;
- (d) sell or lease any plots of land or any buildings thereon; and
- (e) let or rent to tenants any dwelling houses, flats, rooms or other accommodation.

15. Subject to the approval of the Minister, to make advances of money on the security of immovable property for the purpose of enabling persons, including the officers and servants of the Council, to acquire land within the municipality and erect dwellings thereon and to recover any such advances with interest thereon or instalments or otherwise.

*Census.*

16. To take a census of the inhabitants of the municipality or to contribute to the cost of taking any such census.

*Bands and orchestras.*

17. To establish, maintain, hire, support or control bands and orchestras and generally to provide for municipal entertainment at public places and functions.

*Trading activities.*

18. With the consent of the Minister —

- (a) to establish and maintain public transport services;
- (b) to provide and maintain premises for the sale of refreshment and the retailing in them of alcoholic liquor for consumption either on or off such premises, subject to the grant of any licence required by and the provisions of any other law;
- (c) to plant, grow and cultivate upon any land owned or held on lease by the Council and to sell or otherwise dispose of the crops and produce thereof;

- (d) to sell all by-products resulting from the carrying on by or on behalf of the Council of any works or services;
- (e) to undertake such other commercial enterprise as is in the public interest that the Council should so do.

*Public relations.*

- 19. To promote publicity for the municipality.
- 20. To entertain visitors, sponsor, promote and assist in arranging conferences, meetings, lectures and exhibitions of a local government nature or of benefit to the municipality, and meet reasonable out-of-pocket expenses of councillors and officers appointed by the Council to attend conferences and meetings or when engaged on the Council's business.
- 21. To promote schemes of health education and road safety propaganda.

*Regalia.*

- 22. To provide —
  - (a) gowns, chains and badges of office for councillors and officers of the Council;
  - (b) badges, medallions or scrolls for presentation to persons who have given meritorious service; and
  - (c) floral exhibits in memory of councillors, officers of the Council and persons of note.

*Subventions and aid.*

- 23. Subject to Part IX, to aid and support, whether by grant of money or otherwise, the establishment and maintenance of schools, health centres, crèches, libraries, art galleries, museums, musical or scientific institutions, homes for the aged, destitute or infirm, or for orphans and to provide bursaries to assist in the education of the children of persons residing in the municipality, to make donations to charitable and philanthropic, welfare and youth organizations and to make presentations to other local authorities and public bodies.

*General powers to regulate, control and license.*

- 24. To prohibit, restrict, regulate and license —
  - (a) the sale or hawking of wares or the erection of stalls on any street, or the use of any part of a street or public place for the purpose of carrying on any trade, business or profession;
  - (b) the depositing on any street, public place or unoccupied land of any refuse, rubbish, derelict vehicles or parts of vehicles or any other material or thing whatsoever, and to provide for the removal and disposal thereof;
  - (c) street decorations and the erection of shelters, temporary buildings, platforms, seats and other structures, at any entertainment, procession, exhibition, ceremony or display, whether in a public place or not;

- (d) the placing of banners, wires, ropes or any other impediments over or across any street or public place;
- (e) the collection of money or goods in any public place for any charitable or other purposes;
- (f) the public exhibition of any monstrosity, freak of nature, or abnormal person or animal;
- (g) singing, dancing, drumming, the playing of musical instruments, the reproduction of music or the making of any noise whatsoever likely to disturb any person or any performance for profit in any public place;
- (h) the storage or stacking of firewood or other fuel;
- (i) the washing or drying of clothes other than on private premises;
- (j) the quarrying of stone, lime, clay, gravel or other material;
- (k) the keeping of dogs, animals and poultry, and provide for the seizure and destruction of ownerless, unlicensed, diseased or dangerous dogs, and the seizure and disposal of stray animals and poultry;
- (l) billiard saloons, dance halls and other places of public resort;
- (m) lodging houses;
- (n) the burning of rubbish and grassland;
- (o) the posting of bills and advertisements, including the erection of hoardings, signs or other devices by means of which any advertisement or notice is publicly displayed;
- (p) the carrying on of any trade, business or calling which may, in the Council's opinion, be offensive, unhealthy or dangerous, or be a source of discomfort;
- (q) the erection and operation of petroleum filling stations.

25. To regulate, control or license any of the things which the Council is required or empowered under this Act to do, establish, maintain, carry on, promote or control, and subject to section 57 to fix any fees or charges to be made in respect thereof and to prescribe the forms to be used in connection therewith.