

# **COUNTY GOVERNMENT OF HOMA BAY**



# **HOMA BAY MUNICIPAL BOARD**

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PREAMBLE

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

**WHEREAS** Article 184 of the Constitution of Kenya 2010 mandated parliament to enact a legislation to provide *inter alia* the criteria for classifying areas as urban areas and cities; establishing the principles of governance and management of urban areas and cities and to provide for participation by residents in the governance of urban areas and cities within 1 year of the promulgation of the Constitution.

**WHEREAS** Parliament enacted the Urban Areas and Cities Act in the year 2011 and Urban Areas and Cities (Amendment) Act in the year 2011 and 2019 respectively which legislations had an effective date falling after the first elections held under the Constitution of Kenya 2010.

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

**WHEREAS** The Urban Areas and Cities Act does not have the prescribed form of a Municipal Charter.

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

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

**NOW THEREFORE IN EXERCISE** of the powers conferred by section 9 (1) of the Urban Areas and Cities Act, (No. 13 of 2011) as complemented by section 72 of the Interpretations and General Provisions Act (Chapter 2) and all other enabling provisions of law, the County Governor of Homa Bay County **HEREBY GRANTS** the Municipality of Homa Bay this Municipal Charter on this[.....] day of [.....]2023.

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[HE HON GLADYS NYASUNA WANGA]

THE COUNTY GOVERNOR OF HOMA BAY COUNTY

**SEAL OF THE COUNTY GOVERNOR OF HOMA BAY COUNTY**

**1. INCORPORATION, NAME AND BOUNDARIES**

**1.1. INCORPORATION AND NAME**

1.1.1. This Charter is the Municipal Charter of the Municipality of Homa Bay Town within Homa Bay County, Kenya.

1.1.2. All processes affecting the Municipality shall be served on the Municipal Manager or acting Municipal Manager in the absence of both of said officers, on an officer designated by the Board of the Municipality.

**1.2. BOUNDARIES**

1.2.1. The delineation of the boundaries of the Municipality of Homa Bay Town shall be as provided in section 4A of the Urban Areas and Cities (Amendment) Act, 2019. Homa bay Municipality is situated on latitude 3400 46'E and longitude 0000 40'S and it covers an area of 29km<sup>2</sup> out of which 9km<sup>2</sup> falls within the Central Business District (CBD) while the rest consists of peri-urban settlements. The CBD is under leasehold tenure while land in the peri-urban areas are under freehold. This was after the expansion of the boundary in 1991 from eight square kilometres when Homa Bay Town was a town council to 29km<sup>2</sup> when it was upgraded into a municipality. The Municipal boundaries stretches to Kabunde area to the south, Koduogo market to the west, and borders the lake to the north and Ngegu to the East.

**2. POWERS, OBJECTS AND FUNCTIONS OF THE MUNICIPALITY**

**2.1. POWERS OF THE MUNICIPALITY**

**2.1.1.**

The Municipality of Homa Bay Town shall have all the powers, general and special, governmental or proprietary, expressed or implied, which may be possessed or assumed by municipalities under the Urban Areas and Cities Act, the County Government Act and the County of Homa Bay By-laws as approved by the County Assembly.

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

## 2.2. OBJECTS OF THE MUNICIPALITY

2.2.1. The objects of the Municipality of Homa Bay Town are to:-

- (i) Provide for efficient and accountable management of the affairs of the Municipality.
- (ii) Provide for a governance mechanism that will enable the inhabitants of the Municipality to:
  - a. Participate in determining the social services and regulatory framework which will best satisfy their needs and expectations.
  - b. Verify whether public resources and authority are utilized or exercised, as the case may be, to their satisfaction.
  - c. Enjoy efficiency in service delivery.
- (iii) Vigorously pursue the developmental opportunities which are available in the Municipality and to institute such measures as are necessary for achieving public order and the provisions of civic amenities, so as to enhance the quality of life of the inhabitants of the Municipality.
- (iv) Provide a high standard of social services in a cost effective manner to the inhabitants of the Municipality.
- (v) Promote social cohesiveness and a sense of civic duty and responsibility among the inhabitants and stakeholders in the Municipality in order to facilitate collective action and commitment towards achieving the goal of a harmonious and stable community.
- (vi) Providing for services, laws and other matters for Municipality's benefit.

