

ORDINANCE No. 17 of 1953

Assented to in Her Majesty's name this ninth day of June, 1953.

E. BARING,
Governor.

ARRANGEMENT OF SECTIONS

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SECTION

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AN ORDINANCE TO PROVIDE FOR LOANS AND GRANTS OF PUBLIC MONEYS FOR THE CONSTRUCTION OF DWELLINGS FOR CERTAIN CLASSES OF THE POPULATION, TO ESTABLISH A HOUSING FUND AND A HOUSING BOARD FOR THESE PURPOSES: AND FOR PURPOSES CONNECTED THEREWITH

9th June, 1953

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

1. This Ordinance may be cited as the Housing Ordinance, 1953.

2. In this Ordinance, unless the context otherwise requires—

“approved” means approved by the Board;

“Board” means the Central Housing Board appointed under section 3 of this Ordinance;

“dwelling” means a building the whole or part of which is intended to provide residential accommodation for Africans, or for Arabs, Baluchis, Somalies, Abyssinians, Malagasies or Comoro Islanders;

“grant” means a grant of money made to a local authority out of the Housing Fund under the provisions of section 7 (1) (a) of this Ordinance;

“Housing Fund” means the Fund established under section 6 of this Ordinance;

“local authority” means a municipal council or board established under the Municipalities Ordinance, a County District Council established under the Local Government (County Councils) Ordinance, 1952, an African District Council established under the African District Councils Ordinance, 1950, or any person whom, or body of persons which, the Governor may by notice in the Gazette declare to be a local authority for the purposes of this Ordinance;

“Member” means the Member of the Executive Council of the Colony for the time being responsible for local government;

“scheme” means a proposal for the construction of several approved dwellings including such other proposals as may be necessary or desirable or incidental thereto by way of the provision of roads, drains, open spaces, places of worship, places of recreation, facilities for social welfare and trading, and the acquisition, laying out, subdivision and development of land comprised within the area of the scheme.

3. (1) There is hereby established a Central Housing Board which shall be a body corporate by that name with perpetual succession and a common seal, and which shall perform the duties and have the powers conferred on it by this Ordinance.

(2) The Board shall consist of such persons as the Member may appoint; the Member shall designate one of the members to be Chairman and shall appoint an officer in the public service to be secretary to the Board.

(3) Members of the Board shall be appointed as such for a period of two years, or for such longer period as the Member may determine, but every member shall hold office during the pleasure of the Governor.

Cap. 136.

No. 30 of 1952.

No. 12 of 1950.

Establishment and constitution of the Central Housing Board.

Date of commencement.

Short title.

Interpretation.

(4) The Board shall have power to enter into contracts, to hold and dispose of property both moveable and immovable, and may sue and be sued in its corporate name.

4. (1) In the absence of the Chairman from any meeting of the Board a person shall be chosen, by the members present at the meeting, from their number, to preside at such meeting.

(2) At all meetings of the Board three members shall form a quorum.

(3) The person acting as chairman of any meeting of the Board shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote. A decision of the majority of the members present and voting at a meeting of the Board shall be deemed to be the decision of the Board.

(4) The Board shall have power to act notwithstanding a vacancy among the members thereof, and all acts done at any meeting of the Board shall, notwithstanding that it was afterwards discovered that there was some defect in the appointment of a person purporting to be a member of the Board, be as valid as if that defect had not existed.

(5) Subject to the provisions of this section the Board shall have power to regulate its own procedure.

(6) The seal of the Board shall be authenticated by the signatures of the Member and the Chairman of the Board and such seal shall be officially and judicially noticed.

(7) All documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signified under the hand of the Chairman.

5. (1) The Board shall keep such capital, revenue and other accounts as the Member may require, and such accounts together with a balance sheet shall be audited annually by the Director of Audit appointed under the Audit Ordinance, 1952.

