

**CHAPTER 40:01**  
**LOCAL GOVERNMENT**

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**An Act to consolidate the Local Government (District Councils) Act and the Townships Act and to provide for the establishment of Councils and for matters incidental thereto or connected therewith.**

[Date of Commencement: 19th February, 2013]

**PART I**

**Preliminary (ss 1-2)**

**1. Short title**

This Act may be cited as the Local Government Act.

**2. Interpretation**

In this Act, unless the context otherwise requires-

"**administrative officer**" means an officer as defined under section 49 of the Interpretation Act (Cap. 01:04);

"**administrative District**" means a district, city, town or township, prescribed in the Administrative Districts Act (Cap. 03:02);

"**Chairperson**" means the political head of a District Council or Subordinate Authority elected under section 20 (1);

"**city**" means any town or township area conferred with the status of a city by the Minister under section 9;

"**community**" means people living within an administrative district, city, town, village or ward, falling within the jurisdiction of a Council;"

"**council**" means any city council, town council or District Council duly established under section 3;

"**Council Secretary**" means an administrative head of a District Council;

"**Councillor**" means an elected or nominated member of Council or Subordinate Authority;

"**Kgosana**" has the meaning assigned to it in the Bogosi Act (Cap. 41:01);

"**Kgosi**" has the meaning assigned to it in the Bogosi Act;

"**law enforcement office**" means an office established under section 51;

"**law enforcement officer**" means an officer appointed under section 52;

"**mayor**" means the political head of a city or town Council elected under section 20 (1);

"**member**" means both elected and nominated members of a Council or Subordinate Authority including *ex-officio* members;

"**Moemela Kgosi**" has the meaning assigned to it in the Bogosi Act;

"**presiding officer**" means a person who chairs a particular meeting of the Council or Subordinate Authority and leads the proceedings of that meeting;

"**public service**" or "**public office**" or "**public officer**" have the same meaning as in the Constitution;

"**Subordinate Authority**" means an institutional structure lower than a Council established by the Minister under section 7;

"**township**" means a township as established under section 8;

"**township authority**" means an authority established by regulations made under this Act to conduct the affairs of a township concerned and to perform such functions as may be specified in those regulations;

"**town Clerk**" means an administrative head of an urban Council; and

"**Valuation Tribunal**" means a Tribunal established by the Minister under section 41.

**PART II**

**Establishment of Councils and Subordinate Authorities (ss 3-9)**

**3. Establishment of Councils**

The Minister may, by Order published in the *Gazette*, establish a Council in respect of such area as the Minister may consider appropriate.

**4. Council for each Administrative District**

(1) There shall be a Council for each Administrative District as established under section 3 and the Council shall consist of a Mayor or Chairperson, Deputy Mayor or Deputy Chairperson and members.

(2) Notwithstanding the provisions of subsection (1), in establishing Councils, the Minister may not necessarily align administrative boundaries with tribal territories provided that he or she has consulted with the respective tribe.

**5. Restructuring of Councils**

(1) Subject to sections 3 and 13, the Minister shall after consultation with Council and the community, by Order published in the *Gazette*, subdivide or merge Councils for administrative expediency.

(2) The Minister, after consultation with Council and the community, may constitute a new Council from a subdivision of a Council or a merger of two or more Councils.

(3) Where a new Council is constituted in accordance with subsection (2), the Minister shall, by Order published in the *Gazette*, provide for the transfer of the assets and liabilities of the subdivided Council or merged Councils to the new Council established in place of the Council or Councils, as the case may be, and for the vesting of the assets and liabilities in the new Council.

(4) Subject to the provisions of subsection (2), upon restructuring of the Council in accordance with the provision of subsection (1), all members holding office in an existing Council shall cease to hold office.

(5) Subject to subsection (2) where a Council is restructured, the new office bearers shall be appointed in accordance with sections 20 to 22.

## **6. Councils to be bodies corporate**

A Council shall be a body corporate having the name and seal by which it is established and capable of suing and of being sued under the said name.

## **7. Establishment of Subordinate Authorities**

(1) The Minister shall, after consultation with the respective Council and the community, by Order published in the *Gazette*, establish Subordinate Authorities.

(2) The provisions of sections 19 to 21 shall apply to Subordinate Authorities.

## **8. Declaration of township**

(1) The Minister shall, by Order published in the *Gazette* declare any place within any Administrative District, a township, considering mineral developments, agro-commercial or industrial developments and any other developments that may be carried out and shall define the boundaries of that township.

(2) The Minister shall, in declaring a township under subsection (1), consult with the relevant District Council, Dikgosi and the community.

## **9. Conferment of city status**

The Minister shall, by Order published in the *Gazette*, where he or she considers that it is proper and fitting to confer the status of a city on a town or township, declare that town or township a city which shall have all the ranks, liberties, privileges and immunities as are incidental to a city, and after consultation with the Council and the community, define the boundaries of that city.

### **PART III**

### ***Powers and Duties of Councils (ss 10-12)***

## **10. General duties of Council**

It shall be the duty of a Council to perform the functions it is required to perform and otherwise exercise its powers so as to secure and promote the health, safety, well-being, good order, security and good governance of the area for which it has been established.

## **11. Functions and general powers of Council**

(1) The Minister may, in the Order establishing a Council or a Subordinate Authority, and subject to the limitations and conditions as the Minister may consider appropriate, provide that the Council or the Subordinate Authority shall either be required to perform or may perform any of the functions set out in Schedule 1.

(2) Where the Minister confers additional functions or removes any of the functions conferred upon a Council or a Subordinate Authority he or she shall consult with that Council or Subordinate Authority.

(3) A Council may execute any of the functions conferred upon it through establishment of bodies, trusts, and any other organ that, that Council may consider appropriate for the discharge of its functions.

(4) Subject to the provisions of this Act, a Council shall have power to do anything and enter into any transaction which in its opinion is calculated to facilitate the proper discharge of any function conferred or imposed upon it by or under this Act or any other law.

(5) A Council may delegate any of its functions to the bodies under subsection (3) or to any other person in line with Government policies and may with reasons revoke or amend any delegation made

under this section and may attach conditions to the delegation, including general or particular directions, as to the manner in which any delegated power is to be exercised.

(6) A delegation under subsection (5) may include the power to sub-delegate.

## **12. Entry into contract**

A Council shall not enter into any contract for the supply of any goods or materials or the execution of any works or the provision of any services, for or to the Council except as prescribed under the Local Authorities Procurement and Asset Disposal Act (Cap. 42:11) or any other instrument prescribed by the Minister.

## **PART IV**

### **Constitution of Councils and Subordinate Authorities (ss 13-22)**

## **13. Constitution of Councils and Subordinate Authorities**

(1) A Council shall be constituted by the Minister, after consultation with the Community and shall consist of the number of elected or specially nominated members as may be provided in the Order establishing it.

(2) The Minister may, after consultation with the community, by subsequent Order published in the *Gazette*, vary or amend an Order made under subsection (1).

