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CONTENT

Act—	PAGE
The Kwale County Transport Act, 2017.....	1

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THE KWALE COUNTY TRANSPORT ACT, 2017

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ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects and purpose.
- 4—Application.

PART II—THE TRANSPORT DIVISION

- 5—Division of transport.
- 6—Organization of Division officers and employees.
- 7—Functions, powers and duties of the Division.

PART III—TRAFFIC AND PUBLIC ROAD TRANSPORT

- 8—Transportation of hazardous materials.
- 9—Right of entry.
- 10—Preventing engagement of public transport vehicle.
- 11—Conveying dangerous or offensive articles in public transport vehicles.
- 12—Boarding and disembarking of public transport vehicles.
- 13—Queues at public transport facilities.
- 14—Payment of fares.
- 15—Rights and duties of passengers when a public transport vehicle becomes defective.
- 16—Actions prohibited on a public transport vehicle.
- 17—Property left in public transport vehicles.
- 18—Obstruction and disruption of traffic.
- 19—Duties of pedestrians.

- 20—Use of hooter.
- 21—Prohibition on use of communication device while driving.
- 22—General Penalty.

PART IV — STREET LIGHTING

- 23—County to install street lighting.
- 24—Maintenance of street lights.
- 25—Damage to street lights.

PART V — PARKING

- 26—Parking on a public road.
- 27—Prohibited parking areas.
- 28—No parking' and 'street maintenance'.
- 29—Towing away of vehicle.
- 30—Parking on alleys.
- 31—Parking on private property.
- 32—Parking of trailers upon public road.
- 33—Parking on taxi zone.
- 34—Parking a taxi cab within a taxi zone with 'Not for Hire' sign.
- 35—Compliance of this act by taxicabs.
- 36—Parallel parking.
- 37—Angle parking where no parking guidelines are visible

PART VI — SAFE AND ADEQUATE SERVICE, JUST AND REASONABLE CHARGES

- 38—Safe and adequate service.
- 39—Traffic schedules and publication.
- 40—Changes in fares and charges.

PART VII — MOTORCYCLE

PART A — Two wheeled motorcycles Protective gear

- 41—Protection gear.
- 42—Responsibilities of Owners.
- 43—Responsibilities of a Rider.

44—Responsibilities of a Passenger.

45—Carriage of loads.

PART B—Two wheeled motorcycle taxis

46—Two wheeled motorcycle taxis.

PART C—Three wheeled motorcycles

47—Construction and equipment.

48—Responsibilities of owners.

49—Responsibility of a rider.

50—Responsibilities of a passenger.

51—Offences.

PART VII—GENERAL PROVISIONS

52—Power to make regulations.

53—General penalty.

54—Repeal of by-laws.

THE KWALE COUNTY TRANSPORT ACT, 2017

AN ACT of the County Assembly of Kwale to establish the county Division of Transport in the department of Infrastructure, to provide for matters relating to traffic, parking, county roads, street lighting, public road transport; and for connected purposes.

ENACTED by the County Assembly of Kwale, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kwale County Transport Act, 2017. Short title

2. In this Act—

Interpretation

“authority” means the National Transport and Safety Authority established under section 3 of the National Transport and Safety Authority Act, 2012;

“authorized person” means any person responsible for carrying out any duty or function or delegated to carry out any duty or function in terms of this Act and includes a traffic marshal, traffic conductor and any other authorized person authorized under any other law;

“Corporate Body” means a limited liability company registered under the Companies Act, 2015 and includes a co-operative society registered under the Kwale County Co-operative Societies Act, 2016”

“county executive member” means the County Executive Committee Member in charge of transport;

“county roads” means all other roads except those marked as National Roads in the 4th Schedule in the Kenya Constitution;

“director” means the county director for the time being in charge transport;

“hazardous materials” means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce by all modes;

“harbor master” means the person appointed as such pursuant to this Act and includes his authorized deputies.

assistant and any other person authorized by the Department to act in that capacity ;

“harbor” means all that area referred to in the Schedule to this Act;

“harbor premises” means the quays, piers, jetties, stages and all other works, land and buildings for the time being vested in or occupied or administered by the Department within the harbour;