(vii) Fostering the economic, social and environmental well-being of its community

## 2.3. FUNCTIONS OF THE MUNICIPALITY

2.3.1. The Municipality of Homa Bay Town shall, within the boundaries of the Municipality, perform the following functions:

- (a) Promotion, regulation and provision of refuse collection and solid waste management services;
- (b) Promotion and provision of water and sanitation services and infrastructure (in areas within the Municipality not served by the Water and Sanitation Provider);
- (c) Construction and maintenance of urban roads and associated infrastructure;
- (d) Construction and maintenance of storm drainage and flood controls;
- (e) Construction and maintenance of walkways and other non-motorized transport infrastructure;
- (f) Construction and maintenance of recreational parks and green spaces;
- (g) Construction and maintenance of street lighting;
- (h) Construction, maintenance and regulation of traffic controls and parking facilities;
- (i) Construction and maintenance of bus stands and taxi stands;
- (j) Regulation of outdoor advertising;
- (k) Construction, maintenance and regulation of municipal markets and abattoirs;
- (l) Construction and maintenance of fire stations; provision of fire-fighting services, emergency preparedness and disaster management;
- (m) Promotion, regulation and provision of municipal sports and cultural activities;
- (n) Promotion, regulation and provision of animal control and welfare;
- (o) Development and enforcement of municipal plans and development controls;

- (p) Municipal administration services (including construction and maintenance of administrative offices);
- (q) Promoting and undertaking infrastructural development and services within municipality;
- (r) Any other functions as may be delegated by the County Executive Committee Member and provided in the Urban Areas and Cities Act, 2011 and the Urban Areas and Cities (Amendment), Act 2019

### 3. THE BOARD OF THE MUNICIPALITY

#### 3.1. ESTABLISHMENT OF THE BOARD

3.1.1. There shall be a Board of the Municipality of Homa Bay Town.

3.1.2.

The Board of the Municipality shall be a corporate body with perpetual succession and a common seal and shall in its own corporate name, be capable of<sup>1</sup>:

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

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<sup>1</sup> Section 12 (2) of the Urban Areas and Cities Act (UACA)

3.1.3.

There shall be a principal and agency relationship between the Board of the Municipality and the County Government of Homa Bay.

**3.2. POWERS AND FUNCTIONS OF THE BOARD OF THE MUNICIPALITY**

3.2.1. The Board of the Municipality shall have all the powers and perform all functions vested in boards of municipalities under the Urban Areas and Cities Act, Urban Areas and Cities (Amendment) Act, the County Government Act and the Municipality By-laws as approved by the County Assembly.

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

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

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

- (a) Exercise executive authority as delegated by the County Executive Committee of the County of Homa Bay;
- (b) ensure provision of services to its residents;
- (c) impose such fees, levies and charges as may be authorized by the County Government for delivery of services by the Municipality;
- (d) promote constitutional values and principles;
- (e) ensure the implementation and compliance with policies formulated by both the National and County Government;
- (f) make By-laws or make recommendations for issues to be included in Bylaws;
- (g) ensure participation of the residents in decision making, its activities and programmes; and
- (h) Exercise such other powers as may be delegated by the County Executive Committee of the County of Homa Bay.

3.2.5. Notwithstanding any other provision of law or this Charter, the Board of the Municipality shall exercise such executive authority as may be delegated by the County Executive Committee for the necessary performance of its functions.