(2) The Board shall, as soon as practicable after the 31st day of December in every year, submit to the Member a report under the administration of the affairs of the Board and the working of the Housing Fund during the preceding year together with the accounts and balance sheet duly audited in accordance with the provisions of sub-section (1) of this section.

(3) Every such report and all such accounts and balance sheets as are furnished to the Member under this section shall be laid by the Member upon the table of the Legislative Council as soon as may be after they are submitted to him.

Meetings and procedure of the Board.

Accounts and report of the Board.

No. 14 of 1952.

6. (1) There is hereby established a Housing Fund under the control of the Board, consisting of such securities and money and applicable to such purposes as are provided for by this Ordinance.

Establishment of Housing Fund.

(2) There shall, by virtue of this Ordinance and without further assurance, become vested in the Board the right of the Government to demand, sue for and recover, and give receipts for, and the benefit of all securities for every loan made to a local authority by the Government out of the Housing Fund established under the provisions of the Housing Ordinance (hereby repealed) to the extent to which such loans, at the date of the commencement of this Ordinance, remain outstanding, and all moneys received by the Board on account of every such loan shall be carried to the Housing Fund.

Cap. 142.

(3) There shall also be paid to the Board and carried to the Housing Fund—

- (a) all such moneys as may from time to time be voted or appropriated by the Legislative Council for payment into the Housing Fund;
- (b) the repayments of principal or interest made by any local authority on account of any loan referred to in sub-section (2) of this section;
- (c) all repayments of principal or interest made by any local authority, company, society or individual person, on account of any loan made by the Board under the provisions of this Ordinance;
- (d) all such sums as may from time to time be borrowed by the Board in exercise of the powers conferred by this Ordinance;
- (e) all such sums as may from time to time become due upon any investment made by the Board in exercise of the powers conferred by this Ordinance.

7. (1) The Board may, from the Housing Fund and from time to time, in manner provided by this Ordinance—

- (a) lend, or grant, money to any local authority, for the purpose of enabling the authority to exercise any of the powers conferred upon it by this Ordinance;
- (b) make loans to any company, society, or individual person for the purpose of enabling such company, society or individual person to acquire land and construct thereon approved dwellings or to carry out approved schemes;

Loans and grants by the Board and repayments of loans.

- (c) construct dwellings, carry out approved schemes and lay out and provide services for approved schemes;
- (d) acquire any land, building, estate or interest therein for any of the purposes of this Ordinance;
- (e) maintain any land, building, estate or interest therein for any of the purposes of this Ordinance;
- (f) appoint and employ on such terms and conditions as the Board may determine such officers and servants as it may deem necessary.

(2) Every loan made by the Board under this Ordinance shall bear interest at such rate as the Board may from time to time prescribe.

(3) The Board in considering the propriety of making a loan to any company, society or individual person, shall have regard to the financial position of the company, society or individual person and, the sufficiency of the security for the repayment thereof.

8. All loans made to a local authority by the Board shall be charged indifferently on all the rates and revenues of the local authority.

9. (1) If any local authority having power to levy rates or taxes or impose and collect dues or cesses shall neglect to pay any moneys due to the Board in respect of any loan granted under this Ordinance, the Governor in Council may, at any time after the expiry of sixty days from the date on which such moneys become due and payable, forthwith impose and levy a rate or tax of sufficient amount which may be imposed or levied by the local authority and impose and recover any dues or cesses which may be imposed and recovered by the local authority.

(2) For the purpose of this section the Governor in Council shall have all the powers vested in the local authority for imposing, levying and recovering rates upon all rateable property and improvements thereon within its jurisdiction and for imposing, levying and recovering taxes and for imposing and recovering such dues and cesses as aforesaid.

(3) The Governor in Council in making an estimate of the rate or tax to be levied or of the dues or cesses to be imposed for the purpose of paying any sum due to the Board as aforesaid, may add such sum as the Governor in Council thinks sufficient for defraying and may defray thereout, all costs,

Charge of loan on rates and revenues of local authority.

