

LAWS OF FIJI

CHAPTER 125

LOCAL GOVERNMENT

**POWERS CONFERRED TO THE MINISTER
BY THE LOCAL GOVERNMENT ACT**

No.	Section	Role of the Minister
1	19 (2)	Shall cause copies of the annual statement and reports to be laid before Parliament
2	40 (1) (b)	Approve loan or loans not exceeding in the aggregate 15 percent of the recurrent estimated gross revenue of the Council
3	40 (1) ©	Approve loans or overdraft in any other case in consultation with the Minister responsible for finance
4	43	Approve investment made by the Councils
5	44 ©	Approve contribution by the Councils in any charitable purpose within the meaning of the Charitable Trusts Act
6	46 (2)	Receive in the month of November a copy of the estimate of the income and expenditure of Councils for the next succeeding year
7	46 (3)	Receive and where appropriate approve at any time during the year, a revised or supplementary estimate
8	47 (2)	Direct the manner be which the accounts and records of the Councils are to be kept
9	48	Approve the transfers from the general account to meet deficiencies in the separate accounts
10	49	Approve the transfer from separate account in the general account
11	51	Appoint the auditor of the Councils
12	65 (1)	Approve the appointment of a valuer or assistant valuer by the Councils
13	73A (2)	By order vary the maximum amount of discount which may be allowed by councils
14	80	Approve the write-off arrears of rates and interest on grounds of hardship
15	81	Approve the promotion, establishment and maintenance of public utility services including public transportation, or any public works, which in the opinion of the Councils may be necessary or beneficial to the municipality and contribute to the cost of such public works
16	91 & 93	Give consent for the acquisition and disposal of land by agreement
17	92	Give consent to let any land in the possession of the Councils for terms exceeding ten years
18	123	Make regulations for fixing the maximum amounts payable for financial loss, traveling and subsistence allowances and for other general or specific purposes
19	124	Serve order upon Councils to make such by-laws as are specified in the order and to amend or revoke any such by-laws
20	129	Suspend or prohibit any order of resolution by Councils which is likely to cause serious injury or annoyance to the public
21	130 & 131	Appoint an inspection and/or committee of inquiry to investigate the affairs of Councils
22	131A	Prescribe actions, reduce grant and dissolve the Councils or default
23	132	Disallow expenditure incurred without proper authority based on reports of the inspection or auditor or surcharge Councilors or person responsible
24	138	Receive certified copies of minutes or records of proceedings of meetings and confirmed minutes within seven days after the date of confirmation

CHAPTER 125

LOCAL GOVERNMENT

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*Acts Nos. 4 of 1972, 17 of 1973, Legal Notice No. 78 of 1974,
Acts Nos. 14 of 1975, 4 of 1976, 26 of 1980, 11 of 1983*

 AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO
 LOCAL GOVERNMENT

[5 May 1972]

PART I – PRELIMINARY

Short title

- 1. This Act, may be cited as the Local Government Act.

Interpretation

- 2. In this Act, unless the context otherwise requires:-
 "agricultural land" means land exclusively used for one or more of the following purposes or in one or more of the following manners or for a combination of such purposes and manners:-
 - (i) land used as arable, meadow or pasture ground;
 - (ii) land used for the purpose of livestock farming;
 - (iii) land used for a plantation or wood;