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

- (a) oversee the affairs of the Municipality;
- (b) develop or adopt policies, plans, strategies and programs and set targets for service delivery;
- (c) formulate and implement an integrated development plan;
- (d) control land, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centers, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the Municipality as delegated by the County Government of Homa Bay;
- (e) Promoting and undertaking infrastructural development and services within Municipality as delegated by the County Government of Homa Bay;
- (f) developing and managing schemes, including site development in collaboration with the relevant national and county agencies;
- (g) maintaining a comprehensive database and information system of the administration;
- (h) administering and regulating its internal affairs;
- (i) implementing applicable national and county legislation;
- (j) entering into contracts, partnerships or joint ventures as it may consider necessary for the discharge of its functions;
- (k) monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the Board of the Municipality;



- (l) preparing and submitting its annual budget estimates to the relevant County Treasury for consideration and submission to the County Assembly for approval as part of the annual County Appropriation Bill;
- (m) Collecting rates, taxes levies, duties, fees and surcharges on fees as delegated by the County Government of Homa Bay ;
- (n) Settling and implementing tariff, rates and tax and debt collection policies as delegated by the County Government of Homa Bay ;
- (o) monitoring the impact and effectiveness of any services, policies, programs or plans;
- (p) establishing, implementing and monitoring performance management systems;
- (q) promoting a safe and healthy environment;
- (r) facilitating and regulating public transport
- (s) Performing such other functions as delegated by the County Government of Homa Bay ;

### **3.3. COMPOSITION AND TERM OF THE BOARD OF THE MUNICIPALITY**

3.3.1. The composition, eligibility for appointment and term of Board of the Municipality shall be as provided in the Urban Areas and Cities (Amendment) Act, 2019.

### **3.4. POWERS AND FUNCTIONS OF THE CHAIRPERSON**

3.4.1. The Chairperson of the Board of the Municipality shall have the following powers and shall perform the functions set out below:

- (a) The Chairperson shall be the head of the Board of the Municipality;
- (b) Chairing the meetings of the Board of the Municipality; and
- (c) Perform such other duties as may be delegated by the Board of the Municipality.

### 3.5. VICE-CHAIRPERSON OF THE BOARD OF THE MUNICIPALITY

3.5.1. At the first regular meeting of the Board of the Municipality, members of the Board of the Municipality shall elect from amongst themselves, a Vice Chairperson of the Board of the Municipality.

3.5.2.

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

3.5.3.

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

### 3.6. COMMITTEES OF THE BOARD OF THE MUNICIPALITY

3.6.1. The Board of the Municipality may:

- (a) establish such Committees for any general or special purpose which, in its opinion, would regulate or manage its affairs more efficiently and as may be necessary for the performance of its functions under the Urban Areas and Cities Act;<sup>2</sup>
- (b) delegate to such Committee such functions as are necessary for the efficient performance of its duties in respect to the whole or any part of the area under the jurisdiction of the Board of the Municipality;<sup>3</sup> and
- (c) Include persons who are not members of the Board in any Committee<sup>4</sup>.

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

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### 3.7. REMUNERATION OF THE MEMBERS OF THE BOARD OF THE MUNICIPALITY

3.7.1. The Board of the Municipality shall not be entitled to a salary.

3.7.2.

However, members of the Board of the Municipality shall be paid such allowances as the County Executive Committee shall, with the approval of the County Assembly, and on the advice of the Salaries and Remuneration Commission, determine.

### 3.8. REMOVAL OF MEMBERS OF THE BOARD OF THE MUNICIPALITY

3.8.1. A member of the Board of the Municipality shall vacate or cease to hold office in the manner provided in section 31 (5) the Urban Areas and Cities (Amendment) Act, 2019

### 3.9. MEETINGS OF THE BOARD OF THE MUNICIPALITY

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

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

3.9.3. All regular meetings of the Board of the Municipality called for the purpose of transacting public business, where a majority of the members elected are present, shall be open to the public.

3.9.4. The Board shall have the privilege of holding executive sessions from which the public is excluded, however, no by-laws, resolution, rule or regulation shall be finally adopted at such an executive session.

### 3.10. QUORUM

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

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

### 3.11. RULES OF THE BOARD

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

### 3.12. RECORD OF INFORMATION OF THE BOARD

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

3.12.2. Access to information on the activities and resolutions of the Board of the Municipality shall be as provided under the Urban Areas and Cities Act.

### 3.13. CITIZEN FORA

3.13.1. The Board of the Municipality shall ensure the development of mechanisms for the participation of the residents of the Municipality of Homa Bay in the management and administration of the Municipality.