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“License” means a driving licence issued by the Authority under the National Transport and Safety Authority Act 2012;

“master” when used in relation to any vessel means any person having the command charge or management of the vessel for the time being;

“motorcycle” means any mechanically propelled vehicle with less than four wheels the weight of which unladen does not exceed eight hundred kilograms;

“motor vehicle” includes a vehicle, machine, bus, tractor, truck trailer or semi-trailer, propelled or drawn by mechanical power and used upon public roads in the transportation of property or passengers, but does not include any locomotive or car operated exclusively on a rail, rails or track;

“owner” when used in relation to goods includes any consignor, consignee, shipper or agent for the sale, receipt, custody, loading or unloading and clearance of those goods and includes any other person in charge of the goods and his agent in relation thereto; and when used in relation to a vessel includes any part owner, broker, charterer, agent or mortgagee in possession of the vessel or other person or persons entitled for the time being to possession of the vessel and includes the registered owner of a motorcycle;

“permit” means operating authority issued under this Act;

“person” includes an individual, firm, partnership, Association or corporation;

“Quay” means any quay, wharf, jetty, dolphin, landing stage or other structure used for berthing or mooring vessels and includes any pier, bridge, roadway or footway immediately adjacent and affording access thereto;

“ranking facility” includes—

- (a) a place upon a public road from which a public transport service may ply for hire or convey and drop off passengers; and
- (b) any place demarcated or designated for the exclusive parking of specific public transport vehicles by a road traffic sign.

“ride” between means to operate, manage or to be in control of a motor cycle;

“rider” means the person operating or person in control of a motorcycle;

“third party motor vehicle insurance” means an insurance policy by that name issued in respect to a motorcycle pursuant to the provisions of the Third Party Motor Vehicle Insurance Act (revised edition 2012);

“third party public service vehicle Insurance” means an insurance policy by that name issued in respect to a motorcycle pursuant to the provisions of the Third Party Motor Vehicle Insurance Act (revised edition 2012);

“three wheeled motorcycle” means any mechanically propelled vehicle with three wheels the weight of which unladen does not exceed eight hundred kilograms;

“three wheeled Motorcycle Taxi” means a three wheeled motorcycle used for the purpose of carrying or ferrying of a passenger for reward or hire;

“trailer” means any vehicle designed to be drawn by a motor vehicle, but does not include a sidecar attached to a motor cycle;

“two wheeled motorcycle” means any mechanically propelled vehicle with two wheels the weight of which unladen does not exceed eight hundred kilograms;

"Two wheeled Motorcycle Taxi" means a two wheeled motorcycle used for the purpose of carrying or ferrying of a passenger for reward or hire.

"vessel" includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water;

"vehicle" means a device designed or adapted mainly to travel on wheels or crawler tracks and includes such a device which is connected with a draw bar to a break down vehicle and is used as part of the towing equipment of a breakdown vehicle to support any axle or all the axles of a motor vehicle which is being salvaged other than such a device which moves solely on rails;

"waterskiing" means any activity wherein a person or persons are towed by a power driven vessel and are supported on skis or a disc or sled or inflatable tube or cylinder or similar apparatus.

3. The objects and purpose of this Act is to—

Objects and
purpose

- (a) provide for adequate, safe and efficient county transport facilities and services at a reasonable cost to the people;
- (b) facilitate the management, planning and development of county transport facilities and transport infrastructure;
- (c) give effect to, and ensure a balanced transport policy and planning.

4. (1) This Act applies to County roads and County transport, infrastructure and services.

Application

(2) Subject to the provisions of this Act, access to transport in the County and related priority shall be given to persons with disabilities, elderly persons, pregnant women and any other person with special needs.

PART II — THE DIVISION OF TRANSPORT

5. (1) There shall be in the County, a County division of transport within the department of Infrastructure.

Division of
transport

(2) The head of the department shall be the County transport officer who shall be appointed by the county public service board.

6. (1) The County division of transport may, in consultation with the county public service board from time to time, create, abolish, transfer and consolidate divisions, and other units within the department not expressly established by law as may be necessary for the efficient operation of the division.

Organization of
division officers
and employees

7. (1) The division, by or through the County Transport Director, shall have the following general functions, powers and duties—

Functions, powers
and duties of the
division.