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- (iv) land used for a nursery ground or orchard;
- (v) land used for the cultivation of any crop;
- "council" means the council of a city, a town or a district;
- "councilor" means a member of the council of a city, a town or a district;
- "deputy mayor:" includes a deputy chairman of a district council;
- "district" means a district constituted under the provisions of this Act;
- "drain" includes a sewer, pipe, ditch, channel or any other device for carrying off sullage, sewerage and water of any kind together with traps, sinks, cisterns and other fittings appertaining thereto;
- "Electoral Commission" means the Electoral Commission constituted under the provisions of section 42 of the Constitution; (Cap 1.)
- "improvements" in relation to land means all works done or materials used at any time on or for the benefit of the land by the expenditure of capital or labour or both by any owner or occupier thereof or any predecessor in title in so far as the effect of the work done or material used is to increase the value of the land and the benefit thereof is unexhausted at the time of valuation; but except in the case of land owned and occupied by the State or by a statutory public body, does not include work done or material used on or for the benefit of the land by the State or by any statutory public body, except to the extent that the same has been paid for or contributed to by the person who is the owner or occupier of the land at the time of the valuation;
- Provided that---
- (a) the reclamation of land from the sea shall not in any case be deemed to be improvements either of the land reclaimed or of any other land; and
- (b) work done or material used at any time on or for the benefit of any land by the expenditure of capital or labour or both by any owner or occupier thereof or any predecessor in title (whether required by any written law or not) by the provision of streets, roads or drains or the carrying out of any subdivision, reclamation, leveling, cutting or filling or any other work to make such land suitable or more suitable for building purposes, shall not be deemed to be improvements;
- "land" includes messuages, tenements, hereditaments and any estate or interest in the land and houses, buildings, works and structures in or upon the land;
- "Local Government Committee" means the Committee established under the provisions of section 4;
- "mayor" means, in relation to a city or town, the Mayor of that city or town and, in relation to a district, the Chairman of the district council;
- "municipality" means a town or district;
- "occupier" includes any person legally in actual occupation of land or premises without regard to the title under which he occupies and in the case of premises subdivided and let to lodgers or various tenants, the person receiving the rent payable by the lodgers or tenants whether on his own account or as agent for any person entitled thereto or interested thereon;
- "owner" in relation to land means a person other than a mortgagee not in

Possession who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the land under a registered lease or registered agreement; Provided that in the case of unalienated native land the term "owner" shall mean the proprietary unit;

"street" means----

- (a) any road, land, footpath, square, alley or passage over which the public has a right of way whether a thoroughfare or not, and every bridge, culvert, drain, embankment, causeway, fence or other thing belonging or appertaining thereto;
- (b) all land which immediately before 5 May 1972 was a street under the provisions of any Act repealed by this Act;
- (c) any street declared to be a street by a council in pursuance of the provisions of section 109;

"town" means the person appointed as such under the provision of Section 35 and includes a clerk to a district council;

"town clerk" includes a clerk to a district council;

"unimproved value" has the same meaning specified in section 63.

(Amended by Act 14 of 1975 s.73; 26 of 1980 s.2)

(Amended by Act 3 of 1997, s.3.)

Classes of municipalities

3---(1) Municipalities to which this Act applies shall be divided into the following classes:----

- (a) towns, being cities, towns, or, subject to the provisions of paragraph (b), townships in existence immediately before 5 May 1972 or districts or other areas subsequently constituted to be towns under the provisions of section 5;
 - (b) districts, being areas constituted as districts under the provisions of section 6;
- (2) Except where otherwise stated in this Act, the provisions of this Act shall apply to both classes of municipalities specified in subsection (1).

Local Government Committee

4—(1) There is hereby constituted a committee to be known as the Local Government Committee which shall carry out the functions and undertake the enquiries assigned or referred to it under the provisions of this Act.

(2) The members of the Local Government Committee shall be appointed by the Minister and shall consist of a Chairman who shall hold office for a period of five years and not less than two other members who shall be appointed for the purpose of any particular enquiry, *(Amended by Act 26 of 1980, s. 3)*

Declaration of towns and cities

*5---(1) Upon application in that behalf by the council of any district, or upon representations being received that an area not being a district be constituted a town, or upon similar application or representation being made that the boundaries of any town be altered, the Minister may make such order with regard to the

definition or alteration of boundaries as he may consider appropriate, or he may decline to make such order, and in any case may refer the matter to the Local Government Committee for enquiry and advice before deciding on the application or representation. (Amended by Act 26 of 1980, s.4)

(2) Where any district or area is declared to be a town under the provisions subsection (1), the Minister may nominate such members, appoint such officers and make such regulations as may be necessary or expedient as an interim measure provide for the first election of the council of such town and for the government the town including the provision of services until a council is duly constituted under the provisions of this Act, and for the transfer of the property, rights and liabilities of the district council or other local authority to the council so constituted, a generally for giving effect to the provisions of this Act;

Provided that, unless the Minister otherwise prescribes in such regulation such first election shall take place not later than six months after the declaration the district on area to be a town.
(Amended by Act 14 of 1975, s.73, 26 of 1980s.4)

(3) Where a new town is constituted on the boundaries of a town are extended or any material change takes place in the population of a town, the Minister may his own volition or shall upon application by the town council refer the question the division of the town into wards or the redefining of wards or the creation of a new ward to the Electoral Commission which shall make such order in relation thereto as it shall think fit. In such an order the Electoral Commission shall provide that each ward shall contain nearly equal numbers of adult inhabitants as appears be reasonably practicable;

Provide that the Commission may depart from such principles as it consider expedient in order to take into account geographical features, means communication and density and mobility of population.