(3) The Minister shall appoint the following *ex-officio* members who shall not have voting rights or the right to be elected into committees but have all other rights enjoyed by members of Council-

(a) in respect of a Council-

(i) an administrative officer who has special responsibilities relating to the development of the area,

(ii) every Land Board chairperson within the Administration District,

(iii) every member of *Ntlo Ta Dikgosi* designated or selected under subsection (1) or (2) of section 78 of the Constitution, and

(iv) a *Kgosi* who resides within the headquarters of a District Council; and

(b) in respect of a Subordinate Authority-

(i) an administrative officer who has special responsibilities relating to the development of the area,

(ii) a Subordinate Land Board chairperson within the Subordinate Authority area,

(iii) every member of *Ntlo Ta Dikgosi* selected under subsections (4) or (5) of section 78 of the Constitution within the Administrative District where they are selected, and

(iv) a *Kgosi* or *Moemela Kgosi* from the area within which the Subordinate Authority headquarters is situated.

## **14. Holding of post in public service**

A member of a Council, other than an *ex-officio* member, shall not, during the period that he or she is a member of the Council, also hold any post in the public service.

## **15. Qualification for membership of Council**

(1) A person shall be qualified to become a member of a Council if that person is qualified to vote in any election, for members of the Council and does not possess the disqualifications for membership of the National Assembly referred to in section 62 of the Constitution.

(2) Subject to subsection (1), the Order establishing a Council under section 3 may provide that for the purposes of this section a person shall not be considered to possess those disqualifications merely because that person has applied for or has been granted a passport issued by or under the authority of the Government of any country prescribed for that purpose in the Order.

## **16. Tenure of office of members**

Every member of a Council, other than an *ex-officio* member shall, without prejudice to his or her re-election or re-nomination, cease to be a member of Council on the day appointed for the taking of any poll which may become necessary at any Local Government election.

## **17. Vacation of seats**

(1) The seat of a member of a Council, other than an *ex-officio* member, shall become vacant-

(a) upon death;



(b) if, without having obtained leave from the Mayor or Chairperson, the member is absent from three consecutive ordinary meetings of the Council;

(c) if the member is appointed to, or to act in the public service;

(d) if the member has been declared insolvent or adjudged or otherwise declared bankrupt under the law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his or her creditors and has not paid his or her debts in full;

(e) if the member is sentenced by a court in any part of the Commonwealth to death or to imprisonment, or having been under suspended sentence for a term imposed by a court is ordered by the court to serve that sentence;

(f) if the member ceases to hold the qualifications prescribed in section 15;

(g) if the member resigns by giving written notice to the Minister; or

(h) if, after a period of 12 months continuous absence from the Council, the member is confirmed by a Medical Board of not less than two doctors, appointed by the Minister that he or she is incapable of discharging the functions of his or her office by reason of infirmity of mind or body.

(2) Notwithstanding subsection (1) (d) and (e), if at any time before the member vacates his or her seat, the member is granted a free pardon, conviction is set aside, his or her seat shall not become vacant under the provisions of this section.

(3) Notwithstanding subsection (1) (e), the Minister may, at the request of the member extend for a period of 30 days that member's vacation of office under this section, to enable the member to pursue any appeal in respect of that member's conviction or sentence, however, the extension of time shall not exceed 150 days in the aggregate.

(4) If on the determination of any appeal, there are some matters still pending and no further appeal is open to the member of the Council, by reason of the expiration of any period for entering an appeal or notice or refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he or she shall immediately vacate his or her seat.

(5) Subject to subsections (1) and (4), the Minister shall declare the seat of the member of a Council vacant.

### **18. Filling of Council vacancies**

(1) Where the seat of a member of Council both elected and specially nominated becomes vacant by virtue of any provision of this Act, the vacancy shall be filled within three months in a manner prescribed by the Minister in the Order establishing the Council.

(2) Notwithstanding subsection (1), where the vacancy occurs 12 months before the Local Government elections, then the vacancy shall not be filled until the next Local Government elections.

### **19. Swearing in of Councillors**

(1) All members of Council shall before taking their seats in the Council, take and subscribe before the Council the oath of allegiance as set out in Schedule 2.

(2) The Mayor or Chairperson, before assuming the duties of his or her office, shall take and subscribe before the Council the oath of allegiance.

### **20. Mayor or Chairperson of Council**

(1) A Council shall elect through secret ballot in every two and a half years, one of its members other than an *ex-officio* member, a Mayor or Chairperson who shall-

(a) provide strategic leadership to the Council or Subordinate Authority; and

(b) be responsible, under the direction of the Council or Subordinate Authority for the execution of duties and functions of the Council or Subordinate Authority and shall report performance annually.

(2) The Mayor or Chairperson shall, unless he or she resigns or ceases to be qualified or becomes disqualified, continue in office until his or her successor is elected and assumes office.

(3) The nomination of a candidate for election to the office of the Mayor or Chairperson shall be made on a nomination paper which shall specify the names of the candidate, the proposer, the seconder and two supporters, none of whom shall at the same time be the candidate, the proposer, the seconder or other supporter.

(4) Notwithstanding subsection (3), where a Council or Subordinate Authority has less than 10 voting members, it shall be sufficient that the nomination of a candidate for the office of the Mayor or

Chairperson is supported by at least one member who shall not at the same time be the candidate, the proposer or seconder.

(5) On the election of the Mayor or Chairperson the Town Clerk or Council Secretary or his or her Deputy or an officer designated by the Town Clerk or Council Secretary shall preside.

(6) On the election of the Mayor or Chairperson and in the event there is a tie there shall be re-election to a maximum of three times and in the event the tie continues there shall be a toss.

(7) A person who has been elected Mayor or Chairperson shall, at that meeting at which he or she is elected, deliver to the presiding officer a declaration of acceptance of office and where the declaration of acceptance of office is not made the office of Mayor or Chairperson shall become vacant.

(8) A Council shall, with the approval of the Minister, pay allowances to the Mayor or Chairperson of the Council and their Deputies, Chairperson of the Subordinate Authority and their Deputies.

(9) The allowance payable under subsection (8) shall be payable without prejudice to the Mayor, Chairperson or their Deputies' right to receive any allowance payable to him or her as a Councillor.

(10) In the event of the office of the Mayor or Chairperson becoming vacant from any cause during the term of office of that Mayor or Chairperson, a successor shall, within seven days of the meeting of the Council or Subordinate Authority after the vacancy occurs, be elected by the members of the Council or Subordinate Authority from amongst themselves by secret ballot and the person so elected shall immediately be sworn in and enter upon office and shall serve as Mayor or Chairperson for the remainder of the period for which the Mayor or Chairperson whose office became vacant had been elected.

(11) The Mayor or Chairperson shall vacate his or her office if he or she is removed from office by resolution of the Council or Subordinate Authority by votes of not less than two thirds of all members.

(12) A Mayor or Chairperson whose term of office expires shall be eligible for re-election.

## **21. Deputy Mayor or Deputy Chairperson**

(1) There shall be a Deputy Mayor or Deputy Chairperson to the Council who shall assist the Mayor or Chairperson in their day-to-day functions as the Mayor or Chairperson may direct.

(2) The conditions applicable to the offices of Mayor or Chairperson under section 20 shall apply to Deputy Mayor or Deputy Chairperson.

## **22. Committees**

(1) A Council-

(a) with Subordinate Authorities may appoint not more than two committees; and

(b) without Subordinate Authorities may appoint not more than seven committees,

either of a general or special nature, consisting of not more than 12 members, for the purpose of transacting the business or performing any act or duty, which in the judgment of the Council or Subordinate Authority would more conveniently be performed by means of a committee and may delegate to any committee the powers, except the power to make bye-laws and any power to raise revenue by rate or otherwise.