3.13.2. All recommendations from the Citizen Fora of the Municipality of Homa Bay shall be forwarded to the Board of the Municipality for resolution.

3.13.3. All recommendations on issues raised in the Citizen Fora and addressed by the Board of the Municipality shall be forwarded to the Municipal Manager for implementation.

## 4. LEGISLATIVE AUTHORITY

### 4.1. BY-LAWS

4.1.1. The Legislative Authority is vested in the County Assembly. However the Board of the Municipality may make By-laws and forward recommendations to the County Executive Committee Member on issues to be included in County Legislation.

### 4.2. PASSING OF BY-LAWS

4.2.1. The passing of By-laws shall require approval by a majority of the Board of the Municipality at two meetings.

- 4.2.2. The Board of the Municipality may adopt a By-law at a single meeting by the unanimous approval of at least a quorum of Board, provided the proposed Bylaw is available in writing to the public at least two weeks before the meeting.
- 4.2.3. Any substantive amendment to a proposed By-law must be read aloud or made available in writing to the public before the Board of the Municipality adopts the By-law at that meeting.
- 4.2.4. After the adoption of a By-law, the vote of each member must be entered into the Board minutes.
- 4.2.5. Any such amendments, as contemplated in article 4.2.3 shall be applicable at least six months after being passed as per article 4.2.1.
- 4.2.6. After adoption of a By-law, the Chairperson of the Board must endorse it with the date of adoption and his title.
- 4.2.7. The By-laws shall then be submitted to the County Assembly's Committee on delegated county legislation for approval.
- 4.2.8. The Committee on delegated county legislation shall deal with the by-laws as provided under the Statutory Instruments Act of 2013.
- 4.2.9. The by-laws shall then be published in the Kenya Gazette.

#### 4.3. EFFECTIVE DATE OF BY-LAWS

- 4.3.1. By-laws shall take effect after publication in the Kenya Gazette.

### 5. ADMINISTRATIVE AUTHORITY

#### 5.1. RESOLUTIONS

- 5.1.1. The Board of the Municipality shall exercise its administrative authority by approving resolutions.
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## 5.2. APPROVAL OF RESOLUTIONS

- 5.2.1. Approval of a resolution or any other Board administrative decision requires approval by the Board of the Municipality at one meeting.
- 5.2.2. Any substantive amendment to a resolution must be read aloud or made available in writing to the public before the Board adopts the resolution at that meeting.
- 5.2.3. After approval of a resolution or other administrative decision, the vote of each member must be entered into the Board minutes.
- 5.2.4. The resolutions shall then be submitted to the County Assembly's Committee on delegated legislation for approval.
- 5.2.5. The Committee on delegated legislation shall deal with the resolutions as provided under the Statutory Instruments Act of 2013.

## 5.3. EFFECTIVE DATE OF RESOLUTIONS

- 5.3.1. Resolutions and other administrative decisions take effect on the date of approval or on a later day provided in the resolution.

## 6. THE MUNICIPAL MANAGER

### 6.1. OFFICE OF THE MUNICIPAL MANAGER

- 6.1.1. There is established the office of the Municipal Manager.<sup>5</sup>
- 6.1.2. The Municipal Manager shall be the administrative head of the Municipality of Homa Bay.

### 6.2. APPOINTMENT AND TERM

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6.2.1. The Municipal Manager shall be competitively recruited and appointed by the County Public Service Board<sup>67</sup> with the approval of the County Assembly.

6.2.2. The Municipal Manager may be appointed for a three year contract renewable for one further term.

### 6.3. QUALIFICATIONS

6.3.1.

The Municipal Manager shall<sup>12</sup>:

- (a) Be a citizen of Kenya
- (b) Hold a degree from a university recognized in Kenya or its equivalent
- (c) Have served and had proven experience in administration or management either in public or private sector for a term of at least five years.

6.3.2.

In appointing the Municipal Manager, the County Public Service Board shall ensure:

- (a) gender equity;
- (b) the inclusion of minorities and marginalized communities; and
- (c) The person satisfies the requirements of Chapter six of the Constitution.