(4) Where the boundaries of any town are extended the Minister may make such regulations as may be necessary or expedient for the transfer to the town council of property, rights and liabilities of any local authority of any place including in the town by such extension.

(5) Any land which is reclaimed from the sea, the landward boundary of which is contiguous to or connected with land within a town, shall automatically deemed for all purposes to be land within that town.

(6) Upon application in that behalf made by the council of a town having population of not less than twenty thousand, the Minister may, by order, decline such town to be a city and such town shall thereafter be known and described a city. Such order shall in no manner whatsoever affect the constitution or continuation of the council of such town nor shall have any other effect whatsoever save only aforesaid, and all the provisions of any Act relating to towns shall continue to apply thereto.

Declaration of districts

6---(1 The Minister may refer to the Local Government Committee to question as to whether any area not being a town should be constituted a district the purposes of this Act or whether there should be an alteration in the boundaries of an exiting district and, after due enquiries have been made by the Committee thereon and as to the proposed boundaries, the Committee shall advise the Minister who may make such order with regard to the definition or alteration boundaries as he may consider appropriate.

(2) Where any area is declared to be a district under the provisions of subsection (1), the Minister may nominate such members, appoint such officers and make such regulations as may be necessary or expedient as an interim measure to provide for the first election of the council of such district and for the government of the district including the provision of services until a council is duly constituted under the provisions of this Act, and for the transfer of the property, rights and liabilities of any local authority within the area declared to be a district to the council so constituted and generally for giving effect to the provisions of this Act;

Provided that such first election shall take place not later than two years after the declaration of the area to be a district or such lesser period as the Minister may prescribe in such regulations. *(Substituted by Act 26 of 1980, s.5)*

(3) Where a new district is constituted or the boundaries of a district are extended or any material change takes place in the population of a district, the Minister may of his own volition or shall upon the application by the district council refer the question of the division of the district into wards or the redefining of wards or the creation of any new ward to the Electoral Commission which shall make such order in relation thereto as it shall think fit. In such an order the Electoral Commission shall provide that each ward shall contain nearly equal numbers of adult inhabitants as appears to be reasonably practicable;

Provided that the Commission may depart from such principles as it considers expedient in order to take into account geographical features, means of communication and density and mobility of population.

(4) Where the boundaries of any district are extended the Minister may make such regulations as may be necessary or expedient for the transfer to the district council of property rights and liabilities, of any local authority of any place included in the district by such extension.

(5) Any land which is reclaimed from the sea the landward boundary of which is contiguous to or connected with land within a district shall automatically be deemed for all purpose to be land within that district.

Notice of proposals to alter boundaries

7.---(1) Before the boundaries of any town are defined under the provisions of subsection (1) of section 5 or the boundaries of any district are defined under the provisions of subsection (1) of section 6, or such boundaries are altered under the provisions of subsection (1) of section 5 or subsection (1) of section 6, as the case may be, the Minister shall arrange that a notice of the proposal to define or alter the boundaries of any town or district setting out details of such proposals be advertised once in the Gazette and four times in a newspaper published and circulating in Fiji calling upon all persons interested in the proposal to submit to the Local Government Committee within a period of two months from the date of the first of such advertisements, any objections which such person may wish to make *(Amended by Act 14 of 1975, s.73)*

(2) The Local Government Committee shall after the enquiry advise the Minister on any objections referred to in sub-section (1). *(Amended by Act 26 of 1980, s.6)*

Interpretation of sections 5 and 6

7A. In section 5 and 6 the expression "local authority" includes any municipality established under the provisions of this Act and any local authority within the meaning of the Public Health Act. *(Cap. 111)*

(Inserted by Act 26 of 1980, s.7)