(2) Notwithstanding anything contained in subsection (1), a Council or Subordinate Authority may make representation to the Minister to increase the number of committees in accordance with the needs of the Council or Subordinate Authority.

(3) In appointing members to the committees referred to in subsection (1), the Council or Subordinate Authority shall make appointments based on a cross-sectional representation of all parties represented in the Council or Subordinate Authority.

(4) A Council or Subordinate Authority may revoke or amend any delegation made under subsection (1) and may attach conditions to the amended delegation, including general or particular directions, as to the manner in which any delegated power is to be exercised.

(5) Unless in appointing any committee under subsection (1), the Council or Subordinate Authority has appointed one of the members as Chairperson of that committee, the committee shall elect one of

the members as Chairperson who shall be accountable to the Council or Subordinate Authority for the functions of the committee.

(6) A committee may co-opt persons other than members of the committee, and the co-opted persons may take part in the proceedings of the committee, but shall not have the right to vote during the proceedings of that committee.

(7) A Council shall, within seven days after election of committees constitute an executive committee under the chairmanship of the Mayor or Chairperson.

(8) The executive committee referred to under subsection (7) shall be composed of-

(a) in the case of a Council without Subordinate Authorities, the Deputy Mayor or Deputy Chairperson and Chairpersons of Council committees; and

(b) in the case of Councils with Subordinate Authorities, the Deputy Chairperson, Chairpersons of Subordinate Authorities and the Chairperson of the committee responsible for Council finances.

(9) The executive committee shall-

(a) be responsible for overseeing and monitoring performance of Council functions and providing strategic direction and policy formulation;

(b) meet at such place and time as the Mayor or Chairperson may consider appropriate; and

(c) determine its own procedures subject to any directions, rules and orders of the Council.

(10) The presence of more than two thirds of the members of the executive committee shall constitute a *quorum*.

(11) A Council may remove from office one or more or all of the members of any committee other than the members of the executive committee by a resolution of two thirds of the members of Council.

## **PART V**

### ***Proceedings of Council or Subordinate Authorities (ss 23-31)***

#### **23. Chairing of meetings**

(1) The Mayor or Chairperson, or in his or her absence the Deputy Mayor or Deputy Chairperson, of a Council or Subordinate Authority shall preside at any meeting of the Council or Subordinate Authority.

(2) Where both the Mayor or Chairperson and the Deputy Mayor or Deputy Chairperson are absent from, or during, any meeting, the members of the Council or Subordinate Authority present shall elect one from amongst themselves to chair the meeting.

#### **24. Quorum**

The presence of more than half of the members of a Council or Subordinate Authority shall constitute a *quorum*.

#### **25. Voting at meetings**

(1) Notwithstanding the provision of section 20 (11), all matters shall be determined by a simple majority of the votes of the members, present at any meeting.

(2) The member presiding at any meeting shall have an original vote and a casting vote.

(3) Where the member presiding is an *ex-officio* member he or she shall have neither an original nor a casting vote and if upon any question before the Council or Subordinate Authority, the votes are equally divided the motion shall be lost.

#### **26. Meetings of Council and Subordinate Authorities**

(1) A Council or Subordinate Authority shall hold ordinary meetings at intervals of not less than three months per annum, at a place and time as the Council or Subordinate Authority may determine.

(2) The Mayor or Chairperson or in the absence of the Mayor or Chairperson, the Deputy Mayor or Deputy Chairperson or in their absence, the Town Clerk or the Council Secretary may at any time, and shall at the request in writing of not less than two thirds of the members of the Council, call a special meeting.

(3) The notice of a special meeting shall specify the objects of the meeting, and no other business may be discussed at that meeting.

(4) The Mayor or Chairperson may adjourn any meeting of the Council or Subordinate Authority for any period not exceeding 14 days, and any business of the Council or Subordinate Authority conducted after the meeting has been so adjourned shall be of no effect.

(5) Notwithstanding subsection (4), the Mayor or Chairperson shall consult the members present before he or she adjourns a meeting.

(6) An adjournment under subsection (4) shall be subjected to a voting process by the members present and such adjournment shall be effected when there is a concurrence of two thirds of members of Council.

### **27. Meetings to be public**

(1) Every meeting of a Council or Subordinate Authority, other than a meeting of a committee appointed by a Council or Subordinate Authority, or a committee of the whole Council, shall be open to the press and the public.

(2) Notwithstanding subsection (1), the Council or Subordinate Authority may by a majority of members present order that the press or the public, or any member of the press or the public, shall withdraw from the meeting.

### **28. Records to be kept**

(1) Proceedings of every meeting of a Council or Subordinate Authority and of every committee shall be recorded either in English or Setswana language, and shall be kept for that purpose.

(2) The records under subsection (1) shall reflect the names of the members, present at, absent from the meeting, and of persons co-opted and when signed by the Mayor or Chairperson, Town Clerk or Council Secretary shall, unless the contrary is proved, be considered to be a correct record of the proceedings of the meeting for which they were taken.

### **29. When records confirmed, regularity considered**

When the record of the proceedings of any meeting of a Council or Subordinate Authority, or of a committee, have been confirmed-

(a) the meeting shall, until the contrary is proved, be considered to have been duly convened and held;

(b) all the members present at that meeting shall be considered to have been duly qualified; and

(c) where the proceedings so recorded are those of a committee, the committee shall, until the contrary is proved, be considered to have been duly constituted, and to have had power to deal with the matters referred to in the records.

### **30. Records open for examination**

The record of the proceedings of a Council or a Subordinate Authority shall be open for examination by any member of the public during working hours, and any person may obtain a copy of the records, or an extract from the records, upon payment of a fee prescribed by the Council or Subordinate Authority.

### **31. Joint committees of two or more Councils**

A Council may enter into an agreement with any one or more Councils in appointing from among their respective members a joint committee of the Councils for any purposes in which they are jointly interested, and may delegate to the joint committees, with or without restriction or conditions, any powers or functions of the Councils relating to the purpose for which the joint committee was formed, except the power to make bye-laws or the power to raise money by rate or otherwise.

## **PART VI**

### ***Privilege of Immunity (ss 32-35)***

### **32. Immunity from legal proceedings**

Civil or criminal proceedings shall not be instituted against a member of a Council for words spoken at, or written in a report to the Council or committee, or by reason of any matter brought by the member by petition, motion or otherwise.

### **33. Immunity from arrest**

A member of a Council or Subordinate Authority shall not be liable to arrest-

(a) for any civil debts whilst going to, attending at, or returning from, a meeting of the Council or Subordinate Authority or any committee; or

(b) within the precincts of the Council or Subordinate Authority while the Council or Subordinate Authority or a committee is sitting, for any criminal offence.

#### **34. Exercise of process**

A process issued by any court in the exercise of its jurisdiction shall not be served or executed on a member of a Council or Subordinate Authority within the precincts of the Council or Subordinate Authority while the Council or Subordinate Authority is sitting.

#### **35. Definition**

In this Part-

"**precincts of the Council or Subordinate Authority**" means the chamber and offices of a Council or Subordinate Authority and any gallery or place provided for the use or accommodation of members of the public, and includes, while the Council or Subordinate Authority is sitting, the entire building in which the chamber of the Council or Subordinate Authority is situated, and any forecourt, yard, garden, enclosure or open space adjoining or appertaining to that building and used or provided for the purposes of the Council or Subordinate Authority.