Powers in relation to rate where default made.

charges and expenses, including remuneration to any officer or other person employed, incurred in the execution of the powers conferred by this section or otherwise by reason of the default in payment of the sum due to the Board as aforesaid.

(4) If, after payment out of the proceeds of any such rate or tax or dues or cesses of the sum due to the Board as aforesaid and of the expenses of and incidental to the imposition, levy and recovery of such rate or tax or dues or cesses, there remains any balance, such balance shall be paid over to the local authority whose default led to the exercise by the Governor in Council of his powers under this section.

10. Where a loan is made by the Board to meet any expenditure of a local authority which is chargeable to a particular account, there shall be debited to that account all sums required for repayment of the principal of the loan, or for payment of interest thereon.

Charge of service of loan to particular account.

11. Any local authority may—

Powers of local authorities.

(a) out of loans or grants made to it from the Housing Fund—

(i) acquire land, construct approved dwellings and carry out approved schemes within the area of its jurisdiction;

(ii) with the approval of the Board acquire land and construct approved dwellings or carry out approved schemes outside its area of jurisdiction;

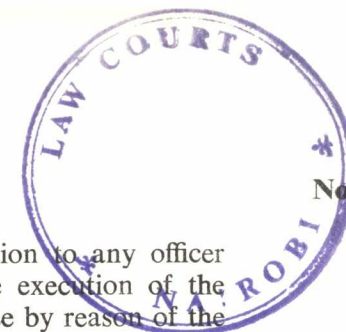
(b) sell or let on such conditions as may be specified by the Board any dwellings constructed by it:

Provided that all moneys received by the local authority from the sale of any dwelling shall be appropriated to the reduction or extinction of any existing debt incurred for the construction of such dwelling.

12. Any local authority may, out of any loan or grant made to it from the Housing Fund make a loan to any company, society or individual person for the purpose of enabling such company, society or individual person—

Loans by local authorities for the construction of dwellings.

(a) to acquire land within the area of jurisdiction of such local authority and construct thereon approved dwellings; or



(b) to carry out therein an approved scheme:

Provided that no such loan shall exceed such proportion of the estimated cost of the land and dwellings or scheme as the Board may determine either generally or specially.

13. (1) Every loan made under this Ordinance shall be repayable by such instalments as the Board or the local authority, as the case may be, shall specify and within a period not exceeding forty years or such other period as may be prescribed by the Member.

(2) Where a loan has been made repayable within a period less than the full period allowed by sub-section (1) of this section, the Board or the local authority, as the case may be, if the repayment of the loan with interest is in its opinion sufficiently secured, may extend the period for the repayment thereof to a period not exceeding the said full period from the date of the loan.

14. (1) Subject to the provisions of this section, every loan made to a company, society or individual person shall be secured by a first mortgage or charge over the land on which the dwelling is to be constructed or is situate or, as the case may be, over the land acquired for the approved scheme together with all the buildings and improvements on such land, and on such further security or on any other security, as the Board, or the local authority, as the case may be, may require.

(2) The Board may prescribe the form of such first mortgage or charge and the affixation of the seal of the Board, or the local authority, as the case may be, to any mortgage or charge purporting to be made under the provisions of this Ordinance shall be conclusive evidence that the same is in the prescribed form.

15. (1) Any loan may be made notwithstanding that the land in respect of which the loan is made has not been surveyed or that such a map or plan of the land as any officer concerned with the registration of the title to or the title deeds of such land is bound to accept for the purpose of registering any dealing with the land is not, for the time being registered or available for registration.

(2) Upon making such a loan the Board, or the local authority, as the case may be, may require the execution of such documents as will ensure—

Repayment of loans.

Security for loans.

Loan may be made notwithstanding non-registration of title, etc.

(a) that the loan will, immediately upon the issue or completion of such grant, lease, purchase or other acquisition as aforesaid, become secured as a first mortgage or charge upon the land in favour of the Board or local authority;

(b) that pending the creation of such first mortgage or charge, no mortgage or charge of the land which would or might rank in priority thereto shall be created.