PART II – COUNCILS

Councils of municipalities

- 8.---(1) For the government of each municipality there shall be constituted a council, which shall---
- (a) in the case of a city, be known by the name of the city followed by the words
 - (b) "City Council";
 - (c) in the case of a town, be known by the name of the town followed by the words "Town Council";
 - © in the case of a district, be known by the name of the district followed by the words "District Council";
- (2) Every Council shall be a body corporate with perpetual succession and a common seal and shall for the purposes and subject to the provisions of this Act be capable of purchasing, holding, disposing of and alienating and of accepting dedications of real and personal property and of doing and suffering all such acts and things as bodies corporate may by law do and suffer.
- (3) Every town declared to be a town and every township declared to be a township before the commencement of this Act shall continue in being as a town and the council or board of every such town or township shall continue in being as a town council under the provisions of this Act and all by-laws, regulations and appointments made, powers conferred, and any notifications issued, served or published, by such council or board shall remain of full force and effect until revoked, cancelled or amended under the provisions of this Act;

Provided that at the request of the township board of such township or upon the directions of the Minister, any township may continue in being as a district in which case, subject to this modification, the provisions of this subsection shall apply.

Composition of Council

- 9.---(1) The council of every municipality shall consist of such number of elected councilors as the Electoral Commission may from time to time by order determine;

Provided that the Minister may advise the Electoral Commission of the minimum number of councilors who should constitute the council.

(2) Where a municipality is divided into wards, the Electoral Commission shall determine the number of councilors for each ward. *(Amended by Act 26 of 1980, s.8)*

(3) Subject to the other provisions of this Act, each councilor shall hold office for a period of three years but shall be eligible for re-election.

Provided that a councilor shall remain in office until immediately before the meeting at which his replacement first takes his seat after the election at which he is returned.

~~[(4) ===== (Repealed by Act 26 of 1980, s.8.)]~~

(5) If at any election to fill any vacancy in the office of a councilor, no person is nominated or returned or a less number of persons are returned than there are vacancies to be filled, any vacancy remaining unfilled shall be deemed to be a casual vacancy occurring on the day appointed for the nomination of election.

(6) In addition to the elected members, the Minister may nominate such

numbers of advisers as he may consider appropriate to assist the council and such advisers shall be entitled to attend meetings of the council but shall have no right to vote thereat.

[(7) ===== (Repeated by Act 26 of 1980, s.8.)]

Qualifications and disqualifications for councilors

10 -----(1) Subject to the provisions of subsections (A) and (2), every citizen of Fiji enrolled as an elector in the municipality who can read or write or speak in any one or more of the English, Fijian or Hindustani languages shall be qualified to be elected as a councilor. *(Substituted by Act 26 of 1980, s.9.)*

- (2) A person is disqualified from being elected or being a councilor if he---
- (a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to any power or state outside Fiji;
 - (b) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Fiji or any other country..
 - (c) is under any law in force in Fiji adjudged or otherwise declared to be of unsound mind;
 - (d) is under sentence of death imposed on him by a court in any part of the Commonwealth or is under a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;
 - (e) is disqualified from membership of a council under any law in force in Fiji relating to offences connected with elections;
 - (f) holds or is acting in any public office;
 - (g) has at any time during the immediately preceding three years held or acted in the office of a member of the Constituency Boundaries Commission, or of the Electoral Commission, or the office of Supervisor of Elections;
 - (h) holds or is acting in an office the functions of which involves any responsibility for or in connection with the conduct of any election to a council; or
 - (i) holds any paid office, other than mayor, under or within the control of the council or any committee thereof. *Amended by Act 20 of 1968, s.9.)*

(Amended by Act 3 of 1997, s.4.)

- (3) *For the purpose of paragraph (d) of subsection (2) ----*
- (a) *two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms;*
 - (b) *a sentence of imprisonment imposed as an alternative to or in default of a payment of a fine shall be disregarded.*

(Amended by Act 14 of 1975, s. 73.)

[(14) ===== (Repeated by Act 26 of 1980, s.9.)]