### **PART VII** **Staff (ss 36-38)**

#### **36. Appointment of staff**

(1) Subject to the provisions of the Public Service Act (Cap. 26:01), a Council shall appoint employees as the Council may consider necessary.

(2) There shall be a Town Clerk or Council Secretary appointed in accordance with the provisions of the Public Service Act, whose office shall be a public office.

(3) Staff of the Council shall be accountable to the Council through the Town Clerk or Council Secretary.

#### **37. Functions of Town Clerk or Council Secretary**

The Town Clerk or Council Secretary shall be the head of the administration of the relevant Council and shall-

(a) be responsible for the implementation of all lawful decisions taken by the Council;

(b) give guidance to the Council;

(c) supervise, monitor and co-ordinate the activities of all officers and departments of the Council and ensure accountability and transparency in the management and delivery of Council services;

(d) act as the liaison officer between the Council and the Government;

(e) advise the Mayor or Chairperson in the administration of Council;

(f) have custody of all documents and records of the Council;

(g) be responsible for expending of the Council's funds and account to the Council;

(h) advise the Council on legal and administrative matters;

(i) supervise and co-ordinate the activities of all delegated services and officers working on those services;

(j) assist in the maintenance of law, order and security in the Council; and

(k) carry out any other duty that may be assigned by the Council through the Mayor or

Chairperson from time to time.

#### **38. Staff rules**

Notwithstanding the provisions of the Public Service Act (Cap. 26:01), the Minister in consultation with the Minister responsible for the public service may publish in the *Gazette* regulations or rules as he or she may consider proper for governing staff matters.

### **PART VIII** **Valuation and Rating of Properties (ss 39-43)**

#### **39. Application of this Part**

(1) This Part shall apply to rateable properties within the City, Town, and any area within a district as may be prescribed by the Minister.

(2) The Minister may by regulations prescribe procedures for valuation, rating of properties, setting threshold and the fixing and levying of rates on different classes of land and properties within the jurisdiction of a Council.

(3) Regulations made for the fixing and levying of rates-

(a) may prescribe the procedure for the enforcement of payment of rates and service levies and may empower a Council to apply to a Magistrate's Court or the High Court, as the case may be, for the sale of any movable or immovable property of any person in default of payment of assessed rates or service levies in satisfaction for such rates or service levies; and

(b) shall provide that any ratepayer shall be at liberty to object to the assessment of his or her own property or any other land within the jurisdiction of the Council and that an ultimate appeal in all matters respecting assessments and rating shall be provided to the High Court.

(4) Subject to the provisions of this section, rateable land within this Part means land within the jurisdiction of the Council except land that is-

(a) vested in Government;

(b) vested in the Council;

(c) set aside under the provisions of the Tati Concessions Land Act (Cap. 32:05);

(d) occupied for use by the public service for the provision of public service; and

(e) used exclusively for the following purposes-

(i) a public library or public museum of natural history or fine arts,

(ii) public schools,

(iii) a public hospital or public institution for the mentally and physically challenged,

(iv) an orphanage or a charitable institution supported entirely by voluntary contributions or payments made by the inmates towards their maintenance,

(v) a public cemetery or crematorium,

(vi) recreation or sport other than any sport for which an admission charge is made,

(vii) agricultural show purposes,

(viii) church property used for worship,

(ix) church owned residences for the clergy,

(x) residences for the needy, elderly and vulnerable in urban areas and residences in rural areas, and

(xi) subsistence farming areas.

(5) Where land is exempt under the provisions of this section or is used for any of the purposes specified in subsection (4) (e), and for some other purpose at the same time or at different times during any year, that land may be regarded as rateable in part and non-rateable in another part or as rateable during a portion of the year, as the case may be, and accordingly the Council may apportion the valuation or rates or both valuation and rates.

(6) The Minister may, upon recommendation by the Council, by Order published in the *Gazette* exempt any properties from payments of rates.

(7) This section shall not be taken to exempt an owner of land from the payment of rates on land from which that owner derives a rent or income used for any of the purposes specified in subsection (4) (e).

(8) It shall be lawful for the Minister in his or her discretion to make a grant to the revenue of the Council *in lieu* of an owner's rate, on property vested in Government or set aside in the circumstances described in subsection (4)(c) not exceeding the amount which would have been payable except for the provisions of subsection 4(a) and (c).

#### **40. Appointment of valuation officer**

Every Council shall appoint one or more valuation officers approved by the Minister to make any valuation and valuation rolls provided for in this Part.

#### **41. Establishment and constitution of Valuation Tribunal**

(1) The Minister may, by Order, establish a Valuation Tribunal for the purposes of this Part.

(2) The composition, terms of reference, jurisdiction and powers of a Tribunal, and the tenure of office of members of the Tribunal, shall be as may be specified in the Order establishing the Tribunal.

(3) Where the Minister has established a Tribunal for any Council on the determination by the Valuation Tribunal of any matter under this Part any person who is dissatisfied may within 21 days appeal to the High Court.

#### **42. Powers, functions and duties of Valuation Tribunal**

The Valuation Tribunal shall at each sitting proceed to consider the valuation roll and any objections made and may confirm any valuation or make alterations or amendments in the valuation roll, whether objected to or not, either by way of reduction, increase, addition or alteration as the Valuation Tribunal may consider appropriate and expedient.

#### **43. Conflict of interest of members of Valuation Tribunal**

A person shall not sit as a member of a Valuation Tribunal at the hearing of any matter in which he or she is personally interested, directly or indirectly, or in which his or her spouse, partner or relative within the first degree of consanguinity or affinity is directly or indirectly interested, or in which any company of which that person is an officer or a shareholder or is directly or indirectly interested.

### **PART IX**

#### ***Power of Council to make Bye-laws (ss 44-63)***

#### **44. Power to make bye-laws**

(1) A Council may after consultation with the community, make bye-laws for the area in respect of which it has been established, or any part of that area, in respect of-

(a) all matters as it considers necessary or desirable for the maintenance of the health, environment, safety and well-being of the inhabitants of that area or that part;

(b) all or any of the functions set out in Schedule 1, and prescribing service and user fees set out in Schedules 3 and 4; and

(c) prescribing, controlling and regulating levy on private land.

(2) The bye-laws under subsection (1) may prescribe what licences or permits may be required by the Council, and may prescribe the fees to be paid, and may also prescribe the fees to be paid for any services to be rendered by the Council.

(3) The bye-law may require acts or things to be performed to the satisfaction of a prescribed person, and may empower a prescribed person to issue directions to any other person requiring acts or things to be done, imposing conditions and prescribing periods within or before which those acts or things shall be performed or done or those conditions shall be fulfilled.

(4) Notwithstanding the powers conferred on the police by the Road Traffic Act (Cap. 69:01) or any other written law, the bye-law under subsection (1) may provide for the administration of parking facilities under the authority of Council.

#### **45. Bye-laws to be submitted to Minister**

(1) All bye-laws made by a Council shall be submitted to the Minister for his or her approval, and no bye-laws shall be of any force or effect until the Minister has approved and caused them to be published in the *Gazette*. (2) In approving any bye-law which prescribes service and user fees for the services set out in Schedule 3, the Minister shall act in consultation with the relevant Ministry.

#### **46. Miscellaneous provisions regarding bye-laws**

(1) The substance and effect of all bye-laws which are to be submitted to the Minister for approval shall, not less than four weeks before submission, be communicated to the inhabitants of the area affected by posting notices on notice boards, Council website, and by publication and posting of the bye-laws at the public places as the Council may determine.