- (a) to co-ordinate and develop a comprehensive and balanced transport policy and planning for the county;
- (b) to co-ordinate and assist in the balanced development and operation of transport facilities and services in the county;
- (c) to make such studies and analyses of transport problems relating to any aspect of transport in the county;
- (d) to partner with and co-operate with all other agencies;
- (e) to exercise all functions, powers and duties relating to traffic regulation and control as set forth in this Act;
- (f) to formulate and execute contracts, keep accounts, record personnel data, compile statistics and engage in research opportunities;
- (g) to prepare plans, specifications, designs and estimates, and, by the procedures and methods provided by the laws relating thereto, to construct and reconstruct—
 - (i) the public roads that are under the jurisdiction of the county;
 - (ii) the canals, waterways of the county and structures that are under the jurisdiction of the county;
 - (i) the bridges and grade separation structures that are under the jurisdiction of the county;

- (ii) parking facilities and appurtenances at or adjacent to transportation interfaces and connections to such facilities.
- (i) to operate and maintain—
 - (i) the county road, other public ways, bridges and grade separations;
 - (a) the canals, waterways and structures of the county; and
 - (b) parking facilities and appurtenances at or adjacent to transportation interfaces and connections to such facilities;

(2) The division of transport shall have power to cooperate with the agencies of other counties and of the National government which are connected with national defense, in the formulation and execution of plans for the rapid and safe movement over county roads of troops, vehicles of a military nature, and materials affecting national defense.

PART III—TRAFFIC AND PUBLIC ROAD TRANSPORT

8. (1) The division is hereby authorized to promote safety in the transportation of hazardous materials by all modes of transport, and in connection therewith it shall have the power to make rules and regulations governing transportation of hazardous materials.

Transportation of
hazardous
materials

(2) A person shall not transport or undertake transport operation in the County in a manner that exposes the public to danger.

(3) A person who contravenes this section or regulations made there under commits an offence and shall be conviction be liable to imprisonment for a period of one year or a fine not exceeding one hundred thousand or to both.

9. An authorized officer may, in enforcing the provisions of this Act, at any reasonable time and without prior notice—

Right of entry

- (a) enter a public transport service facility to inspect the facility; and

(b) make enquiries from a person connected with such facility.

10. A person shall not through use of force, intimidation, threats or by any other means, prevent or try to prevent—

Preventing engagement of a public transport vehicle

- (a) any person from obtaining or engaging a public transport vehicle;
- (b) the driver of a public transport vehicle from taking on passengers; or
- (c) the operation of any public vehicle which is lawfully operated.

11. (1) A person who is in charge of a public transport vehicle shall not knowingly convey a person or thing or allow that person or thing to be conveyed in such vehicle, whether or not the public transport vehicle has been engaged, if that person or thing—

Conveying dangerous or offensive articles in public transport vehicles

- (a) is not permitted to be conveyed in terms of an existing law; or
- (b) has reasonably been exposed to or contaminated by an infectious or contagious disease.

(2) For purposes of this section a person contemplated by section (1) shall include—

- (a) an escaped convict;
- (b) any person escaping from a quarantined area;
- (c) any other person as the county executive member may determine.

12. (1) A person shall not board a public transport vehicle until all persons desiring to disembark from such vehicle have done so.

Boarding and disembarking of public transport vehicles

(2) No person may board a public transport vehicle where the number of passengers would be in excess of the total number of passengers which it is authorized to carry.

(3) No person may board or alight or attempt to board or disembark from any public transport vehicle whilst such vehicle is in motion.

(4) While boarding or disembarking priority shall be given to persons with disabilities, elderly persons, pregnant women and any other person with special needs.

13. (1) The division may establish ranking facilities in the county and may further erect or cause to be erected a queue sign or queuing barrier in any suitable form for the purpose of queuing;

Queues at public transport facilities

(2) All passengers intending to enter any public transport vehicle at an established ranking facility or stopping place must queue from the point at which it is indicated that such public transport vehicle will leave;

(3) Where no queue sign has been erected, passengers waiting to enter a public transport vehicle must form themselves into a queue not exceeding two abreast or in a single file when required to do so by an approved public transport conductor or authorized official of the County;

(4) A passenger may only enter a public transport vehicle when he or she gets to the front of the queue;

(5) Every passenger queuing must comply with all the instructions given by a public transport conductor, authorized officer or authorized official when on duty.