### 6.4. FUNCTIONS AND POWERS OF THE MUNICIPAL MANAGER

6.4.1. The Municipal Manager shall implement the decisions and functions of the Board of the Municipality and shall be answerable to the Board.<sup>8</sup>

6.4.2. The Municipal Manager shall perform the following functions:

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(a) Act on behalf of the Board of the Municipality-

(i) In ensuring the execution of the directives of the Board of the Municipality;

(ii) During all intervals between meetings of the Board of the Municipality;

(b) Prepare and present for approval of the Board of the Municipality, an annual estimate of revenue and expenditure to fund and carry out the programmes and operations of the Board;

(c) Be principally responsible for building and maintain a strong alliance and effective working relationships between the Board of the Municipality and the civil society, private sector and community based organizations;

(d) Cause to be prepared, transmitted to the Board of the Municipality, and distributed to the public at least an annual report on the activities and accomplishments of the departments and agencies comprising the executive branch of the Municipality.

(e) Act as an ex-officio member of all committees of the Board of the Municipality; and

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

6.4.3. The Municipal Manager shall be fully responsible for the proper conduct of the executive and administrative work and affairs of the Municipality. The Municipal Manager shall have the power and shall be required to:

(a) Exercise supervision over all departments and agencies of the Municipality and provide for the coordination of their activities;

(b) Enforce the provisions of this Charter, Municipal By-laws, and all applicable laws;

(c) Exercise powers granted to the Municipal Manager in this Charter, By-laws and applicable laws concerning the appointment and removal of certain officers, employees, and members of committees of the Board of the Municipality;

(d) Exercise such other powers as may be prescribed by this Charter, by-laws and applicable laws.



6.4.4. The Municipal Manager must:

- (a) Attend all Board of the Municipality meetings unless excused by the Chairperson of the Board or the Board of the Municipality;
- (b) Make reports and recommendations to the Board of the Municipality about the needs of the Municipality;
- (c) Administer and enforce all Municipality By-laws, resolutions, franchises, leases, contracts, permits, and other Municipality decisions;
- (d) Appoint, supervise and remove Municipality employees;
- (e) Organize Municipality departments and administrative structure;
- (f) Prepare and administer the annual Municipality budget;
- (g) Administer Municipality utilities and property;
- (h) Encourage and support regional and intergovernmental cooperation;
- (i) Promote cooperation among the Board of the Municipality, staff and citizens in developing Municipality policies and building a sense of community;
- (j) Perform other duties as directed by the Board of the Municipality;
- (k) Delegate duties, but remain responsible for acts of all subordinates.

6.4.5. The Municipal Manager shall have no authority over the Board of the Municipality.

6.4.6. The Municipal Manager shall be entitled to attend meetings of the Board of the Municipality but shall not be entitled to vote.

## 6.5. REMUNERATION

6.5.1. The County Public Service Board shall set the compensation and determine the conditions of employment of the Municipal Manager as advised by the Salaries and Remuneration Commission.

## 6.6. REMOVAL OF THE MUNICIPAL MANAGER

- 6.6.1. The Municipal Manager may be removed from office by
- (a) the County Governor upon resolution of the Board of the Municipality supported by at least two-thirds of the members of the Board of the Municipality; or
  - (b) Petition to the County Assembly by the residents of the Municipality.
- 6.6.2. The Municipal Manager shall cease to hold office upon the lapse of the employment term of if he/she:
- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
  - (b) is declared or becomes bankrupt or insolvent;
  - (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
  - (d) resigns in writing to the County Governor;
  - (e) without reasonable cause, is absent from three consecutive meetings of the Board of the Municipality;
  - (f) is found guilty of professional misconduct by the relevant professional body;
  - (g) is disqualified from holding a public office under the Constitution;
  - (h) engages in any gross misconduct; or
  - (i) dies.
- 6.6.3. The procedure for the removal of the Municipal Manager shall be provided by the Regulations made under the County Government Act (No. 17 of 2012) and in the absence thereof in accordance with Kenyan law having regard to fair labour practices.
- 6.6.4. Any vacancy arising in the office of the Municipal Manager may be filled in the manner provided under Article 6.2 above.