(2) A copy of all bye-laws shall be kept by the Council which made them in the manner as the Minister may prescribe, and any member of the public shall be entitled to a copy of the bye-laws upon payment of a fee as the Council may determine.

(3) Where any bye-law provides for the issue of any licence or permit, a refusal to issue the licence or permit shall be subject to an appeal to the Minister, in the manner prescribed by the Minister.

#### **47. Bye-laws not to override other laws**

The Council shall not make any bye-law that overrides or derogates from the provisions of any other written law in force in Botswana.

#### **48. Minister may make model bye-laws**

(1) The Minister may by Order, cause to be made and published in the *Gazette*, model bye-laws on any of the subjects on which a Council is empowered to make bye-laws.

(2) The Council may adopt model bye-laws on a subject on which it is authorised to make bye-laws, either in whole or in part, or with the variations as may seem to the Council appropriate to the circumstances obtaining in the area in respect of which it is established.

(3) The adoption of model bye-laws by a Council in pursuance of subsection (2) shall have effect for the purposes of this Act of the making of bye-laws by the Council, except only that where the bye-laws are adopted in whole and without variation they shall not require the approval of the Minister under sections 45 and 46 (1) and shall have effect with the substitution for references to the submission of the bye-laws for approval of references to the submission of the bye-laws for publication.

#### **49. Minister may suspend bye-laws**

(1) Where in the opinion of the Minister, it is in the interest of good governance or the maintenance of good order and security of the area or part of that area for which a Council has been established, that the operation of any bye-law made by a Council shall be suspended, the Minister may by Order published in the *Gazette* suspend that bye-law for a period not exceeding 60 days.

(2) Where the Minister suspends any bye-law under subsection (1), the Minister shall-

- (a) consult with the Council and community;
- (b) provide in the suspension Order, reasons for the suspension; and
- (c) provide for any other matter that in his or her opinion may require to be provided.

#### **50. Minister may make or amend bye-laws**

(1) The Minister may by Order published in the *Gazette* make any bye-law which a Council could make, and amend or revoke any bye-laws made by a Council, where the Minister considers the matter to be of importance and in the public interest.

(2) Subject to subsection (1), the Minister shall not make any bye-laws unless the Minister has requested the Council in writing to make, amend or revoke the bye-law, and the Council has not complied with the request at its first meeting after the request has been received.

#### **51. Law enforcement office**

There shall be established a law enforcement office in every Council to enforce bye-laws made by the Council and any other laws delegated to be enforced by Council.

#### **52. Law enforcement officers**

(1) A law enforcement office shall consist of the number of law enforcement officers as the Council may determine and appoint.

(2) A Council shall furnish every person appointed as a law enforcement officer with an identity card stating that, that person is duly appointed by the Council for the purposes of enforcing bye-laws and other delegated functions and the identity card shall be *prima facie* evidence of that appointment.

#### **53. Powers of arrest**

(1) A law enforcement officer may, without a warrant, arrest a person where he or she reasonably suspects that, that person has contravened or is contravening a bye-law.

(2) A law enforcement officer may use force as is reasonably necessary in the circumstances in effecting an arrest under this section; and for the purpose of effecting an arrest, enter and search any premises or place where he or she has reason to believe that there is in the premises or place a person who is to be arrested.

(3) A law enforcement officer shall not enter any premises or place unless he or she first states that he or she is a law enforcement officer and the purpose for which he or she seeks entry and produce his or her identity card to any person requesting its production.

(4) Notwithstanding the provisions of this section, before a law enforcement officer arrests a person where he or she reasonably suspects that, that person contravened or is contravening a bye-law, the law enforcement officer shall produce an identity card to that person as evidence that the law enforcement officer is empowered by law to arrest him or her.



#### **54. Powers of search, seizure and detention**

(1) Where a law enforcement officer has arrested a person under section 53, he or she may-

(a) search that person and the premises or place in which that person was arrested; and

(b) seize and detain anything which that law enforcement officer has reason to believe to be or to contain evidence of any contravention of a bye-law or any other law.

(2) Subject to subsection (1), anything seized, detained or confiscated by a law enforcement officer shall be kept for as long as the Council considers it necessary in all circumstances for use as evidence at a trial for an offence and shall be disposed of in such a manner as may be prescribed in the bye-laws.

(3) A law enforcement officer shall only search a person of the same gender as that of the law enforcement officer.

(4) A law enforcement officer in the performance of his or her duties under this Part shall prepare and issue a copy of a record of goods or properties seized or detained to the person from whom they were seized or detained.

#### **55. Procedure after arrest**

A law enforcement officer shall take any person arrested under section 53 as soon as is practicable to a police station, and that person shall be dealt with in accordance with the Criminal Procedure and Evidence Act (Cap. 08:02) and any other relevant laws.

#### **56. Search with warrant**

(1) Where it appears to a law enforcement officer that there are reasonable grounds to believe that there is in any premises or place anything which is or contains evidence of a contravention of a bye-law, he or she may make an application to a magistrate for a warrant to search the premises or place.

(2) Where the magistrate to whom an application is made under subsection (1) is satisfied that there are reasonable grounds for suspecting that there is in the premises or place referred to in subsection (1), anything which is or contains evidence of a contravention of a bye-law, that magistrate may issue a warrant directing the law enforcement officer to enter and search the premises or place and seize and detain anything which the law enforcement officer has reason to believe to be or to contain evidence of any contravention of a bye-law.

#### **57. Search without warrant in certain cases**

(1) Notwithstanding section 52 of the Criminal Procedure and Evidence Act, where it appears to a law enforcement officer that there are reasonable grounds to believe that the delay in obtaining the search warrant would defeat the object of the search he or she may, without warrant, if he or she considers that the special exigencies of the case so require, enter and search any person, premises, or place, or in a vehicle and receptacle of whatever nature for anything which-

(a) is evidence of contravention of any bye-law, or in respect of which a contravention of a bye-law is about to take place; or

(b) is being conveyed or is concealed or contained in any package in the premises or place or vehicle for purposes of being conveyed, and the law enforcement officer may seize and detain anything if found on any person or in those premises or place, vehicle or receptacle.

(2) The entry and search referred to in subsection (1) shall, as far as possible, be made during day time and in the presence of two or more respectable inhabitants of the locality in which the entry and search is made.

#### **58. Exercise of powers of search and seizure**

In exercise of the powers of search and seizure under section 54, the law enforcement officer may use reasonable force as is necessary in the circumstances, to enter into or upon any premises or place, as the case may be.

#### **59. Penalty for hindering or obstructing a law enforcement officer**

A person who hinders or obstructs a law enforcement officer in the performance of his or her duties under this Act commits an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding two months, or to both.

#### **60. Imposition and collection of fines**

(1) A law enforcement officer may impose fines for a contravention of a bye-law as a Council may determine.

(2) Notwithstanding subsection (1), any fine determined by the Council under this section shall not exceed P5 000.

(3) A Council shall directly collect any fines imposed by a law enforcement officer and the fines shall accrue to the Council concerned.

#### **61. Collection of debt**

Where a person who has been fined under section 60 fails within a stipulated period to pay the fine to the Council, the Council may recover the fine in a court of law as a civil debt.