14. (1) A passenger must pay the determined fare for the journey.

Payment of fares

(2) The fare to be paid shall not exceed the amount displayed on the vehicle.

15. (1) If a public transport vehicle becomes defective or, for any reason whatsoever, is unable to proceed, the passengers must disembark such defective vehicle and should the passengers have already paid their fares, they are entitled to a refund to the amount of their fares so paid.

Rights and duties of passengers when a public transport vehicle becomes defective

(2) Upon agreement with the driver or owner or operator of the defective public transport vehicle, passengers should be allowed to travel with the next available public transport vehicle for the remainder of the distance in respect of the paid fares, at the cost of the owner of the defective public transport vehicle.

(3) A driver or owner or operator who refuses to refund a passenger, as contemplated in subsection (1), or who refuses to allow a passenger to travel in the manner as contemplated in subsection (2) commits an offence.

(4) Where the vehicle has become defective in an area, the driver shall take reasonable steps to ensure the security of the passengers.

16. (1) The following actions are prohibited on a public transport vehicle when passengers are on board: Actions prohibited on a public transport vehicle

- (a) smoking;
- (b) playing offensive or excessively loud music;
- (c) using obscene or offensive language;
- (d) committing an offensive act;
- (e) interfering with the comfort of any passenger;
- (f) damaging anything and interfering with the equipment of the public transport vehicle in any way;
- (g) forcibly causing the driver to deviate from his route;
- (h) endangering the life of another passenger;
- (i) interfering with the actions of the driver;
- (j) showing or displaying any pornographic material;
- (k) or any other actions prohibited by any other law.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding fifty thousand shillings or to a imprisonment for a term not exceeding six months.

17. (1) The driver of a public transport vehicle must carefully examine the vehicle after a trip, and if a passenger has left behind any property in the vehicle, the driver must— Property left in public transport vehicles

- (a) deliver that property to the person who left it behind; or
- (b) if he or she is unable to deliver that property to the person who left it behind, take the property, as soon as possible, to the lost property office of his or her employer or to the nearest police station and deposit it with the officer on duty and obtain a receipt for it.

18. (1) A person shall not park or allow a public transport vehicle to park in a stopping place designated for specific public transport vehicles. Obstruction and disruption of traffic

(2) No public transport vehicle may traverse a pedestrian crossing when stopping to enable passengers to be picked up or dropped off.

(3) No public transport vehicle may park in a demarcated parking place any longer than is required to enable waiting passengers to be picked up or dropped off.

19. (1) A pedestrian may cross a public road only at a pedestrian crossing or an intersection or at a distance further than 100 metres from such pedestrian crossing or intersection. Duties of pedestrians

(2) Where a marked pedestrian crossing exists at an intersection, a pedestrian may only cross the intersection within the marked pedestrian crossing.

(3) Where a traffic-control light signal, which embodies pedestrian signals, operates at an intersection, a pedestrian may not commence to cross the roadway in a pedestrian crossing at the intersection while the red light of a pedestrian signal is displayed in the direction opposite to that in which he or she is proceeding.

(4) Where no pedestrian signals are operating at an intersection, but such intersection is controlled by a traffic-control light signal, a pedestrian may not commence to cross the roadway in a pedestrian crossing at the intersection while the red light of the traffic-control light signal is displayed in the direction opposite to that in which he or she is proceeding.

(5) Where a traffic-control light signal, which embodies pedestrian signals, are operating at a pedestrian crossing elsewhere than at an intersection, a pedestrian may only commence to cross the roadway in the pedestrian crossing when the green light of the pedestrian signal is displayed in the direction opposite to that in which he or she is proceeding.

(6) No pedestrian may carelessly, negligently or recklessly disregard, or endanger his or her own safety, or the safety of a person or vehicle using a public road.