Qualifications of electors

- 11. -----**(1) Every person of or over the age of twenty-one years who is a citizen of Fiji and who is the occupier or owner of land within the municipality shall be entitled to be enrolled as an elector;
- (2) In the case of a municipality divided into wards, a person registered to be an elector shall be entitled to be enrolled only in respect of the ward in which he occupies or own land.
- (3) The name of an elector shall not appear more than once on the electors roll of any ward.
- (4) A person shall be an occupier for the purposes of this section if -----
- (a) he has, during the three months immediately preceding the date of registration been in joint or several occupation as a lawful tenant of land within the municipality or of land included in the municipality or virtue of an extension of its boundaries, or
- (b) he is nominated in writing as an elector by a body corporate which is, or by trustees who are, in occupation as aforesaid or as owners of land within the municipality;
- © he has resided in the municipality or in a place included in the municipality by virtue of an extension of its boundaries for continuous period of twelve months at the time of enrolment. *(Amended by Act 17 of 1973, s. 2; 26 of 1980, s. 10.)*

(Amended by Act 3 of 1997, s.5.)

Election and voting power

- 12. ----**(1) Every person whose name appears on the electoral roll of municipality shall be an elector in that municipality for the purposes of this Act.
- (2) No elector shall give ----
- (a) more than one vote for any one candidate; or
- (b) more votes in all than the total number of councilors to be elected for the electoral area.
- (3) An election shall be determined by the majority of valid votes cast at the poll.
- (4) No person shall be subject to incapacity to vote in a local government election by reason of his being or acting as the returning officer thereat.

Conduct of elections

- 13.-----**(1) The Electoral Commission may make regulations providing for the conduct of elections to municipalities and all matters incidental thereto including prescribing electoral offences and for election petitions.
- (2) Regulations made under the provisions of subsection (1) shall include provision for –
- (a) a fresh electoral roll to be prepared prior to each general election to council.
- (b) Annual revision of the electoral roll.
- (3) The Supervisor of Elections shall, in respect of elections to municipalities have the same powers as are conferred upon him under the Constitution so far applicable.

Costs of elections

14. All reasonable costs and expenses incidental to any election except the expenses incurred by or on behalf of the candidates shall be paid out of the municipal fund.

Vacation of office by failure to attend meetings

15. -----(1) If a councilor fails throughout a period of three consecutive months to attend any meeting of the council he shall, unless the failure was due to some reason approved by the council, cease to be a member of the council.

(2) Attendance at a meeting of a committee or other body to whom any of the functions or powers of the council have been delegated or transferred shall for the purpose of this section be deemed to be attendance at a meeting of the council.

(3) The period of three months referred to in subsection (1) shall run ----

(a) where the councilor has attended a meeting of the council, from the date of the last meeting which he attended; or

(b) where the councilor has not attended any meeting of the council, from the date of his election or appointment.

(4) Notwithstanding the provisions of subsections (1), (2) and (3), a councilor who fails to attend three consecutive ordinary meetings of the council convened in accordance with subsection (3) of Section 31 shall, unless the failure was due to some reason approved by the Council, cease to be a member of the Council. *(Amended by Act 3 of 1997, s.6.)*

Acting as councilor whilst disqualified an offence

16. If a person who is not qualified to be or is disqualified from being a member of a council acts or purports to do any act as a councilor, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200 for each occasion on which he is found to have so acted;

Provided that no proceedings shall be brought under the provisions of this section except—

(a) with the written consent of the Director of Public Prosecutions; and

(b) by an elector of the town in district council; and

(c) within six months of the date upon which such person is alleged to have so acted.

Declaration by council of vacancy in office

16A.-----(1) Where a councilor ceases to be qualified to be a councilor or becomes disqualified from being a councilor or ceases to hold office by reason of failure to attend meetings in pursuance of section **15**, the council shall forthwith declare his office to be vacant and signify the vacancy by notice signed by the town clerk and publicly displayed at the office of the council.

(2) Where the office of a councilor becomes vacant by reason of the death or resignation of the councilor the town clerk shall cause the vacancy to be publicly notified in the manner prescribed by subsection (1).

(Inserted by Act 26 of 1980, s. 11.)

Validity of acts done by unqualified persons

16B. The acts and proceedings of any person elected to an office under this Act and acting in that office shall notwithstanding his disqualification or want of qualification be as valid and effectual as if he had been qualified.