#### **62. Power to make standing orders**

A Council shall make standing orders as may be necessary for the conduct of its business and, without prejudice to the generality of the foregoing, shall make standing orders for the following purposes-

- (a) the regulation of the business and procedure of the Council;
- (b) to ensure the punctuality of the attendance of the members at meetings, and to prevent meetings being held without adequate notice to members; and
- (c) to maintain order and method in the dispatch of business and in the conduct of meetings.

#### **63. Service and user fees**

A Council shall, by resolution, set service and user fees and levies for the services set out in Schedule 4.

### **PART X**

#### ***Revenues of Councils, Accounts and Audits (ss 64-72)***

#### **64. Revenues of Councils**

The revenues of a Council shall consist of-

- (a) the rates the Council is authorised by law to impose;
- (b) rent from property owned or administered by the Council;
- (c) all monies derived from licences or permits issued by the Council and all taxes, levies and dues and fees imposed under lawful authority by the Council;
- (d) interest on investments;
- (e) the royalties as may by law be payable to or receivable by the Council;
- (f) donations, contributions and endowments;
- (g) reimbursements;
- (h) the grants as the Government may make to the Council;
- (i) any other monies which may by law be paid to or received by the Council; and
- (j) any other sources as the Council may lawfully determine.

#### **65. General fund**

(1) Every Council shall establish and maintain a general fund and all monies received by the Council by way of revenue shall be paid into the fund, and all expenses incurred by the Council in the execution of the powers and duties conferred upon it by or under the provisions of this Act shall be defrayed out of that fund.

(2) The Minister acting in accordance with the advice of the Minister responsible for finance may issue instructions with regard to the general management, supervision and control of the general funds established under subsection (1).

#### **66. Bank account and investments**

(1) Every Council shall open and maintain an account at a financial institution, and shall operate the account in such manner as may be prescribed.

(2) A Council may obtain overdraft facilities from a financial institution.

(3) The overdraft facilities under subsection (2) shall not at any one time exceed in all an amount equal to one-third of the revenue (excluding grants) received by the Council during the preceding financial year, except with the written approval of the Minister acting in accordance with the advice of the Minister responsible for finance.

(4) A Council may invest all or any part of its monies in the manner as the Minister acting in accordance with the advice of the Minister responsible for finance may approve.

#### **67. Borrowing powers**

(1) A Council may raise loans for amounts, in the manner, and for purposes, it may deem appropriate for the execution of its functions, upon conditions as the Minister, in accordance with the advice of the Minister responsible for finance, may in each case approve.

(2) The loans under subsection (1) shall be secured on the revenue and assets of the Council.

(3) The interest for the time being payable in respect of any monies borrowed by the Council shall be a first charge on the revenue and assets comprising the security for the monies.

#### **68. Performance and financial audit**

(1) Every Council shall cause true accounts to be kept in accordance with the instructions as may be issued by the Minister.

(2) Within three months from the end of each financial year, every Council shall cause its accounts for the preceding financial year to be audited and an annual statement or abstract of accounts to be prepared and presented to the Auditor General.

(3) The accounts under subsection (2), with all books, vouchers and papers relating to the accounts, with a copy of an annual statement or abstract shall be audited by the Auditor General.

(4) The Auditor General shall complete the audit of accounts within 12 months of their submission.

(5) The Auditor General's report and the audited statements shall be submitted to the-

(a) Minister;

(b) Minister responsible for finance; and

(c) Town Clerk or Council Secretary, who shall cause the report and the audited statement to be tabled before the Full Council.

(6) The Council shall, upon receipt of the report and audited statements, submit them to the committee responsible for finance which shall, together with the Council management and Auditor General, examine them in detail and shall report back with any recommendations to Council.

(7) Every Council shall, for a period of not less than one month prior to the audit of its accounts, and at places as may be prescribed by the Minister, deposit for inspection the annual statement or abstract, and any person interested may without payment inspect the documents.

(8) The annual statement or abstract shall be further deposited for inspection within six months after the close of the financial year to which the accounts relate, or within two months of receipt of the Auditor General's report, whichever may be the earlier.

(9) A notice giving information of the dates when the documents will be available for inspection shall be posted at the places as the Minister may direct.

(10) Every Council shall permit the Auditor General to check any cash, and verify the existence of any investments or other assets in its possession and to have access to all its accounts and all books, vouchers and papers relating to the cash, investments or assets in the Council's possession.

(11) The Auditor General shall undertake a performance audit of a Council and submit a report to the Minister, the Minister responsible for Finance and to the Town Clerk or Council Secretary.

(12) The Town Clerk or Council Secretary shall cause the performance audit report to be tabled before the Full Council.

(13) The Town Clerk or Council Secretary shall maintain an efficient, effective and transparent system of risk management within the Council.

#### **69. Copies of statement and report to be supplied**

A copy of annual statement or abstract of the Auditor General's report shall be furnished to any inhabitant of the area upon payment of a fee as may be fixed by resolution of the Council.

#### **70. Disallowance and surcharge**

(1) The Town Clerk or Council Secretary may make objection in writing to any item of expenditure, and shall report that objection to the Permanent Secretary.

(2) The Town Clerk or Council Secretary shall disallow any item of expenditure or any part of that item on the grounds that the expenditure is wrongful or unreasonable or on any other ground, and the Town Clerk or Council Secretary may by order in writing surcharge any person as the person responsible for the payment of that item.

(3) Where it appears to the Town Clerk or Council Secretary that any failure to collect money due, or any loss of money or damage to the property of a Council has occurred through the wilful, negligent or wrongful act of any member or employee of the Council, the Town Clerk or Council Secretary shall by order in writing surcharge the amount of the money due, or any loss of money or damage to the property of a Council on any member or employee who, in the opinion of the Town Clerk or Council Secretary, is so responsible.

(4) In ordering the surcharge under subsection (3), the Town Clerk or Council Secretary shall immediately report in writing to the Permanent Secretary the details of the surcharge, and the Permanent Secretary may confirm the surcharge or remit all or any portion of the surcharge as the Permanent Secretary may consider appropriate.

(5) Any amount surcharged under subsection (4) on any person shall be considered to be a debt due to the Council.

#### **71. Financial year**

The financial year for every Council shall be from 1st April to 31st March in the succeeding year.

#### **72. Annual estimates**

(1) Every Council shall, after considering a report from its committee responsible for finance, at least three months before the beginning of any financial year prepare and approve by resolution, detailed estimates of its revenue and expenditure for the forthcoming financial year, and shall submit the estimates together with a copy of the resolution for the approval of the Minister who may either approve the estimates as submitted, or disallow estimates in whole or in part, or refer the estimates back to the Council for further consideration.

(2) A Council may, in any financial year, prepare and approve by resolution, supplementary estimates of revenue and expenditure.

(3) Where the supplementary estimates include expenditure in excess of 10 per cent of an approved head under the annual estimates, or include expenditure not contained in the annual estimates or expenditure which cannot be met from revenue available to the Council, the supplementary estimates, together with a copy of the resolution approving them, shall be submitted for the approval of the Minister, who may approve or disallow the supplementary estimates either wholly or in part.

(4) A Council shall not, except with the prior approval of the Minister, incur any expenditure which has not been included in the estimates or supplementary estimates of the Council, duly approved where necessary by the Minister, but may, after considering a report of the committee responsible for finance, and with the approval of the Minister, make re-allocations of any sum contained in the approved estimates.

(5) Notwithstanding subsection (4), any person designated for the purpose in writing by the Minister may, within limits as the Minister may direct, approve re-allocations without reference to the Minister.