20. A person shall not, on a public road, use the sounding device or hooter of a vehicle except when such use is necessary in order to comply with the provisions of this Act or any other law or on the grounds of safety. Use of hooter

21. (1) No person shall drive a motor vehicle on a public road while holding, using or operating a cellular or mobile telephone or any other communication device in one Prohibition on use of communication device while driving

or both hands or with any other part of the body unless such a cellular or mobile telephone or other communication device is affixed to the vehicle or is part of the fixture in the vehicle and remains so affixed while being used or operated, or is specially adapted or designed to be affixed to the person of the driver as headgear, and is so used.

(2) An authorized person may, in the public interest and safety of the public, confiscate and impound a hand held communication device.

(3) The authorized person must, when confiscating any hand held communication device—

- (a) inform the owner of such communication device of the reasons of confiscating and impounding;
- (b) issue a receipt to the owner of such hand held communication device, stating the place at which such device may be claimed; and
- (c) follow all procedures contained in any policy of the County dealing with the confiscation and impoundment of property.

22. (1) A person who contravenes a provision of this Part commits an offence and is liable, on conviction to a fine not exceeding one hundred thousand or to imprisonment to a term of imprisonment not exceeding one year, or to both fine and imprisonment. General penalty for this part

(2) This section does not prevent the court of competent jurisdiction to award any further or additional penalty as may be prescribed under any other written law.

PART IV—STREET LIGHTING

23. (1) The County Government shall install street lights within the County with special attention to the following areas; major traffic routes, high crime urban areas, town centres, pedestrian crossings, pedestrian subways, residential areas, foot bridges and shopping centres. County to install street lighting.

(2) The County shall, subject to sufficient allocation or availability of funds, realize the dictates of subsection (1).

24. (1) The division shall be responsible for the maintenance of streetlights. Maintenance of street lights

(2) To assist the division maintain the street lights and other transport related infrastructure, the court may award cost or require a person found guilty of vandalization or damage of road infrastructure to deposit such fees or charges as are reasonable to the county government bank account.

(3) The funds realized as a consequence of subsection (2) shall be used for the maintenance of county roads.

25. (1) A person shall not willfully, carelessly or negligently cause damage to any streetlight. Damage to street lights

(2) Any person who contravenes this section shall, upon conviction be liable to a fine not exceeding thirty thousand shillings or a term of imprisonment not exceeding one year or to both.

(3) In addition to the fine prescribed under subsection (2), the person found guilty shall be required to repair the street light at such cost as the Court may award upon assessment.

PART V— PARKING

26. (1) A person shall not park or permit a vehicle to be parked on a public road contrary to a traffic sign or in a manner that impedes the flow of traffic. Parking on a public road.

(2) A person who contravenes section (1) commits an offence.

27. Unless required or permitted by this Act or by a traffic control device, or in compliance with the directions of a traffic officer, or to avoid conflict with other traffic, a person shall not stop or park a vehicle— Prohibited parking areas.

- (a) at an intersection nearer than ten (10) metres to the projection of the curb line immediately ahead or immediately to the rear;
- (b) within ten (10) meters on the approach to a stop sign or yield signs;
- (c) within five (5) meters of any fire hydrant, or when the hydrant is not located at the curb, within five (5) meters of the point on the edge of the roadway nearest the hydrant;
- (d) within ten (10) meters of the approach to a pedestrian crossing;

(2) To assist the division maintain the street lights and other transport related infrastructure, the court may award cost or require a person found guilty of vandalization or damage of road infrastructure to deposit such fees or charges as are reasonable to the county government bank account.

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PART V— PARKING

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- (a) at an intersection nearer than ten (10) metres to the projection of the curb line immediately ahead or immediately to the rear;
- (b) within ten (10) meters on the approach to a stop sign or yield signs;
- (c) within five (5) meters of any fire hydrant, or when the hydrant is not located at the curb, within five (5) meters of the point on the edge of the roadway nearest the hydrant;
- (d) within ten (10) meters of the approach to a pedestrian crossing;

- (e) on a sidewalk;
- (f) facing oncoming traffic;
- (g) on any bridge or approach to any bridge;
- (h) in a passenger loading or unloading space posted as such by a traffic control device except when actually taking or discharging passengers;
- (i) on any portion of a public road posted as "No Parking";
- (j) on any land owned by the county which the county uses or permits to be used as a playground, recreation area, utility lot, or public park, except in such areas designated or posted for parking;
- (k) on any space posted as a fire lane except for emergency vehicles;
- (l) on any space posted for disabled persons parking unless such vehicle is designated as a disabled persons vehicle;
- (m) in a transit zone except a transit vehicle; in such a manner so as to obstruct an emergency exit; and
- (n) in such a manner so as to obstruct the entrance or exit of a fire hall or ambulance station.

