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OF THE COLONY AND PROTECTORATE OF KENYA

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GOVERNMENT NOTICE No. 1571

The Governor in Council has approved of the introduction of the following Bill into Legislative Council.

This Bill incorporates and supersedes the Bill of the same title published as Government Notice No. 1510 on 1st November, 1955.

A. W. PURVIS,
Clerk of the Legislative Council.

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE AFRICAN
DISTRICT COUNCILS ORDINANCE, 1950**

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the African District Councils (Amendment) (No. 2) Ordinance, 1955.

Amendment of section 2 of the principal Ordinance. No. 12 of 1950.

2. Section 2 of the African District Councils Ordinance, 1950, hereinafter referred to as the principal Ordinance, is amended—

(a) by adding after the definition of "African", appearing therein, a new definition as follows—

"African Locational Council" means an African Locational Council established under the provisions of section 17A of this Ordinance;

(b) by substituting for the definition of "Council", appearing therein, a new definition as follows—

"Council" means an African District Council established under the provisions of section 3 of this Ordinance;

Amendment of section 3 of the principal Ordinance.

3. Section 3 of the principal Ordinance is amended—

(a) by substituting for the words "The Governor may, by notice in the Gazette, establish an African District Council", appearing therein, the words "The Governor may from time to time, by notice in the Gazette, establish one or more African District Councils";

(b) by renumbering the section as sub-section (1) thereof, and by adding a new sub-section as follows—

(2) The Governor may, by notice in the Gazette, add to, alter or vary the area for which an African District Council has been established, and may, by such or further notice, make such orders and give such directions as may be deemed necessary or desirable consequent on such addition, alteration or variation.

Insertion of new sections 17A, 17B and 17C, in the principal Ordinance.

4. The principal Ordinance is amended by adding after section 17 thereof, three new sections as follows—

17A. (1) The Minister may, by notice in the Gazette, establish in any African District Council area an African Locational Council for any area under the jurisdiction of one or more Chiefs.

(2) Any notice establishing an African Locational Council shall make provision for the membership and constitution of such Council.

(3) Every African Locational Council established under the provisions of this section shall, under the name of "The African Locational Council of (insert description of

area or tribe)”, be a body corporate with perpetual succession and a common seal and shall by such name be capable in law of suing and being sued and of entering into contracts, subject to the provisions of this Ordinance and of any other law for the time being in force in the Colony.

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(4) The Minister may, by notice in the Gazette, dissolve any African Locational Council, and may by such or further notice make provision for the winding up of such Council.

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Powers of African Locational Councils.

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17B. (1) An African Locational Council shall have such powers or duties as the African District Council within whose area the African Locational Council is situated may from time to time delegate to such African Locational Council under the provisions of section 20 of this Ordinance, being powers or duties which such African District Council may itself for the time being, possess, and such other powers or duties as the Minister may, by notice in the Gazette, from time to time confer upon such African Locational Council, but subject to such conditions as the Minister may impose, being powers or duties which the Minister may, in accordance with the provisions of this Ordinance, confer upon an African District Council, or powers or duties which are conferred by the Ordinance on an African District Council.

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(2) For the avoidance of doubt it is hereby declared that the Minister may confer upon an African Locational Council the power to make by-laws and the power to raise money by loan or by rates or taxes.

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(3) An African Locational Council may, subject to the general or specific approval of the Provincial Commissioner, appoint such officers or employees and may pay such emoluments or allowances as the Provincial Commissioner may approve, for the purpose of carrying out any powers.

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40 Finances of African Locational Councils

17C. (1) Such sums of money as may be required from time to time by an African Locational Council for the remuneration of officers or employees, and for the payment of agents or contractors, and generally for the purpose of exercising any power or performing any duty may be raised in accordance with any power conferred upon such Council or may be paid to it by the African District Council in whose area the African Locational Council is situated.

