

SPECIAL ISSUE



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GAZETTE NOTICE NO. 12768

THE NATIONAL HOSPITAL INSURANCE FUND ACT

(Cap. 255)

APPOINTMENT

IN EXERCISE of the powers conferred by section 4 (1) of the National Hospital Insurance Fund Act, the Cabinet Secretary for Health appoints:

Under subsection (j) (ii)—

Lattif Shaban;

Under subsection (k)—

Jacqueline Kitulu (Dr.);

to be members of the National Hospital Insurance Fund Board, for a period of three (3) years, with effect from the 30th November, 2018.

Dated the 30th November, 2018.

SICILY K. KARIUKI,
Cabinet Secretary for Health.

GAZETTE NOTICE NO. 12769

EMBU COUNTY CHARTER

PREAMBLE

WHEREAS

Article 2 of the Constitution of Kenya provides that the Constitution is the supreme law of the Republic of Kenya and binds all persons and all State organs at both levels of government.

WHEREAS

Article 184 of the Constitution of Kenya mandated parliament to enact a national legislation for the governance and management of urban areas to provide *inter alia* the criteria for classifying areas as urban areas and cities; establishing the principles of governance and management of urban areas and cities and to provide for participation by residents in the governance of urban areas and cities within 1 year of the promulgation of the Constitution.

WHEREAS

Parliament enacted the Urban Areas and Cities Act, no. 13 of 2011 in fulfilment of Article 184 of the Constitution of Kenya.

WHEREAS

Section 9 of the Urban Areas and Cities Act empowers the Governor, on the resolution of the County Assembly, to confer on a qualifying town, the status of a Municipality by grant of a Charter in the prescribed form.

WHEREAS

The Urban Areas and Cities Act, does not have the prescribed form of a Municipality Charter.

WHEREAS

No regulations have been promulgated under the Urban Areas and Cities Act providing the prescribed form of a Municipal Charter under the Urban Areas and Cities Act.

WHEREAS

Section 72 of the Interpretations and General Provisions Act allows for substantial conformity of any instruments required to be in a prescribed form under any statute in Kenya.

WHEREAS

Section 9(4) of the Urban Areas and Cities Amendment Act provides that every Headquarter of a county government shall be conferred the status of a municipality, whether or not it meets the criteria for a classification as a municipality.

WHEREAS

Schedule 3 of the County Government Amendment Act provides Embu Urban Area (Embu) to be the headquarters of Embu County.

WHEREAS

The County Assembly of EMBU in its sitting on Thursday the 13th day of September, 2018 duly approved the request by the Embu County Executive Committee for

grant of this Charter to the now Municipality of EMBU.

NOW THEREFORE IN EXERCISE of the powers conferred by section 9 (1) of the Urban Areas and Cities Act, (No. 13 of 2011) and all other enabling provisions of law, the Governor of Embu County HEREBY GRANTS the Municipality of Embu this Municipality Charter on 12th October, 2018.

MARTIN NYAGA WAMBORA,
Governor, Embu County.

DEFINITION AND INTERPRETATION OF TERMS

In this Charter, unless otherwise defined;

Board—means the Embu Municipality Board established in this Charter

Charter—means the Embu Municipality Charter

County Assembly—means the County Assembly of Embu

County Executive Committee—means the Embu County Government County Executive Committee

County Executive Committee Member—means the County Executive Committee Member responsible for urban areas

County Public Service Board—means the Embu County Public Service Board

Governor— means the Governor of Embu County

Officer means a Member of the Municipality board

Manager— means the Embu Municipality Manager appointed under this Charter

Permanent dwelling—means a self-contained unit of accommodation used by one or more households as a home, such as a house, apartment, mobile home, houseboat, vehicle or other 'substantial' structure. A dwelling typically includes nearby outbuildings, sheds, etc. within the curtilage of the property, excluding any 'open fields beyond'

1. INCORPORATION, NAME AND BOUNDARIES

1.1. INCORPORATION AND NAME

1.1.1. This Charter shall be referred to as the Embu Municipality Charter.

1.1.2 All processes affecting Municipality of Embu (hereinafter referred to as "the Municipality") shall be served on the Municipal Manager or acting Municipal manager

1.2. BOUNDARIES

1.2.1 The boundaries of the Municipality of Embu shall be defined in the Embu Town Integrated Urban Spatial Development Plan.

1.2.2 The Boundaries may be altered by the County Executive Committee by an amendment of this Charter approved by the County Assembly.