## 6.7. ACTING MUNICIPAL MANAGER

### 6.7.1.

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

### 6.7.2.

The County Governor shall inform the County Public Service Board of such appointment within seven (7) days.

### 6.7.3.

The Acting Municipal Manager shall have the authority and duties of the Municipal Manager, except that the Acting Municipal Manager may appoint or remove employees only with approval of the Board of the Municipality.

### 6.7.4.

An Acting Municipal Manager shall hold office until such a time as a new Municipal Manager shall be appointed by the County Public Service Board.

## 7. MUNICIPAL FINANCES AND FINANCIAL MANAGEMENT

### 7.1. SOURCES OF THE MUNICIPALITY'S FUNDS AND REVENUE

7.1.1. The Board of the Municipality shall derive its revenue and funds from :

- (a) monies allocated by the County Assembly for the purposes of the management and service delivery of the Board;
- (b) monies or assets that may accrue to the Board in the course of the exercise of its powers or the performance of its functions;
- (c) all monies or grants from any other legitimate source provided or donated to the Board;
- (d) revenue arising from rates, fees, levies, charges and other revenue raising measures which is retained by Municipality for the purpose of defraying its costs for providing services as determined under the Finance Act of the Homa Bay County Assembly;
- (e) investment income; and

(f) Borrowing.

7.1.2 All agricultural land rates shall be abolished.

7.1.3 The amounts chargeable for single business permits shall be provided in the Homa Bay County Finance Act. Zoning of trading centres within the municipality shall be determined in the Finance Act such that businesses in satellite trading centres are charged less.

## 7.2. APPOINTMENT OF THE MUNICIPALITY ACCOUNTING OFFICER

7.2.1. The Municipality Accounting Officer shall be the Municipal Manager as and shall be designated by the County Executive Committee Member for Finance in the manner provided under Section 148 of the Public Finance Management Act.

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## 7.3. FUNCTIONS AND POWERS OF THE MUNICIPALITY ACCOUNTING OFFICER

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

7.3.2. Without prejudice to the foregoing, the Municipality Accounting Officer shall be responsible for managing the finances of the Municipality.

## 7.4. FINANCIAL YEAR

7.4.1. The Municipality shall operate on an annual budget.

7.4.2.

The financial year of the Board of the Municipality shall be the period of twelve months ending on the thirtieth June in each year.<sup>9</sup>

## 7.5. BUDGET

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

## 7.6. MANAGEMENT OF MUNICIPALITY FINANCES

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- 7.6.1. The Board of the Municipality shall, with the approval of the County Executive Committee member for finance, open and maintain a bank account in the name of the Municipality.
- 7.6.2. All monies received by the Board of the Municipality shall be paid into the Municipality's bank account promptly and in accordance with the Public Finance Management Act.<sup>10</sup>
- 7.6.3. The Board shall submit an annual financial report to the County Assembly for consideration
- 7.6.4. The County Assembly shall where necessary, summon the Board Members and or Municipal Manager to the relevant Committee of the County Assembly to appear to respond to any issues touching on the mandate of the Board.

#### 7.7. BORROWING BY THE MUNICIPALITY

- 7.8. The Board of the Municipality may only borrow from<sup>11</sup>:-
- (a) from the County Government;
  - (b) through the County Government; or
  - (c) By way of a bank overdraft.

Provided that such borrowing or obtaining of bank overdraft shall be approved by the County Assembly and subject to such terms as may be imposed by the County Assembly or such terms as provided by law.

#### 7.9. AUDIT

- 7.9.1. The audit of the Board of the Municipality shall be as provided under Section 46 and 47 of the Urban Areas and Cities Act and the provisions of the Public Audit Act of 2015.
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## 8. MUNICIPALITY PERSONNEL

### 8.1. MUNICIPALITY PERSONNEL

- 8.1.1. The Board of the Municipality may subject to the approval by the County Public Service Board, employ such officers and employees as it deems necessary to execute the powers and duties provided by this Charter or other any other law.