16. Upon all money due upon any loan being fully paid, the Board, or the local authority, as the case may be, shall, when required, give to the local authority, company, society or individual person as aforesaid a receipt in writing for the same, and such further sufficient discharge (if any) as may be necessary, and upon such receipt being given the rates and revenues of the local authority or the land mortgaged or charged, as the case may be, shall be released from the charge created by section 8 of this Ordinance, or the first mortgage or charge, as the case may be.

17. The rate of interest payable on a loan made by a local authority shall not exceed the rate of interest which the local authority is liable to pay in respect of the money from which the loan has been made by more than one-half per centum, and such loans or instalments thereof shall bear interest from the date of issue.

18. (1) If an individual person to whom, or a company or society to which; a loan has been made—

(a) fails to pay any amount due in respect of the principal or interest of the loan; or

(b) has not applied the whole or any part of the loan to the specific purpose for which it was made; or

(c) fails to make such progress as the Board, or the local authority, as the case may be, considers reasonable with an approved dwelling or approved scheme; or

(d) fails to comply with any condition on which the loan or any part thereof was made; or

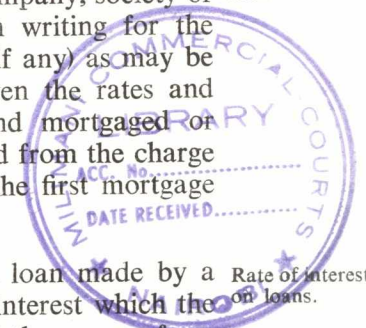
(e) becomes bankrupt, or is placed in liquidation,

the Board or the local authority, as the case may be, may either proceed to recover the amount outstanding on account of the loan together with all interest due thereon, by action in

Discharge of security and repayment of loan.

Rate of interest on loans.

Remedies in respect of loans.



a competent court or may by an officer authorized in writing by it and without obtaining any judgment or order of any court, enter upon and take possession of the land and premises on which the loan is secured, using force, if necessary for that purpose; and may thereupon sell, by public auction or after public tender, the said land and premises and transfer it to the purchaser and give a good and valid title thereto notwithstanding that such land and premises may have been mortgaged or charged in favour of some other person:

Provided that—

- (i) if the land and premises are so mortgaged or charged the Board, or the local authority, as the case may be, shall transmit to the second or subsequent mortgagee or chargee at his last known abode or office or place of business three weeks before the date fixed for the sale, notice by prepaid registered post of such its intention in order that such mortgagee or chargee may redeem the loan, if he so desires;
 - (ii) except in the event of the bankruptcy of the person, or the liquidation of the company or society as aforesaid, the Board, or the local authority, as the case may be, shall before exercising its power of entry and sale hereunder, give three months' notice by prepaid registered letter addressed to such individual person at his last known place of abode or office or business, or to such company or society at its office or place of business, of its intention as aforesaid.
- (2) If any such dwelling is not completed the Board or the local authority, as the case may be, may in its discretion complete the same before such sale. The proceeds of such sale shall be applied in payment of all sums due to the Board or the local authority, including the cost of completing any such dwelling and of the sale; and the balance (if any) shall be paid to the individual person to whom, or the company or society to which, the loan was made or to any other person who is the legal representative thereof or is otherwise entitled to receive such balance.
- (3) The Board or a local authority may itself purchase any land and premises sold by public auction as aforesaid and take transfer of any dwelling sold as aforesaid and treat the same as if it had been constructed by the Board or by the local

authority under this Ordinance, and no stamp duty or registration charges shall be payable on transfer to the Board or to the local authority.

(4) Any officer having any duties in connexion with the registration of the title to or the title deeds of any such land and premises as aforesaid shall make all the necessary entries in his registers and sign all documents necessary to give effect to this section.