2. POWERS, AND OBJECTS, OF THE MUNICIPALITY

2.1. POWERS OF THE MUNICIPALITY

2.1.1. The Municipality of Embu shall have all the powers, general and special, governmental or proprietary, expressed or implied, which may be possessed or assumed by municipalities under the Urban Areas and Cities Act, the County Government Act and any other relevant laws.

2.1.2. No enumeration of specific powers in this Charter shall be held to be exclusive. All such powers shall be exercised in the manner prescribed in this Charter, or, if not prescribed herein, in such manner as Board of the Municipality may determine, or, unless a contrary intent appears in this Charter or in the Resolutions of the Board of the Municipality, in such manner as may be provided by the County Laws and Regulations.

2.2. OBJECTS OF THE MUNICIPALITY

2.2.1. The objects of the Municipality of Embu are to:-

- (i) Provide for efficient and accountable management of the affairs of the Municipality.
- (ii) Provide for a governance mechanism that will enable the inhabitants of the Municipality to:
 - (a) Participate in determining the social services and regulatory framework which will best satisfy their needs and expectations;
 - (b) Verify whether public resources and authority are utilized or exercised, as the case may be, to their satisfaction; and

(c) Enjoy efficiency in service delivery.

- (iii) Vigorously pursue the developmental opportunities which are available in the Municipality and to institute such measures as are necessary for achieving public order and the provisions of civic amenities, so as to enhance the quality of life of the inhabitants of the Municipality.
- (iv) Provide a high standard of social services in a cost-effective manner to the inhabitants of the Municipality.
- (v) Promote social cohesiveness and a sense of civic duty and responsibility among the inhabitants and stakeholders in the Municipality in order to facilitate collective action and commitment towards achieving the goal of a harmonious and stable community.
- (vi) Providing for services, By-Laws and other matters for Municipality's benefit.
- (vii) Fostering the economic, social and environmental well-being of its community.

3. THE BOARD OF THE MUNICIPALITY

3.1. Establishment of the Board

3.1.1. There shall be established a Board of the Municipality.

3.1.2 The Governance and management of the Municipality shall be in accordance with the laws relating to County Governments; Urban Areas and Cities Act 2011.

3.1.3. The Board of the Municipality shall be a corporate body with perpetual succession and a common seal and shall in its own corporate name be capable of:

- (a) Suing and being sued;
- (b) Taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) Borrowing money or making investments within the limits imposed by law;
- (d) Entering into contracts; and
- (e) Doing or performing all other activities or things for the proper performance of its functions in accordance with the Urban Areas and Cities Act or any other written law which may lawfully be done or performed by a body corporate.

3.2. Powers and Functions of the Board of the Municipality

3.2.1. The Board of the Municipality shall have all the powers and perform all functions vested in boards of municipalities under the Urban Areas and Cities Act, the County Government Act and the Municipality By-Laws.

3.2.2. Except as this Charter otherwise provides, all powers of the Municipality shall be vested in the Board of the Municipality.

3.2.3. The Board of the Municipality shall provide for the exercise of these powers and for the performance of all duties and obligations imposed on the Board of the Municipality.

3.2.4. Subject to the Constitution and any other written law, the Board of the Municipality shall, within the boundaries of the Municipality:

- (a) Exercise executive authority as delegated by the County Executive Committee;
- (b) Ensure provision of services to its residents;
- (c) Impose such fees, levies, and charges as may be authorised by the County Government for delivery of services by the Municipality;
- (d) Promote constitutional values and principles;
- (e) Ensure the implementation and compliance with policies affecting the Municipality formulated by both the National and County Government;
- (f) With the approval of the County Executive Committee make By-Laws or make recommendations for issues to be included in By-Laws;

- (g) Ensure participation of the residents in decision-making, its activities, and programmes.
- (h) Develop a one-stop shop service delivery resource centre ; and
- (i) Exercise such other powers as may be delegated by the County Executive Committee.

3.2.5. The Board of the Municipality shall perform the following functions:

- (a) Oversee the affairs of the Municipality;
- (b) Develop or adopt policies, plans, strategies and programmes and set targets for service delivery;
- (c) Formulate and implement an integrated development plan;
- (d) Control land use, land sub-division, land development, and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centres, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the Municipality as delegated by the County Government of Embu;
- (e) Promoting and undertaking infrastructural development and services within Municipality as delegated by the County Government of Embu;
- (f) Developing and managing schemes, including site development in collaboration with the relevant national and county agencies
- (g) Maintaining a comprehensive database and information system of the administration;
- (h) Administering and regulating its internal affairs;
- (i) Implementing applicable national and county legislation;
- (j) Entering into contracts, partnerships or joint ventures as it may consider necessary or the discharge of its functions;
- (k) Monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the Board of the Municipality;
- (l) Preparing and submitting its annual budget estimates to the County Treasury for consideration and submission to the County Assembly for approval as part of the annual County Appropriation Bill;
- (m) Collecting rates, taxes levies, duties, fees and surcharges on fees as delegated by the County Government of Embu;
- (n) Settling and implementing tariff, rates and tax and debt collection policies as delegated by the County Government of Embu;
- (o) Monitoring the impact and effectiveness of any services, policies, programs or plans;
- (p) Establishing, implementing and monitoring performance management systems;
- (q) Promoting a safe and healthy environment;
- (r) Facilitating and regulating public transport; and
- (s) Performing such other functions as delegated by the County Government of Embu or as may be provided by any other written law.