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(2) Every African Locational Council shall cause to be kept true accounts of all moneys raised or advanced to it and all moneys received and expended by it, and such accounts shall be deemed to be a part of the accounts of the African District Council in whose area the African Locational Council is situated and the provisions of sections 36, 37, 38 and 39 of this Ordinance shall apply to such accounts.

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Amendment of section 20 of the principal Ordinance.

5. Section 20 of the principal Ordinance is amended by adding thereto the following sentence—

No delegation to an African Locational Council under this section of any powers shall exclude the exercise of such power by the Council by whom the delegation was made. 5

Insertion of new section 21A in the principal Ordinance.

6. The principal Ordinance is amended by adding after section 21 thereof a new section as follows—

Housing.

21A. (1) A Council may, subject to the consent of the Minister— 10

(a) lay out building plots or otherwise subdivide any land acquired by it, whether within or without the Council area, for the purpose of housing schemes for inhabitants of the Council area; 15

(b) erect and maintain dwelling-houses with their appurtenant outbuildings on such plots or sub-divisions of land;

(c) convert buildings into dwelling-houses and alter, change, repair and improve the same; 20

(d) let any dwelling-house erected or provided by it and charge such reasonable rent for the tenancy or occupation thereof as it may determine; 25

(e) sell any dwelling-house erected or provided by it to a person undertaking to reside therein and recover the purchase price thereof by such instalments as it may determine; 30

(f) sell, let or otherwise dispose of any plot or sub-division of land referred to in paragraph (a) of this sub-section to any person for the purpose and under the condition that that person will erect and maintain thereon a dwelling-house for occupation by him; 35

(g) sell, let or otherwise dispose of land acquired by it to any person for the purpose and under the condition that that person will erect and maintain thereon such number of houses as may be determined by the Council in accordance with plans approved by it. 40

Cap. 131. (2) The approval of the Public Health (Division of Lands) Board constituted by the Public Health (Division of Lands) Ordinance shall not be required to any sub-division by a Council under the provisions of paragraph (a) of sub-section (1) of this section. 45 50

(3) Subject to such conditions as may be prescribed by the Minister a Council may advance money to any person—

(i) to enable him to repair, reconstruct, enlarge or improve a dwelling-house occupied or intended to be occupied by him; or 55

(ii) to enable him to construct, whether on land provided by the Council or otherwise, a dwelling-house for occupation by him; or 60

(iii) to enable him to acquire for occupation by him any dwelling-house.

(4) The Minister may make rules regulating the making of advances under the foregoing sub-section and in particular—

- 5 (a) for prescribing the nature of the security to be taken by the Council in respect of any advance;
- (b) for requiring a valuation to be made of the property the subject of any advance;
- 10 (c) for prescribing the maximum amount of an advance by reference to a proportion of the value of any property;
- (d) for prescribing the rate of interest to be paid upon advances;
- 15 (e) for prescribing the method of repayment of advances;
- (f) for enabling advances to be made by instalments paid from time to time as the work of construction, repair, reconstruction, enlargement or improvement of the dwelling-house proceeds.
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7. Paragraph (26) of sub-section (1) of section 22 of the principal Ordinance is amended by deleting the words "other than buildings used for private residential purposes outside markets or trading centres," which appear therein.

Amendment of section 22 of the principal Ordinance.

25 8. Section 42 of the principal Ordinance is amended by renumbering the section as sub-section (1) thereof and by adding a new sub-section as follows—

Amendment of section 42 of the principal Ordinance.

30 (2) (a) The Governor may, by notice in the Gazette, direct that any African District Council shall be wound up.

(b) On any direction being made under the provisions of paragraph (a) of this sub-section with respect to an African District Council, such Council shall, until dissolved, continue in existence for the purpose only of winding up, and to that end shall, without undue delay, take such steps as may be necessary to wind up its affairs, and in particular shall do such acts as may be required by any order made by the Minister under the provisions of paragraph (c) of this sub-section.