### 8.2. MANAGEMENT OF MUNICIPAL PERSONNEL

- 8.2.1. Employees of the Municipality shall be under the general guidance of the Municipal Manager.

### 8.3. RETIREMENT SYSTEMS

- 8.3.1. The Board of the Municipality may do all things necessary to include its officers and employees, or any of them within any retirement system or pension system under the terms of which they are admissible, and to pay the employer's share of

the cost of any such retirement or pension system out of the general funds of the Board of the Municipality.

### 8.4. COMPENSATION OF MUNICIPAL PERSONNEL

- 8.4.1. The compensation of all employees of the Municipality shall be set by the County Public Service Board upon the advice of the Salaries and Remuneration Commission.

## 9. MUNICIPALITY PROPERTY

### 9.1. ACQUISITION, POSSESSION AND DISPOSAL

- 9.1.1. The Board of the Municipality is a body corporate and may acquire real, personal, or mixed property for any public purpose by purchase, gift, bequest, devise, lease, or otherwise and may sell, lease, or otherwise dispose of any property belonging to the Municipality.

9.1.2.

All town property and funds of every kind belonging to or in the possession of the town (by whatever prior name known) at the time this Charter becomes effective are vested in the Municipality, subject to the terms and conditions thereof.

9.2. MUNICIPAL BUILDINGS

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

9.3. PROTECTION OF MUNICIPALITY PROPERTY

9.3.1. The Board of the Municipality may do whatever may be necessary to protect municipal property and to keep all municipal property in good condition.

10. GENERAL PROVISIONS

10.1. OATH OF OFFICE<sup>12</sup>

10.1.1. Before entering upon the duties of their offices, the Municipal Manager, the Chairperson and Vice-Chairperson and the members of the Board, and all other persons elected or appointed to any office of profit or trust in the Municipality, as determined by Board, shall take and subscribe to the following oath or affirmation:

*“I, [.....], being called on to exercise the functions of .....of the Municipality of Homa Bay Town do swear/solemnly affirm that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold this Constitution of Kenya and all other laws of the Republic, that except with the authority of the Board of the Municipality of Homa Bay Tow. I will not directly or indirectly reveal the nature or contents of any business, proceedings or document of the Municipality committed to my secrecy, except as may be required for the due discharge of my duties as..... of the Municipality of Homa Bay Town or otherwise under the law.*

*(In the case of an oath— So help me God.”*

10.1.2. The Municipal Manager shall take and subscribe to this oath or affirmation before the County Governor or before one of the sworn deputies. All other persons taking and subscribing to the oath shall do so before the Municipal Manager.

## 10.2. AMENDMENTS TO THE CHARTER

10.2.1. The County Governor may at any time, after consultation with the Board of the Municipality, amend any provision of this Charter.

10.2.2. The public may also petition the County Assembly to amend this Charter. Such petition shall be directed to the relevant Committee of the County Assembly. The Committee shall consider the proposal for amendment and invite the Board for their views before the amendment is approved.

10.2.3. The County Governor shall cause a copy of the Amended Charter to be laid before the County Assembly within 30 days of its amendment for approval before the amendments take effect.

## 10.3. SEPARABILITY

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

## 10.4. DISPUTE RESOLUTION

10.4.1. In the event of any dispute between the local community and the Municipal Board and/or the County Government concerning community land within the municipality, the dispute shall be resolved through consensus or mediation.

## 11. TRANSITIONAL PROVISIONS

### 11.1. EFFECTIVE DATE OF CHARTER

11.1.1. The provisions of this Charter shall be in effect from and after publication in the Kenya Gazette.

### 11.2. RIGHTS AND PRIVILEGES PRESERVED

11.2.1. Nothing in the Charter except as otherwise specifically provided shall effect or impair the rights or privileges of persons who are Town Officials, Officers or Employees at the time of its adoption.

### 11.3. DEPARTMENTS



11.3.1. All Town Departments shall continue to operate with the same powers, duties, activities, budgets, and employees as were in effect at the time this Charter becomes effective until changed by the Municipal Manager with the approval of the Board of the Municipality.

GLADYS NYASUNA WANGA,  
*Governor, Homa Bay County.*

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