(Inserted by Act 26 of 1980, s. 11)

Disabilities

17.-----(1) Where any person is presiding over a meeting of the council or of a committee thereof and-----

- (a) has any direct or indirect pecuniary interest in any contract or proposed contract or other matter with the council, the terms of which or a decision on which is the subject of consideration at such meeting; or
- (b) *holds any office or appointment which is likely to lead to a conflict of duty or interest in the performance of his duty and functions as the person presiding, he shall disclose the fact, specifying such interest, matter, office or appointment and shall not continue to preside over the meeting and shall absent himself there from whilst such subject is under consideration (Amended by Act 14 of 1975m s, 73.) (Amended by Act 3 of 1997, s.5.)*

(2) If any councilor---

- (a) has any pecuniary interest, direct or indirect, in any contract or proposed contract or any other matter; and
- (b) is present at any meeting of the council or any committee of the council at which the terms of such contract or a decision on such other matter is the subject of consideration,

he shall at such meeting disclose such interest and shall not, without the permission of the council given by resolution, take part in any consideration or discussion of or vote on any question relating to such contract or other matter, and if the person presiding at such meeting so directs he shall withdraw from such meeting during such consideration, discussion or voting;

Provided that the foregoing provisions of this section shall not apply to a pecuniary interest which a councilor may have as a ratepayer or taxpayer or as holder of a business license only.

(3) Any person who fails to comply with the provisions of subsection (1) or subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$400 unless he establishes to the satisfaction of the court that he did not know----

- (a) that he had a pecuniary interest in the contract, proposed contract or other matter; and
- (b) that the contract, proposed contract or other matter was the subject of consideration at the meeting;

(4) A prosecution for an offence under this section shall not be commenced except with the consent of the Director of Public Prosecutions. *(Amended by Act 3 of 1997, s.7.)*

Members of council not personally liable

18. No matter or thing done and no contract entered into by any councilor and no matter or thing done by any councilor or officer or servant of such council shall, if the matter or thing were done or the contract were entered into *bona fide* for the purpose of executing provisions of this Act, subject then or any of them personally to any action, liability, claim or payment whatsoever and any expenses incurred by any such council, officer or servant shall be borne and repaid out of the funds at the disposal of the council.

Accounts and reports

- 19.----**(1) On or before 31 July in each year every council shall transmit to the Minister----
- (a) a copy of the annual statement prepared by the council in accordance with the provisions of section **57**;
- (b) a copy of any report on such annual statement made by the auditor; and

- © a report containing a summary of the proceedings and activities of the council during the preceding year.
- (2) The Minister shall cause copies of the annual statement and reports to be laid before Parliament.
(*Substituted by Act 26 of 1980, s. 12.*)

PART III – MAYOR AND CHAIRMAN

Mayors

20. Each council shall elect a mayor in accordance with the provisions of section 21.
(*Substituted by Act 26 of 1980, s. 13.*)

Election of mayor

21.-----(1) The mayor shall be elected annually by the council from among the members of the council and shall unless he resigns or ceases to be qualified or becomes disqualified from being a councilor under this Act or his office otherwise becomes vacant, hold office until his successor is elected at the first meeting of the council after the expiry of twelve months from his election.

(2) The election of the mayor shall be by secret ballot and shall be the first business transacted at the annual meeting held after a general election to the council and thereafter at the first meeting of the council after the expiry of twelve months from the last election of a mayor.

(3) If at any election under subsection (2) there is given to two or more candidates an equal number of votes in excess of those given to any other candidate, or where in the case of their being only two candidates an equal number is given to each, the election between the two candidates with an equal number of votes shall be decided by the drawing of lots.

(4) The town clerk or, if there be no town clerk, the person appointed to be returning officer for the purpose of supervising elections to the council, shall preside at the annual or other meeting referred to in subsection (2).

(5) A council may with the prior approval of the Minister pay to the mayor such quarterly allowance as it considers reasonable.

(*Substituted by Act 26 of 1980, s. 13.*)

Lord Mayor of Suva

22. The mayor of the city of Suva shall be known by the style of title of Lord Mayor of Suva.
(*Substituted by Act 26 of 1980, s. 13.*)

Election of Deputy mayor

23.-----(1) Each council shall at the annual meeting held after a general election to the council, and thereafter annually, elect by secret ballot from among the members of the council a person to be deputy mayor who shall unless he resigns or ceases to be qualified or becomes disqualified from being a councilor under this Act or his office otherwise becomes vacant, hold office until the next annual election of a mayor.