3.2.6 Notwithstanding the provision of sub Clause 3.2.4 of this Charter, such functions shall be delegated gradually as may be determined by the County Executive Committee.

3.3. Composition and term of the Board of The Municipality

3.3.1. The Board of the Municipality shall be composed of nine (9) members as per the provisions of the Urban Areas and Cities Act, 2011.

3.3.2. Four (4) members of the Board of the Municipality shall be appointed through a competitive process by the Governor and approved by the County Assembly; and

3.3.3. Five (5) members of the Board shall be nominated by the following umbrella bodies appointed by the Governor with the approval of the County Assembly:

- (a) An umbrella body representing professional associations in the area;
- (b) An association representing the private sector in the area;
- (c) A cluster representing registered associations of the informal sector in the area;
- (d) A cluster representing registered neighbourhood associations in the area; and
- (e) An association of Urban Areas and Cities.

3.3.4 The County Executive Committee Member for the time being responsible for urban areas or his representative shall also sit in the board as an ex-officio Member

3.3.5 The Municipal manager who shall be the secretary to the Board and an ex-officio member

3.3.6. In appointing members of the Board of the Municipality, the Governor shall ensure gender equity, representation of persons with disability, youth and marginalised groups.

3.3.7. The term of the members of the Board of the Municipality shall be five (5) years on a part-time basis and shall be eligible for renewal for a further one term.

3.4. Eligibility for appointment as Member of The Board of The Municipality

3.4.1. A person shall not be appointed as a member of the Board of the Municipality unless such person;

- (a) Is a Kenyan citizen,
- (b) Is ordinarily resident or has a permanent dwelling in the Municipality;
- (c) Carries on business in the municipality;
- (d) Has lived in the municipality for at least five years; or
- (e) Meets the requirements of Chapter Six of the Constitution of Kenya, 2010.
- (f) In case of the Chairperson holds a minimum of a degree, while for any other member holds at least a minimum of a Diploma from an institution recognised in Kenya
- (g) Has a distinguished career in a medium level management position in either the private or public sector; and
- (h) Holds at least 10 years post-qualification professional experience in case of the chairperson, while in case of any other member, at least five years post qualification professional experience.
- (i) A person shall not be appointed a Member of the Board of the Municipality if that person ;
 - (i) Is an undischarged bankrupt;
 - (ii) Has been removed from office for contravening the Constitution or any other written law;
 - (iii) Has in the conduct of his or her affairs not met any statutory obligations

3.5. Chairperson and Vice- Chairperson of the Board

3.5.1. There shall be a Chairperson and a vice-chairperson for the board.

3.5.2 The Chairperson and vice-Chairperson shall be elected by the members of the Board from among themselves during the first meeting of the Board, and subsequently whenever a vacancy arises.

3.5.3. The Chairperson and vice-Chairperson of the Board shall hold office for five (5) years.

3.6. Powers and Functions of The Chairperson and vice-Chairperson

3.6.1. The Chairperson shall-

- (a) Be the head of the Board;
- (b) Chair meetings of the Board;
- (c) Perform such duties as may be delegated by the board.

3.6.2 The Vice-Chairperson shall in the absence of the chairperson perform the functions of the Chairperson and shall perform such other functions as may be delegated by the chairperson or the board.

3.6.3. The Chairperson and the Vice-Chairperson of the Board of the Municipality shall at all times be of different gender.

3.7. Removal from Office of the Chairperson and Vice-Chairperson

3.7.1. The Chairperson and the Vice-Chairperson of the Board of the Municipality may be removed by:

- (a) Two-Thirds decision of the members of Board of the Municipality at a duly convened meeting where quorum (five members) is present; or
- (b) Upon petition to the County Assembly by residents of the Municipality.
- (c) By the County Governor;

3.7.2. The procedure for the removal of a Chairperson or Vice-Chairperson of the Board of the

Municipality under 3.7.1 above may be provided by Regulations under the Urban Areas and Cities Act and in the absence thereof in accordance with Kenyan law having regard to fair labour practices.