19. The Member may, on the application of the Board, declare that any by-law or resolution made by a local authority which is inconsistent with the conditions of approval specified by the Board in respect of any dwelling or scheme, shall, in so far as it is inconsistent, not apply to the approved dwelling or scheme.

Approved schemes and dwellings may be exempted from by-laws, etc.

20. Whenever it appears to the Governor in Council, and after a local inquiry in public by an officer appointed by the Governor for that purpose at which the local authority and other parties interested shall be entitled to be heard, that the provision made in the area of any local authority for the needs of Africans ordinarily employed within that area for normal requirements is inadequate or unsuitable, the Governor in Council may, by written notice, require that local authority within such time as may be stated in the notice, to make such provision for the housing of Africans as the Governor in Council may specify.

Governor's powers where inadequate or unsuitable accommodation provided for Africans.

21. (1) Upon the failure of a local authority within the time fixed in any notice given under section 20 of this Ordinance or within any extension of that time granted by the Governor in Council to comply with any requirement notified under that section, the Member may, after written notice to the local authority, carry out such works and do all such things as may be necessary to give effect to that requirement; and for that purpose the Member is hereby authorized to exercise all such rights, powers and authorities as might have been exercised by the local authority in that behalf.

Member's powers upon failure of local authority to comply with requirements made under section 20.

(2) Any expenditure reasonably incurred by the Member under this section in excess of revenue derived from the exercise of the powers vested in him may be recovered in the manner provided by section 9 of this Ordinance.

Additional duties
of the Board.

22. (1) The Board may, and shall when required by the Member or the local authority, inquire into and report to the Member or the local authority, on the necessity or otherwise of the provision of dwellings in the area of any local authority.

(2) The Board shall advise and assist in the preparation of proposals for dwellings and schemes.

Borrowing by
the Board.

23. The Board may, with the consent of the Member, borrow any moneys which it requires for the purpose of exercising its functions under this Ordinance in such amount and upon such conditions as the Member may sanction.

Power of
Member to make
regulations.

24. The Member may from time to time make regulations for prescribing anything which may require to be prescribed under this Ordinance, and for the better carrying out of the objects and purposes of this Ordinance, and such regulations may be expressed to apply throughout the Colony or any specified or defined portion thereof. Such regulations may provide penalties for any contravention thereof or failure to comply therewith not exceeding a fine of ten thousand shillings or imprisonment for two years, or both such fine and imprisonment.

Powers of entry
and inspection
of premises.

25. (1) Any member of the Board, any officer or servant of a local authority generally or specially authorized by such local authority, and any person likewise authorized by the Member may, at any hour reasonable for the proper performance of the duty, enter upon any land or building in respect of which a grant or loan has been made or undertaken to be made under this Ordinance to make any inspection or to perform any work or to do anything which he is required or authorized to do under regulations made under this Ordinance.

(2) Any person who fails to give or refuses access to any person mentioned in or authorized under sub-section (1) of this section or obstructs or hinders him in the execution of his duties under the regulations made under this Ordinance or who prevents any servant or workman of a local authority from entering any such land or dwelling for the purpose of complying with any requirements under the regulations made under this Ordinance shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

26. The provisions of this Ordinance shall be deemed to be in addition to and not in substitution for any provisions of any other law which are not in conflict or inconsistent with this Ordinance, and if the provisions of any law are in conflict with or inconsistent with this Ordinance the provisions of this Ordinance shall prevail.

Provisions of
this Ordinance
in relation to
other laws.

27. Nothing in this Ordinance shall—

Savings.

(a) in any way prejudice or affect the rights of Her Majesty the Queen, Her Heirs and Successors, or of any body or bodies politic or corporate or other person or persons, excepting only such as are mentioned in this Ordinance and those claiming by, from or under them.

(b) prejudice or affect the priority of any security for a loan created by any local authority before the date of the commencement of this Ordinance.

28. The Housing Ordinance is hereby repealed.

Repeal of
Cap. 142.