### **PART XI**

#### ***Establishment of Local Authorities Public Accounts Committee (ss 73-79)***

#### **73. Establishment of Local Authorities Public Accounts Committee**

(1) Subject to the laws governing the public service, the Minister may establish the Local Authorities Public Accounts Committee (in this Part referred to as "the Committee").

(2) The Committee shall be assisted in its functions by a secretariat comprising of public officers from the Ministry and Ministry responsible for Land Boards as the Minister may direct.

#### **74. Functions of the Committee**

The functions of the Committee shall be to-

- (a) examine the accounts of every Council and Land Board which are required by written law to be presented to the Minister;
- (b) examine the Auditor General's reports and audited financial and performance reports one month after they have been presented before the Full Council and Land Board;
- (c) examine other accounts as may be referred to it by the Minister; and
- (d) report the results of an examination under paragraphs (a), (b) and (c) to the Minister.

#### **75. Membership of the Committee**

(1) The Committee shall consist of nine persons appointed by the Minister in consultation with the Minister responsible for Land Boards, two of whom shall be Councillors and two of whom shall be Land Board members.

(2) The members of the Committee shall be persons of good standing in the community and who possess substantial knowledge and experience in the areas of accounting and auditing, local authority financial and performance management systems or in other matters of a nature likely to assist the Committee in the discharge of its functions.

(3) The Minister shall appoint a chairperson from among the members.

(4) The tenure of office of a member of the Committee shall be a period of not more than three years from the date of appointment.

(5) Notwithstanding subsection (4), a member shall be eligible for re-appointment at the expiration of the term of office where that re-appointment is in the interest of the service.

#### **76. Proceedings of the Committee**

The Committee shall meet at such time and place, and shall proceed with business in the manner as the Minister may direct.

#### **77. Provision of evidence and advice**

The Town Clerk, Council Secretary or Land Board Secretary shall provide the Committee with such evidence and advice, either documentary, oral or both, as may be required by the Committee.

#### **78. Auditor General and Director to attend meetings**

The Auditor General and Director responsible for Council finances or their duly authorised representatives shall attend the meetings of the Committee and shall give advice on financial, procurement and performance matters as may be required.

#### **79. Minister's report**

The Minister shall report on annual basis to the National Assembly on the operations of the Committee.

### **PART XII**

#### ***Development Committees (ss 80-81)***

#### **80. Establishment of district or urban development committees**

(1) Each Administrative District shall establish a district or urban development committee whose functions shall be to-

- (a) co-ordinate the activities of all local and central Government agencies in the district with a view to promote development;
- (b) serve as a planning body for the district;
- (c) advise the agencies referred to in paragraph (a) in all matters relating to planning and development; and
- (d) monitor the process of decentralisation with a view to advising Council on the possible cause of action.

(2) The development committee shall be chaired by the administrative officer and shall have membership composed of heads of central Government departments, heads of local government institutions and other members as the Minister may direct.

(3) The development committee may establish sub-committees at district and Subordinate Authority level as may be deemed appropriate.

(4) The administrative officer shall report the activities of the development committee to the Mayor or Chairperson on a quarterly basis or as the Mayor or Chairperson may direct.

### **81. Establishment of village or ward development committees**

(1) A Council shall establish a development committee at each village ward or service centre in accordance with the regulations and guidelines that the Minister may issue.

(2) Subject to section 12, the committees may enter into contracts and transactions on behalf of the Council.

(3) The development committee shall be responsible for the co-ordination of development at the level at which it has been established and shall be apolitical.

(4) The Councillor and *Kgosi, Moemela Kgosi* or *Kgosana* of the area for which a village, ward, or service centre development committee has been established shall be *ex-officio* members of the development committee.

## **PART XIII**

### **Miscellaneous (82-92)**

### **82. Power of entry**

A Local Government officer employed under the provisions of the Public Service Act (Cap. 26:01) and duly authorised for the purpose by the Council in writing, may at all reasonable times enter into or upon land or premises within the area of the Council or part of the Council for which the Council is established, for the purpose of carrying out any duty imposed by this Act and specified in that authorisation.

### **83. Execution of orders against Council**

A court order or judgment against the Council or any member of the Council shall be executed upon giving three months notice, unless the Court orders otherwise.

### **84. Recovery of Government expenditure**

(1) Where the Government has expended public funds or incurred any liability as a result of a resolution of a Council under which the Council has undertaken to pay the Government a capital or recurrent contribution from its funds, the Minister may, if the Council fails to make due payment in accordance with the provisions of that resolution, order that, the payment be made from the funds of the Council, and that any rate or tax necessary to produce the sum required shall be imposed upon and collected from the rateable or taxable inhabitants of the area or the part of the area concerned.

(2) Where the Minister is satisfied that a judgment for the payment of money has been given by a competent court against a Council, or that for good and sufficient reason, money is due from and payable by the Council, and the Council fails to make due payment, the Minister may order that the payment be made from the funds of the Council and that any rate or tax necessary to produce the sum required shall be imposed upon and collected from the rateable or taxable inhabitants of the area or the part of the area concerned.

### **85. Powers to reject, vary or amend a resolution**

The Minister may reject, vary or amend a resolution of a Council considering the financial implications and public or national interests.

### **86. Powers of Minister to vary or amend Schedules**

The Minister may, by Statutory Instrument, vary or amend the Schedules to this Act.

### **87. Pecuniary interests**

Where a member of a Council-

(a) has a pecuniary interest, direct or indirect, in a contract or pro-posed contract or any other matter; and

(b) is present at a meeting of a Council at which the contract or other matter is the subject of consideration,

the member shall, at that meeting disclose both in writing and verbally to the Mayor or Chairperson his or her interest and, subject to the provisions of any standing order made under section 62, shall not take part in the consideration or discussion of, or vote on, any question relating to the contract or other matter, unless after disclosure the Council by a majority of the members present gives the member leave to take part or to vote.

### **88. Personal gain**

(1) A member shall not use his or her position or privileges or confidential information obtained as a member of Council for private gain or to improperly benefit another person.

(2) A member who uses his or her position or privilege or confidential information obtained as a member of Council for private gain or to improperly benefit another person under subsection (1), commits an offence and is liable to a fine not exceeding P 5 000 or to imprisonment for a term not exceeding one year, or to both.

### **89. Dissolution of Councils**

(1) Notwithstanding the provisions of section 16, the Minister may by Order published in the *Gazette* and after consultation with the community, dissolve a Council in any of the following situations-

- (a) where the Council fails to hold three consecutive ordinary meetings per annum;
- (b) where there is serious financial mismanagement as may be certified by the Auditor

General;

- (c) where the Council wilfully fails without good cause to perform any of its functions; or
- (d) in the event of *force majeure*.

(2) Where the Minister considers that one or more of the situations in subsection (1) exist, the Minister shall, before exercising the powers conferred under this section, by notice in the *Gazette* direct an inquiry to be held, to review, consider and report on the situation.

(3) Upon the dissolution of a Council in accordance with this section-

(a) all members of the Council shall cease to hold office and the seats of elected and nominated members shall be deemed to have become vacant; and

(b) the Minister shall by further Order published in the *Gazette*-

(i) appoint not more than 10 members within the Administrative District to form a Commission which shall have the status of the Council which has been dissolved, and may exercise all the powers and authorities vested in such Council until a successor is constituted, and

(ii) direct the holding of elections for a new Council, within 90 days from the date of the dissolution, provided that no election shall be held where the remaining term of office for members of the dissolved Council is less than 12 months.