3.7.3. Any vacancy arising out of the removal of a Chairperson or the Vice-Chairperson of Board of the Municipality may be filled in the manner provided under Section 3.4 and 3.5 of this charter.

3.8. Secretary of the Board of the Municipality

3.8.1. The Municipal manager or a person acting in his or her capacity shall be the secretary of the Board and shall not have a voting right.

3.8.2 Where the Secretary of the Board of the Municipality is validly absent from any meeting, the Municipal Manager shall appoint a secretary of the Board from the secretariat for purposes of that meeting.

3.9. COMMITTEES OF THE BOARD OF THE MUNICIPALITY

3.9.1. The Board of the Municipality may:

- (a) Establish such Committees for any general or special purpose which, in its opinion, would regulate or manage its affairs more efficiently and as may be necessary for the performance of its functions under the Urban Areas and Cities Act;
- (b) Delegate to such Committee such functions as are necessary for the efficient performance of its duties in respect to the whole or any part of the area under the jurisdiction of the Board of the Municipality; and
- (c) Include persons with necessary expertise who are not members of the Board to such committees

3.9.2 The Municipal board of Embu shall establish at least three committees which must include:-

- (a) Finance and Administration
- (b) Technical Committee
- (c) Audit, monitoring and evaluation Committee

3.9.3. The Committees of the Board of the Municipality to which members of the Board of the

Municipality delegate any of their powers and functions must follow procedures which are based as far as they are applicable on those provisions of this Charter which govern the taking of decisions and performance of functions by the Board of the Municipality.

3.10. REMUNERATION OF THE MEMBERS OF THE BOARD OF THE MUNICIPALITY

3.10.1. The Chairperson, vice-chairperson and members of the Board of the Municipality shall not receive a salary from the Board but shall be paid such allowances and benefits as advised by the Salaries and Remuneration Commission for the time being.

3.11. REMOVAL AND TERMINATION OF MEMBERS OF THE BOARD OF THE MUNICIPALITY

3.11.1. A member of the Board of the Municipality shall cease to hold office if the member:

- (a) Is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) Without reasonable cause, the member is absent from three consecutive meetings of the Board or Committee of the Board of the Municipality within one financial year;
- (c) Is found guilty of professional misconduct by the relevant professional body;
- (d) Fails to declare his or her interest in any matter being considered or to be considered by the Board or Board Committees;
- (e) Engages in any gross misconduct,
- (f) Is declared or becomes bankrupt or insolvent;
- (g) Is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (h) Resigns in writing to the Governor;
- (i) If he or she Dies;
- (j) Is disqualified from holding a public office under the Constitution;

3.11.2 A person may be removed from office on any of the grounds provided under section 3.11.1 (a), (b) (c), (e), (f), (g), (h) and (i)-

- (a) By the County Governor;
- (b) By a resolution of the Board of the Municipality supported by at least two-thirds of the Members of the Board of the Municipality; or
- (c) Upon a petition to the County Assembly by the residents of the Municipality.

3.12. Meetings of the Board of the Municipality

3.12.1. The Board of the Municipality shall hold its sittings to transact the business of the Board at least once every three months.

3.12.2. Notwithstanding Article 3.12.1, the Chairperson of the Board of the Municipality may, and upon request in writing by at least one-third of the members of the Board of the Municipality shall convene a special meeting to transact any urgent business of the Board of the Municipality.

3.12.3. A board meeting shall be formally convened through a fourteen days' notice issued by the secretary to the Board to all Board members in writing.

3.12.4. A member of the Board who has an interest in any matter or subject under discussion regarding any subject or transaction under consideration by the Board of the Municipality shall declare such interest and shall not participate in the proceedings of the Board over such matter or subject.

3.12.5 All regular meetings of the Board called for the purpose of transacting public business, where the majority of the Members elected are present, shall be open to the open.

3.12.6 The Board shall have the privilege of holding executive sessions from which members of the Public are excluded; however no By-Laws, resolutions, rules or regulations shall be finally adopted at such an executive

3.13. Quorum

3.13.1. The quorum of the board shall be more than one half of its membership (5 members)

3.13.2 A majority of the members of the Board of the Municipality is a quorum to conduct business, but a smaller number may meet and compel attendance of absent members as prescribed by Board of the Municipality Rules.

3.13.3 A member of the Board of the Municipality of Embu who is interested in any discussions or decision-making regarding any subject or transaction under consideration by the board shall not be counted as participating in the discussions or decision-making and is not entitled to vote on or agree to the subject or transaction relating to it.