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40 (c) In order to facilitate any such winding up, the Minister may, by notice in the Gazette, make such orders as he deems necessary or desirable, and particularly, but without prejudice to the generality of the foregoing, to ensure—

45 (i) that all or any property, movable and immovable, vested in or belonging to such Council or to which the Council is entitled and all or any assets and claims to which the Council is entitled, shall be transferred to and vested in such other authority or authorities as exist or may be established for the area or tribe for which such Council was established;

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(ii) that all or any contracts of service, appointments made or powers conferred shall be deemed respectively to have been entered into, made or conferred by such other authority or authorities as aforesaid;

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(iii) that all or any works, undertakings, rights, liabilities, contracts, and engagements of the Council, and all actions, suits and legal proceedings by or against the Council, shall be

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transferred to, vested in, and be enforced, carried on and prosecuted by or against such other authority or authorities as aforesaid;

(iv) that all or any licences, registration and permits issued, made or granted by the Council shall continue in force for the period for which they were issued, made or granted, and shall be deemed to have been issued, made or granted by such other authority or authorities as aforesaid;

(v) that all or any by-laws made by the Council shall be deemed to be the by-laws of such other authority or authorities as aforesaid, and shall continue in full force and effect for such period as the Minister may determine.

(d) On the Minister being satisfied that the winding up of an African District Council is completed, he shall, by notice in the Gazette, declare it to be dissolved with effect from such date as shall be specified in such notice.

Amendment of section 44 of the principal Ordinance.

9. Section 44 of the principal Ordinance is amended by adding after sub-section (3) thereof a new sub-section as follows—

(4) In this section "Council" includes an African Locational Council.

Insertion of new section 51A in the principal Ordinance.

10. The principal Ordinance is amended by adding after section 51 thereof a new section as follows—

Powers of Council to make standing orders.

51A. (1) An African District Council may, with the approval of the Minister, and subject to the provisions of this Ordinance, make standing orders for all or any of the following purposes—

- (a) regulating the business and procedure of a Council or any committee of a Council;
- (b) providing for notice to be given of the holding of any meeting of a Council or any committee of a Council;
- (c) prescribing the number of members who shall form a quorum of a Council or any committee of a Council;
- (d) preserving order at a meeting of a Council or any committee of a Council;
- (e) providing for the safe keeping and use of a common seal;
- (f) prescribing the duties of any officer or employee of the Council or any committee of the Council.

(2) Any standing orders made by any African District Council under and in accordance with the provisions of this section may provide that any rules made for any of the purposes set forth in paragraph (b), (c), (d) or (e) of sub-section (1) of section 52 of this Ordinance shall not apply to or in respect of that African District Council after the commencement of such standing orders.

(3) For the purposes of this section the term "Council" includes an African Locational Council established within the area of the African District Council and any committee of the African District Council or of such African Locational Council.

Amendment of section 52 of the principal Ordinance.

11. (1) Sub-section (1) of section 52 of the principal Ordinance is amended—

- (a) by inserting in paragraphs (a), (b), (c), (d), (e), (g), (h), (i), (j) and (k) thereof, immediately after the

word "Council", wherever it appears therein, the expression "an African Locational Council"; and

- (b) by substituting for the word "Councils", which appears in paragraph (f) thereof, the expression "a Council or an African Locational Council".

(2) Sub-section (2) of section 52 of the principal Ordinance is amended by substituting therefor a new sub-section as follows—

(2) For the purposes of this section—

- (a) the term "Council" includes any committee of a Council;
- (b) the term "African Locational Council" includes any committee of an African Locational Council.

MEMORANDUM OF OBJECTS AND REASONS

This Bill makes four amendments to the African District Councils Ordinance, 1950.

(1) Section 3 of the Ordinance enables a Council to be established for any area or tribe, and section 42 contains provision for the Governor to dissolve any Council.

It has now become necessary to dissolve an existing Council and to substitute in its place two new Councils, and it is apparent that the Ordinance requires amendment before that can be done because in its present form it does not permit more than one Council to be established for any given area, nor does it make any transitional provision as to the vesting of property, rights, liabilities, contracts, legal proceedings and other matters of the Council which is dissolved.