(2) The deputy mayor shall, if for any reason the mayor is unable to act or the office of mayor is vacant, discharge all of the functions which the mayor as such may discharge.

(3) If at an election under subsection (1) there is given to two or more candidates an equal number of votes in excess of those given to any other candidate, or in the case of their being only two candidates with an equal member of votes shall be decided by the drawing of lots. (*Substituted by Act 26 of 1980, s. 13.*) (*Amended by Act 3 of 1997, s.8.*)

Duty of mayor

- 24.** It shall be the duty of the mayor---
- (a) subject to the provisions of this Act to preside, unless prevented by reasonable cause, or all meetings of the council and, subject to rules, or regulations for the time being in force, to regulate conduct of business at such meetings;
 - (b) to perform such executive functions as may be allotted to him under the provisions of this Act.

Resignation or removal of mayor

25.----(1) The mayor may at any time resign his office by notice in writing addressed to the town clerk.

(2) Where the Minister is satisfied after due enquiry that the mayor has been guilty of misconduct or is incapacitated from performing his duties or has acted in a manner prejudicial to the interests of the municipality, he may order that the mayor be suspended or dismissed.

(3) Without prejudice to the general meaning of the word "misconduct" a mayor who fails to comply with the provisions of subsection (1) of section 17 shall be deemed to be guilty thereof.

Special powers of mayor in emergency

26. The mayor may in cases of emergency direct the execution or stopping any work or the doing of any act which requires the sanction of the council as immediate execution, stoppage or doing of which is in his opinion necessary for the service or safety of the public and may direct that the expense of executing work or doing such act shall be paid from the municipal fund:

Provided that---

- (c) he shall not act in contravention of any order of the council prohibiting the execution of any particular act; and
- (d) he shall report forthwith the action taken under the provisions of section and the reason therefore to the council.

PART IV – COMMITTEES*Council may appoint special or standing committee*

27.----(1) A council may from time to time appoint standing or committees and may delegate to any such committee any matters for consideration or enquiry or management or regulation and may delegate to any such committee any of the powers and duties conferred or imposed upon the council by the provisions of this Act except---

- (a) to borrow money;
- (b) to make a rate;
- (c) to make by-laws;
- (d) to execute a contract; or
- (e) to institute an action.

(2) Persons who are not councilors may be appointed to a committee other than a committee for regulating and controlling the finances of the municipality appointed under the provisions of this section but shall not be entitled to vote on any matter coming before the committee.

Provided that at least two-thirds of the members of every committee shall be councilors.

(3) Every member of a committee appointed under the provisions of this section who at the time of his appointment was a councilor shall upon ceasing to be a councilor also cease to be a member of the committee.

Chairman of committee

28.----(1) A council may appoint a member to be chairman of a committee and in default of such appointment the committee shall itself appoint a chairman.

(2) The committee may from time to time appoint a deputy chairman to act in the absence of the chairman.

Committee subject to direction by council

29. Every committee other than a joint committee appointed under the provisions of section **30** shall be subject to the control of the council and shall carry out all directions generally or specially given by the council in relation to such committee or its affairs.

Joint committees

30.----(1) A council may concur with any one or more local authorities in appointing from amongst their respective member a joint committee of the council and those other authorities for any purpose in which they are jointly interested and may delegate to such committee with or without restrictions or conditions as they think fit any functions of the council relating to the purposes for which the joint committee is formed except the power of imposing a rate, borrowing money or making by-laws.

(2) The council shall pay such proportion of the expenses of the joint committee as may be agreed by it and the other local authorities or, in case of disagreement, as may be determined by the Minister.

(3) In this section, the expression "local authority" includes any municipality established under the provisions of this Act, any provincial council established under the provisions of the Fijian Affairs Act and any local authority within the meaning of the Public Health Act.

(Cap. 120. Cap. 111)

PART V – MEETING AND PROCEEDINGS OF COUNCILLORS AND COMMITTEES

Meetings of council

31.----(1) Every council shall, within fourteen days of each general election thereto hold a general meeting of the council. *(Amended by Act 3 of 1997, s.9.)*

(2) The first annual meeting of the council shall be summoned by the town clerk, or, if there be no town clerk, by a person appointed in that behalf by the Minister.

(3) Ordinary meetings of the council shall be held not less frequently than once a month at such time as may be prescribed or as the council may direct.