3.14. Rules of the Board

3.14.1. The Board of the Municipality shall by resolution adopt rules to govern its meetings.

3.15. Record of Information of the Board

3.15.1. The minutes and other information of the Board of the Municipality shall be kept by the Secretary.

3.15.2 Access to information on the activities and resolutions of the Board shall be as provided under Section 24 of the Urban Areas and Cities Act, 2011

3.15.3. The Board shall furnish the County Executive Committee and any other person as the County Executive Committee may designate with certified copies of:-

- (a) Any proceedings or minutes of the Board or its Committees within twenty one days after the confirmation of the minutes;
- (b) Records of any of its accounts: and
- (c) Reports, statistics and documents as the County Executive Committee may require.

3.15.4 The Board shall publish all information relating to their operations.

3.16. Citizen Fora

3.16.1. Residents of the Municipality of Embu may-

- (a) Deliberate and make proposals to the relevant bodies or institutions on:-
 - (i) The provision of services;
 - (ii) Proposed issues for inclusion in the county polices and county legislation;
 - (iii) Proposed national policies and national legislation;
 - (iv) The proposed annual budget estimates of the county and of the national government;
 - (v) The proposed development plans of the county and of the national government; and
 - (vi) Any other matter of concern to the residents.
- (b) Plan strategies for engaging the various levels and units of government on matters of concern to residents.
- (c) Monitor the activities of elected and appointed officials of the urban areas and cities including members of the Board; and
- (d) Receive representations including feedback on issues raised by the County citizens from elected and appointed officials

3.16.2. The board of the municipality shall invite petitions and representations from the Citizen Fora and with regard to the administration and management of the affairs within the municipality under its jurisdiction.

3.16.3. The Board shall make recommendations on the manner in which issues raised at the citizen Fora, if any may be addressed and shall accordingly pass the recommendation to the Municipal manager for implementation.

3.16.4 The Citizen Fora shall be convened in accordance with the Embu County Public Participation Act, 2015.

3.16.5 The manager shall make a report on the decision made in respect of a petition or presentation made by a citizen for and reasons for such a decision.

4. LEGISLATIVE AUTHORITY

4.1. By-Laws

4.1.1. The Board may with the approval of the County Executive Committee make By-Laws or make recommendations for issues to be included in By-Laws.

4.1.2 The By-Laws shall be subject to the provisions of the Statutory Instruments Act No. 23 of 2013

4.1.3 Such By-Laws shall be in conformity with the Constitution, County Governments Act, The Urban Areas and Cities Act, this Charter and any other written law.

4.1.4 Any By-Law that is inconsistent with the Constitution, County Governments Act, The Urban Areas and Cities Act, this Charter and any other written law is null and void to the extent of the inconsistency.

4.2. Passing of By-Laws

4.2.1. After any By-Law has been made by the municipality board, it shall be submitted to the Embu County Assembly for approval by the County Executive Committee.

4.2.2. Every By-Law submitted for approval under sub-section (1) above shall be accompanied by-

- (a) A certified copy of the minutes of the meeting of the board of the municipality at which the By-Law was adopted;
- (b) Evidence of public participation;
- (c) Copies of any objection to the adoption of the By-Law which has been lodged in writing with the municipality, or if no such objection has been lodged, a statement to that effect.

4.2.3. The County Assembly may approve, with or without alteration or reject any such By-Law

4.3. Effective Date of By-Laws

4.3.1. No By-Law shall have the force of law until it has been approved, whether with or without alteration by the County Assembly, and published or notice thereof published.

4.3.2. Upon the signing of the approval by the County Assembly of any By-Law, the Clerk of the County Assembly shall cause the By-Law or a notice stating that the By-Law has been approved, to be published in the *gazette*.

4.3.3 The effective date of the By-Laws shall be from the date they are published or notice thereof published or the date stipulated in the *gazette*.

5. ADMINISTRATIVE AUTHORITY

5.1. Resolutions

5.1.1. The Board of the Municipality shall exercise its administrative authority by way of a resolution supported by a majority of its members present and voting.

5.2. Approval of Resolutions

5.2.1. For day to day running of the municipality, no approval of resolutions shall be required.

5.2.2. Any resolution by the board on development plans and projects, budgets, partnerships, borrowing and investments of the municipality will be forwarded by the County Executive Committee to the County Assembly for approval.