Clause 3 of this Bill amends the Ordinance to permit the establishment of more than one Council for any given area or tribe, and the opportunity has been taken to provide for any subsequent alteration to a Council area.

Clause 8 amends section 42 of the principal Ordinance to empower a Council to be wound up, prior to dissolution. The effect of the clause is that during the winding-up process the Council shall continue to exercise legal powers but for the purpose only of the winding up. The clause also empowers the Minister to make orders as to the vesting or transference of the property, rights, liabilities and other matters mentioned above; this is deemed necessary in order to ensure that where a Council is unwilling or unable to divest itself of any of these matters the Minister shall have the power to effect the necessary transfer to such authority or authorities as he deems proper (which would normally be the Council or Councils substituted therefor).

The same clause empowers the Minister to dissolve the Council when winding up has been satisfactorily completed.

(2) In many African District Council areas Locational Councils have, with the encouragement of the Government, been established and it is considered desirable to recognize and indeed to give statutory and corporate existence to these Councils. Section 20 of the principal Ordinance enables an African District Council to delegate certain powers to any person or body of persons and it is proposed that, in those areas where Locational Councils have been or may be established, African District Councils will delegate certain of their functions to such Locational Councils. Accordingly this Bill, by clause 4, amends the Ordinance to make provision for the establishment of African Locational Councils in an area under the jurisdiction of one or more Chiefs. The membership and constitution of these Councils will be specified in the notice establishing them and every such Council is to be a body corporate with certain limited powers. Provision is made also for the dissolution of any such Council. African Locational Councils will have their powers and duties delegated to them by the African District Council in whose area they are situated, and such other powers as the Minister may by notice in the Gazette confer upon them, being, in either case, powers or duties which the African District Council has or might have. African Locational Councils will have power to raise money in accordance with the powers conferred upon them, and such Councils may also be financed by money provided by the African District Council; and, in so far as an African Locational Council desires and is delegated the power to carry out any work for the benefit of the Location, the African District Council concerned can impose a special tax on the Location by virtue of section 30 (4) and (5) of the Ordinance. Each African Locational Council is required to keep

proper accounts and those accounts are to form part of the accounts of the African District Council. *Clauses 2, 9 and 11* make consequential amendments to the Ordinance.

(3) In a number of districts surrounding municipalities and it is necessary that such development be controlled, although at the same time it is considered advisable to encourage African District Councils to undertake the lay-out of housing estates and the construction of housing in their areas. At present such Councils have insufficient powers to carry out such undertakings and *clause 6* of this Bill makes the necessary provision to enable African District Councils to lay out housing estates, to erect dwelling-houses and to sell or lease any houses built or purchased: a Council is also empowered, subject to rules made by the Minister, to advance sums of money to individuals to enable them to build, purchase or repair a dwelling-house. For these purposes an African District Council is exempted from the provisions of the Public Health (Division of Lands) Ordinance (Cap. 131). This clause is based on section 85 of the Local Government (County Councils) Ordinance, 1952.

Clause 7 of this Bill amends section 22 (26) of the Ordinance (which enables African District Councils to make by-laws in respect of buildings) to enable Councils to control building generally and to preserve green belts around urban areas.

(4) The existing provisions of the Ordinance do not confer upon African District Councils the power normally given to local authorities and to other statutory bodies to regulate their own procedure. At present this is done by rules made by the Minister under section 52 of the Ordinance but it is considered desirable to enable those Councils which are qualified to do so to regulate their own Council procedure. *Clause 10* of this Bill accordingly adds a new section to the Ordinance for this purpose and provides that any standing orders made under that section may provide that any rules made under section 52 in respect of the same matters shall no longer apply. The power to make standing orders under the new section is subject to the approval of the Minister, but extends to making provision for the regulation of the conduct of the business of African Locational Councils within the African District Council area.

No additional expenditure of public moneys will be incurred if this Bill is enacted.

Nairobi,
12th November, 1955.

E. N. GRIFFITH-JONES,
Attorney General.