28. The division through any of its authorized officers or employees, is hereby authorized to cause moveable signs to be posted on or near a road to indicate "No Parking", or "Street Maintenance" and when so posted, such signs shall take precedence over all other traffic control devices.

No parking' and
'street
maintenance'

29. (1) Any vehicle parked contrary to this Act may be towed away at the owner's expense.

Towing away of
vehicle

(2) The owner of the vehicle towed under subsection (1) shall be charged in a court of law for violation of this Act.

30. (1) A person shall not park a vehicle on any alley unless a traffic control device otherwise permits, except for the following purposes—

Parking on alleys

- (a) the loading or unloading of goods from a commercial vehicle for a reasonable period;

(b) the loading or unloading of goods or passengers from a vehicle other than a commercial vehicle for a reasonable period.

(2) Notwithstanding subsection (1), no person, while loading or unloading passengers or goods, shall park in such a manner as may obstruct the passage of other vehicles along the alley.

31. A person shall not park a vehicle or permit a vehicle to be parked on private property without the permission or authorization of the owner of the private property or a person having lawful possession or control of the private property. Parking on private property.

32. A person shall not park or permit to be parked, any trailer upon any public road unless the said trailer is attached to a vehicle by which it may be propelled or drawn and when so attached, the trailer shall be deemed part of the vehicle and subject to the provisions pertaining to vehicles. Parking of trailers upon public road

33. A person shall not park or permit to be parked a vehicle that is not a taxicab, in an area posted as a taxi zone. Parking on taxi zone

34. (1) The operator of a taxicab, except when answering a call, shall not park the taxicab upon any roadway other than within a taxi zone, unless such taxicab is displaying a "Not for Hire" sign and the operator is out of the taxicab. Parking a taxi cab within a taxi zone with 'Not for Hire' sign

(2) Nothing in this part shall be construed as to allow parking contrary to any other provision of this Act.

35. Notwithstanding the establishment of a taxi zone on a roadway, an operator of a taxicab stopping or parking in such a zone shall comply with the requirements of this Act. Compliance of this Act by taxicabs

36. When parking a vehicle on a roadway, a person may only park a vehicle— Parallel parking

(a) with the sides of the vehicle parallel to the curb or edge of the roadway, and the right wheels of the vehicle not more than five hundred (500) millimeters from the right curb or edge of the roadway; or

(b) in the case of a one-way highway where parking on either side is permitted, with the sides of the vehicle parallel to the curb or edge of the roadway, the

wheels that are the closest to a curb or edge of the roadway not more than five hundred (500) millimeters from that curb or edge, and the vehicle facing in the direction of travel authorized for the highway.

37. When a sign indicates that angle parking is permitted or required, and no parking guidelines are visible on the roadway;

Angle parking where no parking guidelines are visible

- (a) a person may only park a vehicle with the vehicle's sides at an angle of between thirty (30) and sixty (60) degrees to the curb or edge of the roadway; and
- (b) in the case of a vehicle other than a motorcycle, with the nearest wheel not more than five hundred (500) millimeters from the curb or edge of the roadway; or
- (c) in the case of a motorcycle, with the nearest wheel of the motorcycle not more than five hundred (500) millimeters from the curb or edge of the roadway, and the motorcycle angled adjacent to the lane on which the motorcycle is parked.

PART VI—SAFE AND ADEQUATE SERVICE, JUST AND REASONABLE CHARGES

38. (1) Every corporation, person or public transport service providers performing a transport service in the county, shall furnish such service and facilities as shall be safe and adequate and in all respects just and reasonable.

Safe and adequate service; just and reasonable charges

(2) All charges made or demanded by any such corporation, person or transport service provider for the transportation of passengers or property or for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order of the director of transport and made as authorized by this Act.