5.3. Effective Date of Resolutions

5.3.1. The effective date of the Resolutions shall be from the date they are approved by the County Assembly.

6. THE MUNICIPAL MANAGER

6.1. Office of the Municipal Manager

6.1.1. There is established the office of the Municipal Manager.

6.1.2. The Municipal Manager shall be the administrative head of the Municipality of Embu.

6.2. Appointment and Term

6.2.1. The County Public Service Board shall competitively source and appoint a Municipal Manager with the approval of the County Assembly

6.2.2. The Municipal manager may be appointed for a term of five year contract with an option for renewal of contract

6.2.3. A municipal manager shall not serve for more than two terms.

6.3. Qualifications

6.3.1. The Municipal Manager shall:

- (a) Be a citizen of Kenya
- (b) Hold a degree from a university recognized in Kenya or its equivalent
- (c) Have served and had proven experience in administration or management either in public or private sector for a term of at least five years three of which should be in senior management.
- (d) Demonstrate experience in leadership and managerial skills;
- (e) Demonstrate knowledge and understanding in corporate governance; and
- (f) Satisfy the requirements of Chapter Six of the Constitution of Kenya 2010

6.4. Roles and responsibilities of the Municipal Manager

6.4.1. The Municipal Manager shall implement the decisions and functions of the Board of the Municipality and shall be answerable to the Board.

6.4.3. The Municipal Manager shall perform the following roles and responsibilities:

- (a) Carrying out the day to day business of the Municipality to ensure that departments, sections and units conform to the overall operational plans and performance targets;
- (b) Developing an annual operational plan, for the Board's approval for effective implementation of the strategy of the Municipality;
- (c) Implementing the Board's decisions and corporate policies and programmes in a results oriented and timely manner to achieve the Municipality's goals and objectives;
- (d) Establishing proper internal monitoring and control systems and procedures, performance standards and ensuring compliance of the same by the staff;
- (e) Ensuring effective communication between the management and the Board as well as different levels of staff;
- (f) Attending to human resource matters including development and implementation of sound Human resource policies and procedures to maintain conducive working environment for attracting, retaining and motivating employees;
- (g) Managing staff matters including organizational structure, welfare, industrial relations, staff development, separation and effective management of succession plans;
- (h) Strengthening collaborative partnership and undertaking appropriate liaison with the County Government Departments, sector institutions, the civil society, private sector, community based organizations and other organs of National Government in order to advocate, represent and influence policies on the development of infrastructure;
- (i) Coordinating and preparing business related proposals, reports and other submissions for consideration by the board;
- (j) Advising the board concerning future activities and on the development of objectives and policies necessary to steer the Municipality ahead;

(k) Identify and develop mechanisms for managing the risks facing the Municipality;

(l) Be accountable and responsible for all resources and assets of the Municipality;

(m) Prepare financial and expenditure statements and assets of the Municipality;

(n) Respond to audit queries raised;

(p) Be the secretary to the Board and shall Act as an *ex-officio* member of all committees of the Board of the Municipality; and

(q) Such other functions as the Board may, by order, confer upon the Municipal Manager.

6.5. Remuneration

6.5.1. The terms of service and remuneration shall be as per the guidelines set by the Salaries and Remuneration Commission.

6.6. Termination and Removal from office of The Municipal Manager

6.6.1. A Person may be removed from office of the Municipal Manager by the Governor upon;

- i. Recommendation by the Public Service Board;
- ii. A resolution of the Board of the Municipality supported by at least two-thirds of the members of the Board of the Municipality
- iii. A resolution of the of the County Assembly supported by at least two-thirds of the members present and voting; or
- iv. Petition to the County Assembly by a resident of the Municipality.

6.6.2. The Municipal Manager shall cease to hold office upon the lapse of the employment term or if he or she:

- (a) Is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) Is declared or becomes bankrupt or insolvent;
- (c) Is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) Resigns in writing to the Governor;
- (e) Without reasonable cause, is absent from three consecutive meetings of the Board of the Municipality;
- (f) Breaches his contract;
- (g) Is found guilty of professional misconduct by the relevant professional body;
- (h) Is disqualified from holding a public office under the Constitution;
- (i) Engages in any gross misconduct; or
- (j) Dies.

6.6.3. The procedure for the removal of the Municipal Manager may be provided by the

Regulations made under the County Government Act (No. 17 of 2012) and in the absence thereof in accordance with Kenyan law having regard to fair labour practices.

6.6.4. Any vacancy arising in the office of the Municipal Manager may be filled in the manner provided under Sub- Clause 6.2 above.

6.7. Acting Municipal Manager

6.7.1. When the Municipal Manager is temporarily disabled from acting as Municipal Manager or when the office of the Municipal Manager becomes vacant, the Governor shall appoint a qualified person to be an Acting Municipal Manager on the recommendation of the Public Service Board.