(4) The members of the Commission appointed under subsection (3) (b) (i) shall comprise *ex-officio* members appointed under section 13 (3) and such other persons who are credible, and possess such experience in local government matters as the Minister may determine.

(5) The Minister shall appoint amongst the members of the Commission a Chairperson who shall not be an *ex-officio* member.

### **90. Local Government Association**

(1) There shall be established a Local Government Association to promote good governance and co-operation among Councils.

(2) The objectives of the Local Government Association shall be, amongst others, to-

- (a) promote and strengthen local governance;
- (b) provide opportunities for discussing issues of common interest;
- (c) collaborate and engage in matters of mutual understanding with Government; and
- (d) build partnerships, networks and coalitions with strategic organisations locally, regionally and internationally through decentralised co-operation.

(3) The membership of the Association shall comprise Councils.

(4) The Association shall regulate the conduct of its business through a constitution and any other regulations adopted by a National Conference.

(5) The Association shall develop a code of conduct for its members.

### **91. Penalties**

A person who commits an offence under this Act for which no other penalty is provided for is liable, for a first offence, to a fine not exceeding P2 000 or to imprisonment for a term not exceeding one year, or to both and for a second or subsequent offence, a fine not exceeding P5 000, or to imprisonment for a term not exceeding two years, or to both.

### **92. Regulations**

The Minister may make regulations prescribing anything required to be prescribed by this Act, and generally for carrying out the purpose and intent of this Act.

#### **PART XIV**

#### ***Repeal, Savings and Transition Provisions (ss 93-94)***

#### **93. Repeal of Cap. 40:01 and Cap. 40:02**

The Local Government (District Councils) and the Townships Acts (in this Part referred to as "Repealed Acts" are hereby repealed.

#### **94. Savings**

(1) Every order, direction or appointment which was issued, given or made pursuant to the provisions of the repealed Acts and every office which was created pursuant to the repealed Acts, shall remain valid until otherwise cancelled, revoked, varied or abolished under the provisions of this Act.

(2) All subsidiary legislation made under the repealed Acts shall, in so far as they are not inconsistent with this Act or with the terms and conditions of service of the employees, remain in force until they are expressly amended, revoked or reviewed pursuant to the provisions of this Act.

#### **SCHEDULE 1**

#### **FUNCTIONS OF COUNCILS**

*(sections 11 (1) and 44 (1) (b))*

#### **1. Education**

To provide primary schools and other educational services in relation to primary education.

#### **2. Health and sanitation**

To take steps in addition to those taken by any other authority to safe-guard and promote public health and prevent the occurrence of, or to deal with, any outbreak or prevalence of any disease.

#### **3. Collectin and management of waste**

To provide for collection, management and disposal of waste.

#### **4. Public roads and streets**

To make, alter and maintain public roads and streets, other than those the maintenance of which is undertaken by the Government, and name all roads and streets within the Council area in consultation with the community.

#### **5. Water supplies**

To provide public water outside an area for which a water authority has been appointed by law.

#### **6. General administration**

(1) To provide for the protection, maintenance and administration of common property.

(2) To protect and administer common lands and open spaces.

(3) To establish and maintain common markets.

(4) To establish and maintain recreation grounds, parks and other public places and to provide for the planting and protection of plants and shrubs.

(5) To manage matimela and other domestic animals and to establish, maintain and operate matimela and pounds.

(6) To provide for the destruction of stray dogs and other animals believed to be or suspected of being rabid.

(7) To establish and maintain cemeteries and crematoria.

(8) To provide services or assist in the provision of services giving relief from or attempting to avert natural calamity.

#### **7. Social development**



To provide social welfare and community development services.

#### **8. Economic and physical development planning**

(1) To regulate, licence and promote local economic opportunities.

(2) To promote local economic development, and investment opportunities.

(3) To undertake economic and physical planning and development of areas or settlements under the Council.

#### **9. Implementation of bye-laws**

To carry into effect any bye-laws made by the Council.

#### **10. Council and staff**

To secure the proper working of the Council (and any committees of the Council) and the welfare of its employees.

#### **11. Build and let out premises**

To build, maintain and let out premises and housing.

#### **12. Acquire land by purchase for development**

To acquire land by purchase for development and sell the land in serviced lots.

#### **13. Sale of land and premises**

To enter into contracts or concessions for the sale of land or premises or of any interest in the land or premises.

#### **14. Regulatory and licensing powers**

(1) To license and regulate business in accordance with any Act that may be in force at a given time.

(2) To regulate, control and license the brewing, distribution and sale of traditional beer.

#### **15. Abattoirs**

To establish, maintain and operate abattoirs and to fix by bye-law reasonable fees, charges and tariffs in connection therewith, which may include charges for the inspection of carcasses.

#### **16. Power to raise revenue**

To raise revenue through rates, levies and other sources for better carrying out of the functions of the Council.

#### **17. Maintenance of law and order**

To regulate and maintain law and order in the area of jurisdiction of the Council.

#### **18. Enter into contract**

Subject to the Minister's approval, a Council may enter into contracts, for the privatisation or delegation of any of its functions and duties.

#### **19. Administration of parking facilities**

To administer parking facilities under the authority of Councils.

#### **20. Prevention of dangerous trade, nuisance and litter**

To control or prevent advertising dangerous trade, nuisance, noise, street collections and indiscriminate disposal of litter and refuse.

**SCHEDULE 2**  
**OATH OF ALLEGIANCE/AFFIRMATION**  
(section 19 (1))

I ..... do hereby solemnly swear/affirm and sincerely promise to be faithful to the Republic of Botswana, to uphold and defend the Constitution and the laws of the Republic of Botswana and perform all my duties as a member of the local authority of ..... District, diligently, honestly, fairly and to the best of my ability, so help me God.

**SCHEDULE 3**  
**SERVICE AND USER FEES FOR COUNCILS**

*(sections 44 (1) (b) and 45 (2))*

- | NO. | SERVICES                           |
|-----|------------------------------------|
| 1.  | Abattoir services                  |
| 2.  | Certificates of rights conversions |
| 3.  | Matimela or pound services         |
| 4.  | Property rates services            |
| 5.  | School services                    |
| 6.  | Issuance of trade licences.        |

**SCHEDULE 4**  
**SERVICES FOR WHICH SERVICE AND USER FEES SHALL BE SET BY RESOLUTION OF A COUNCIL**

*(sections 44 (1) (b) and 63)*

- | NO. | SERVICES   |
|-----|--|
| 1.  | Advertising services (both on public and private land) |
| 2.  | Cemetery services                                      |
| 3.  | Community services                                     |
| 4.  | Day care centre services                               |
| 5.  | Hiring of classrooms                                   |
| 6.  | Provision of markets or factory shells                 |
| 7.  | Pest control services                                  |
| 8.  | Plan perusal and building control services             |
| 9.  | Plant hire services                                    |
| 10. | Refuse removal services                                |
| 11. | Road reinstatement services                            |
| 12. | Road reserve servitude                                 |
| 13. | Sanitation services                                    |
| 14. | Self Help Housing Agency services (SHHA)               |
| 15. | Shrub and plant sale services                          |
| 16. | Staffhouse rentals                                     |
| 17. | Stock sales commission                                 |
| 18. | Surveys and plans services                             |
| 19. | Sale of tender documents.                              |