(3) Every unjust or unreasonable charge made or demanded for any such service or transportation of passengers or property or in connection therewith or in excess of that allowed by law or by order of the transport director is prohibited.

(4) All transport service providers have a general duty to deal reasonably with customers and adequately address customer complaints.

39. Every county transport service provider shall file with the division of transport and shall print and keep open to public inspection schedules showing the rates, fares and charges for the transportation of passengers and property within the county between each point upon its route and all other points thereon; and between each point upon its route and all points upon every route leased, operated or controlled by it.

Tariff schedules
and publication

40. (1) Unless the county director otherwise orders, no change shall be made in any rate, fare or charge, or joint rate, fare or charge, which shall have been filed and published by a county transport service provider in compliance with this Act, except after thirty days' notice to the transport officer.

Changes in fares
and charges

(2) The county transport officer, for good cause shown, may allow changes in rates without requiring the thirty days' notice and publication herein provided for, by duly filing and publishing in such manner as he may direct an order specifying the change so made and the time when it shall take effect; all such changes shall be immediately indicated upon its schedules by the county transport service provider.

PART VII— MOTORCYCLE

PART A— Two wheeled motorcycles

41. (1) No motorcycle shall be sold or transferred by any person without the following protective gear:-

Protective gear

- (a) two helmets which comply with the standards established by the Kenya Bureau of Standards and which shall have the registration number indelibly printed in letters not less than three inches in height on both sides of the helmet.
- (b) two reflective jackets which shall have the registration number of the motorcycle indelibly printed in letters not less than four inches in height on the back of the jacket.

(2) A person desirous of transferring a motorcycle must present physical proof of compliance with section 2(1) to the Authority.

(3) For Purposes of section 2 the term reflective jacket shall also mean a reflective vest.

42. (1) Every owner of a two wheeled motorcycle shall;

Responsibilities of Owners.

- (a) provide the rider and passenger with the protective gear stipulated in section 42(1);
- (b) not cause or permit any person to ride their motorcycle unless such person is the holder of a valid driving licence or a valid provisional licence endorsed in respect of that class of motorcycle;
- (c) for private motorcycles, ensure that the motorcycle is at the very minimum insured against third party risks in accordance with the Motor Vehicle (Third Party) Insurance Act (revised edition 2012);
- (d) for two wheeled motorcycle taxi, ensure that motorcycle has a Third Party Public Service Vehicle Insurance;
- (e) ensure that no structural modifications to the motorcycle are undertaken that may affect the safe operation of the motorcycle;
- (f) ensure that no structural modifications to the motorcycle are undertaken that may obstruct the visibility of the rear number plates;
- (g) ensure that no modifications to the exhaust system or any other noise abatement device of a motorcycle are done so as to cause the noise emitted by the motorcycle to be above that emitted by the motorcycle as originally manufactured.

43. (1) Every rider of a motorcycle shall—

Responsibilities of a Rider.

- (a) have a valid driving license issued by the Authority;
- (b) ensure that they shall not ride or carry a person on a motor cycle without the prescribed protective gear properly fastened;
- (c) not carry more than one person at a time;

- (d) ensure that passengers are carried on a proper seat with foot rests securely fixed to the motor cycle behind the rider's seat;
- (e) ensure that a passenger sits astride the motor cycle; and
- (f) ensure that the headlights of the motorcycle are on at all times when riding.

(2) For the purposes of this part:-

- (a) a child less who is less than twelve (12) years old maybe carried together with an adult provided the child is seated between the rider and the adult and wears a helmet designed for children.
- (b) persons with disabilities will be exempted from the requirement to sit astride while being carried on a motorcycle.

44. (1) Every passenger in a motorcycle shall—

Responsibilities of a Passenger.

- (a) properly wear a helmet and reflective jacket whenever being carried on a motorcycle;
- (b) not board or be carried on a motorcycle that already has a passenger except as provided by section 43(2);
- (c) not board or be carried on a motorcycle that is carrying any load; and
- (d) sit astride in the seat fixed behind the rider's seat.

45. (1) No load shall be carried on a motorcycle—

Carriage of Loads.