6.7.2. Notwithstanding the provisions of sub-section 6.8.1, the County Public Service Board in consultation with the County Governor, shall have power to appoint a County Staff who meets the

qualification requirement as an acting Municipal manager. Such appointment shall be for a maximum period of six months.

7. MUNICIPAL FINANCES AND FINANCIAL MANAGEMENT

7.1. Sources of the Municipality's Funds and Revenue

7.1.1. The Board of the Municipality shall subject to all laws and regulations on Management of Public Finance derive its revenue and funds from:

- (a) Monies allocated by the County Assembly for the purposes of the management and service delivery of the Board;
- (b) Monies or assets that may accrue to the Board in the course of the exercise of its powers or the performance of its functions;
- (c) All monies or grants from any other legitimate source provided or donated to the Board;
- (d) Investment income in accordance with relevant written law; and
- (e) Borrowing in line with the Public Finance Management Act.

7.2 Procurement of goods and Services

7.2.1 Subject to the provisions of the Public Procurement and Assets Disposal Act, 2015, the Board shall be a procuring entity

7.3. Appointment of the Municipality Accounting Officer

7.3.1. The Municipal Manager shall be the authorised Accounting Officer for the Municipality.

7.4. Functions and Powers of the Municipality Accounting Officer

7.4.1. The Municipality Accounting Officer shall have all the powers and perform all the functions of accounting officers as provided for under the Public Finance Management Act.

7.5. Financial Year

7.5.1. The Municipality shall operate on an annual budget.

7.5.2. The financial year of the Board of the Municipality shall be the period of twelve months ending on the thirtieth June in each year.

7.6. Budget

7.6.1. The budget of the Board of the Municipality shall be developed in the manner provided under Section 175 of the Public Finance Management Act.

7.7 Management of Municipality Finances

7.7.1 The Board of the Municipality shall approve the opening and maintaining of a Bank account in the name of the Municipality.

7.7.2 All monies received by the Board of the Municipality shall be paid into the Municipality's bank account promptly and in accordance with the Public Finance Management Act.

7.7.3 The Board shall, within three months of its inception establish relevant financial and administrative policies to ensure efficient and effective municipal operations.

7.8. Audit and Accounts

7.8.1. The Board shall cause to be kept all proper books and records of account of its income, expenditure, assets and liabilities.

7.8.2 Within a period of three months after the end of each financial year. The board shall submit to the County Executive Committee its accounts for that year for transmission to the Auditor-General together with-

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

7.8.3 The Auditor General shall prepare a financial audit as required as the Public Audit Act, (No. 12 of 2003) or its successor and shall forward a copy of the report to the relevant board and County Executive Committee in respect of which the audit report is made.

7.8.4 As soon as is practicable, and in any event not later than thirty days from the date of receipt of the audit report together with the annual statements and abstracts of accounts, the manager or administrator shall-

- (a) Lay the documents before the board for consideration; and
- (b) Make them available to any resident of the area within the jurisdiction of the board, upon application and payment of the prescribed fee.

7.8.5 Where the manager or the administrator of a board fails to table the report as required under this section, the report shall be laid by any other person authorised by the Governor.

7.8.6 The Board shall cause its audited annual financial statement to be posted in full in a conspicuous place in the board's offices or in two widely circulated newspapers and the board's website.

7.8.7 The County Executive Committee shall lay before the County Assembly the reports, balance sheets and statements of accounts submitted under article 7.8.3 (1), and such statements of accounts as may be approved, within a period of fourteen days of the receipt of the reports and statements, or, if the County Assembly is not sitting, within fourteen days of the commencement of its next sitting.

7.9 Borrowing by the Municipality

7.9.1 The Municipality may borrow only—

- (a) from the county government;
- (b) through its county government; or
- (c) by way of a bank overdraft.

7.9.2 Any borrowing by the Municipality shall be subject to such terms and conditions as the County Assembly may impose, and in the case of paragraph (b), in accordance with the provisions of section 140 of the Public Finance Management Act.

8. MUNICIPALITY PERSONNEL

8.1. Municipality Personnel

8.1.1. The Board of the Municipality shall through the County Executive Committee request the County Public Service Board to employ such officers and employees as it deems necessary to execute the functions and duties provided by this charter or any other law.

8.1.2 Notwithstanding the provisions of Sub- Clause 8.1 above the Public Service Board shall put into consideration the existing workforce and no fresh recruitments shall be undertaken until the Municipality has exhausted the existing workforce.

8.2. Management of Municipal Personnel

8.2.1. The office of the Municipal Manager shall be an office in the County Public service within the meaning of Part VII of the County Governments Act, 2012

8.2.2 All offices shall be as determined by the County Public Service Board

8.2.3 Employees of the Municipality shall be under the general guidance of the Municipal Manager

8.3. Pension Schemes

8.3.1. All officers of the Board shall subscribe to an existing pension scheme approved by the Retirements benefits Authority in accordance with the provisions of the retirements benefits Act No 12 of 2012 and any other relevant law.

8.3.2 All officers and employees of the Municipality shall subscribe to an existing pension scheme for officers and staff of the County Government.

8.4. Compensation of Municipal Personnel

8.4.1. The compensation of all employees of the Municipality shall be set by the County Public

Service Board upon the advice of the Salaries and Remuneration Commission.

9. MUNICIPALITY PROPERTY

9.1. Acquisition, Possession and Disposal

9.1.1. The Board of the Municipality may for the purpose of provision of services assigned to it;

- (a) Purchase, lease or otherwise acquire on such terms as the County Executive Committee may approve; premises, plant equipment and facilities
- (b) Purchase, lease or otherwise acquire land on such terms as the County Executive Committee may approve and
- (c) Incur expenditure on administrative items without approval of the County Executive Committee

9.2. Compulsory Acquisition

9.2.1. Subject to the Provision of the Constitution, the Land Act, 2012, the National Land Commission Act and any other written law, the Municipality will upon notification of the County Executive Committee, engage the National Land Commission in cases where there are spatial development plans and compulsory acquisition of land is required.

9.3 Municipality Buildings

9.3.1 The Board of the Municipality of Embu may acquire, obtain by lease or rent, procure, construct, operate, and maintain all buildings and structures it deems necessary for the operation of the Municipality of Embu.

10. GENERAL PROVISIONS

10.1. Oath of Office

10.1.1. Before assuming the duties of their offices, the Municipal Manager, the Chairperson and Vice-Chairperson and the members of the Board, shall take and subscribe to the following oath or affirmation:

“I, [.....], being called on to exercise the functions of the

Manager, Chairperson, Vice- Chairperson, board Members etc] of the Municipality of Embu, do swear/solemnly affirm that that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold this Constitution of Kenya and all other laws of the Republic, that I shall diligently discharge my duties and perform my functions in the said office, to the best of my judgement; that I shall do justice to all— so help me God”

10.1.2. The Municipal Manager and all members of the Board shall take and subscribe to this oath or affirmation before the Governor.

10.2. Amendments to the Charter

10.2.1. The County Executive Committee may with the approval of the County Assembly amend any provision of this Charter.

10.2.2. The County Executive Committee shall cause the proposed amendments of the Charter to be laid before the County Assembly for approval.

10.3. Separability

10.3.1. If at any time, any provision of this Charter is or becomes illegal, invalid or unenforceable in any respect under Kenyan law, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision will in anyway be affected or impaired.

11. TRANSITIONAL PROVISIONS

11.1. Effective Date of Charter

11.1.1. The provisions of this Charter shall come to effect upon publication in the Kenya Gazette

11.2. Protection against personal Liability

11.2.1. No act, matter or thing done or omitted to be done by-

- (a) The Chairperson or vice-chairperson of the Municipality;
- (b) Any member of the Board;
- (c) Any member of staff or other person in the service of the municipal board; or
- (d) Any person acting under the direction of the Board

Shall, if the that act, matter or thing was done or omitted to be done in good faith in the execution of a duty or under direction render that member or person personally liable to any civil action, claim or demand.

11.2.2 Notwithstanding the provisions of subsection (11.2.1) a person who misappropriates or authorizes the use of funds contrary to existing law or instructions shall be personally liable for any loss arising from that use even if that person has ceased to hold office.

11.3. Subsequent regulations and guidelines

11.3.1. This charter shall be operationalized through subsequent regulations and guidelines as may from time to time be necessary.

11.4 Rights and Privileges preserved

11.4.1 Every person who, immediately before the commencement of this Act was an officer, agent or member of staff appointed, seconded or otherwise employed by the County Government shall, on the commencement of this Act be seconded or otherwise deployed as may be provided by law

11.4.2 Nothing in this Charter except as otherwise specifically provided shall affect or impair the rights or Privileges of persons who are Officials, Officers or Employees within the Municipality at the time of its adoption

11.5 Departments

11.5.1 All Departments shall continue to operate with the same powers, duties, activities, budgets and employees as were in effect at the time this Charter becomes effective until changed by the Board of the Municipality of Embu with the approval of County Executive Committee.

MUNICIPALITY OF EMBU
ORGANOGRAM