- (a) whose width projects more than fifteen (15) centimeters beyond the outside end of the handle bars;
- (b) whose height is more than two (2) meters from the ground;
- (c) whose weight is more than thirty (30) kilograms for a motorcycle whose carrying capacity does not exceed fifty (50) cc and 60 kilograms for a motorcycle whose carrying capacity does not exceed Four hundred (400)cc;
- (d) which projects to the rear beyond the maximum overall length of the motorcycle by more than sixty (60) centimeters. The rear extremity of the load

must be plainly indicated by a conspicuous red marker during the day and by a red light at night.

(2) The rider of a motorcycle carrying loads shall ensure that no part of the load carried drags on the road.

(3) For the purpose of this section the term "load" excludes luggage carried by a passenger provided such luggage does not exceed ten (10) kilograms in weight and does not project more than fifteen (15) centimeters beyond the outside end of the handle bars. Such luggage may be carried together with the passenger provided the luggage is properly secured between the rider and the passenger.

PART B—Two wheeled motorcycle taxis

46. (1) All two wheeled taxis must have their helmets painted yellow. Two wheeled motorcycle taxis.

(2) Any person engaging in business of motorcycle taxis services shall be a member of a body corporate which shall have a minimum of one hundred (100) motorcycle taxis.

(3) For two wheeled motorcycle taxis, the name of the group or Sacco which they are members of must be indelibly printed in letters not less than four inches in height on the back of both jackets.

PART C—Three Wheeled Motorcycles

47. (1) Every three wheeled motorcycle taxi shall — Construction and Equipment.

(a) be fitted with a seat belt for the rider and a seat belt per seating position for passengers;

(b) have a covered body;

(c) be painted on both sides and on the rear, a broken horizontal yellow band having a width of 150 millimetres and of a consistency sufficient to enable such band to be clearly visible by day at a distance of 275 meters;

(d) no part of the motorcycle, whether unladen or laden, other than the driving mirror or direction indicators, shall project more than 15 centimeters, beyond the outside wall of the outmost rear tyre; and

(e) Have at the minimum a motor commercial public service vehicle insurance cover.

48. Every owner of a three wheeled motorcycle taxi shall— Responsibility of owners.

- (a) not cause or permit any person to ride their motorcycle unless such person is the holder of a valid driving licence or a valid provisional licence endorsed in respect of that class of motorcycle;
- (b) ensure that all three wheeled motorcycle taxi owned have at the minimum a Third Party Public Service Vehicle Insurance

49. Every rider of a three wheeled motorcycle shall— Responsibilities of a Rider

- (a) not ride a motorcycle unless that person has a valid driving licence issued by the Authority;
- (b) not ride a motor cycle without properly wearing a seat belt or carry passengers who have not properly worn their seat belts;
- (c) not carry more than passengers in excess of the seating positions provided;
- (d) ensure that the headlights of the motorcycle are on at all times when riding;
- (e) overtake on the right hand side and not to overtake in the same lane occupied by vehicle being overtaken;
- (f) observe traffic lights;
- (g) not ride or operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles;
- (h) keep the seat belts in a clean, dry and generally wearable condition; and
- (i) observe all traffic rules.

50. Every passenger in a three wheeled motorcycle shall— Responsibilities of a Passenger.

- (a) Wear seatbelt whenever being carried on a motorcycle.

- (b) not board or be carried on a motorcycle that already has the maximum number of passengers allowed.

51. A person who contravenes any provision of this part and whose penalty is not provided for in the Traffic Act, commits an offence and is liable on conviction to a fine not exceeding Twenty Thousand Shillings or to imprisonment for a term not exceeding six months or, both. Offences

PART VII—GENERAL PROVISIONS

52. The County Executive Committee member may pursuant to this Act make regulations for the administration of this Act including but not limited to regulations relating to— Power to make regulations.

- (a) matatu termini;
- (b) taxi- cabs;
- (c) motor cycles;
- (d) bicycles; and
- (e) tri-cycles

53. A person who contravenes any of the provision of this Act to which no express penalty is provided commits an offence and shall be liable on conviction to a fine not exceeding Kenya Shillings one hundred thousand and imprisonment for a term of one year or to both. General penalty.

54. The by-laws in relation to transport made pursuant to the Local Government Act are hereby Repealed. Repeal of by-laws