(4) The mayor may call a meeting of the council at any time.

(5) Three clear days at least before a meeting of the council---

(a) notice of the time and place of the intended meeting shall be published at the office of the council;

(b) a notice to attend the meeting specifying the business to be presented thereat and signed by the town clerk shall be left at, or sent by post to the address of every councilor communicated to the town clerk;

Provided that the failure to serve such notice on any councilor shall not affect the validity of the meeting.

(6) Notwithstanding any other provisions of this section, the mayor may call an emergency meeting of the council at any time;

Provided that a copy of any resolution passed at such a meeting shall be dispatched to all councilors within three days thereof.

Person presiding

32.----(1) Subject to the provisions of section **17**, at every meeting of the council, the mayor, if present, or, in his absence, the deputy mayor, shall preside.

(2) Subject to the provisions of section **17**, at every meeting of every committee, the chairman thereof, if present, or, in his absence, the deputy chairman, shall preside.

(3) If no person has been elected to preside at any meeting of the council or at any meeting thereof or if the person elected to preside is absent there from or from any part thereof, such councilor as may be elected by the council or committee, as the case may be, shall preside.

Quorum and majority

32A.----(1) All acts of a council and of any committee thereof and all questions coming or arising before a council or any committee thereof may be done and decided by the majority of such members of the council or committee as are present at a meeting held in pursuance of this Act or of any regulation or by-law made thereunder, the whole number present at the meeting (whether voting or not) being not less than one half of the number of members of the council or of the committee as the case may be when that number is even or a majority of such number if odd,.

(2) Subject to the provisions of sections **21** and **34B** in the case of equality of votes the person presiding at any meeting of the council or any committee thereof shall have a second or casting vote.

(Inserted by Act 26 of 1980, s. 14.)

Proceedings not to be invalid by means of vacancy

33. No act or proceeding of a council or of a committee or of any person acting as a member of the council shall be invalidated by reason of there being a vacancy in the number of councilors at the time of such act or proceeding.

By-laws regulating procedure

34A. A council may make by-laws providing for the summoning of meetings of the council and any committee thereof, the regulation and conduct of meetings and proceedings, the conduct of debates, the maintenance of order, the suspension of members and all such matters, whether similar to the foregoing or not, as may be deemed necessary and proper to ensure the efficient functioning of the council and its committees.

(Inserted by Act 26 of 1980, s. 15.)

PART VA – CASUAL VACANCIES
(Inserted by Act 26 of 1980, s. 16.)

Filling of casual vacancy in the office of mayor

34B.----(1) On a casual vacancy occurring in the office of mayor his successor shall be elected by the council from among its members and for the purpose of such election the town clerk shall forthwith convene a special meeting of the council.

(2) The provisions of section **21** shall apply, *mutates muttandis*, to any election under subsection (1).

(Inserted by Act 26 of 1980, s. 18.)

Filling of casual vacancy in the office of deputy mayor

34C.----(1) Subject to subsection (2) on a casual vacancy occurring in the office of deputy mayor an election to fill the vacancy shall be held not later than the next ordinary meeting of the council held after the date on which the vacancy occurs, or if that meeting is held within fourteen days of that date, then not later than the next following ordinary meeting of the council and shall be conducted in the same manner as an ordinary election to the office of deputy mayor.

(2) Where under subsection (1) of section **34B** the person holding the office of deputy mayor is elected to fill a casual vacancy in the office of mayor the council shall art the same special meeting proceed to elect a new deputy mayor in the manner prescribed by subsection (1) of section **23**.

(Inserted by Act 26 of 1980, s. 16)

Filling of casual vacancy in the office of councilor

34D.----(1) On casual vacancy occurring in the office of councilor an election to fill the vacancy shall be held within sixty days of the date of the vacancy occurring.

(2) Where a casual vacancy in the office of councilor occurs within 6 months before the date upon which the next general election of councilors is required to be held, an election shall not be held under subsection (1) unless on the occurrence of the vacancy (or, in the case of a number of simultaneous vacancies, the occurrence of the vacancies) the total number of unfilled vacancies in the membership of the council exceeds one third of the whole number of members, and where an election is not held under subsection (1) the vacancy shall be filled at the next general election.

(Inserted by Act 26 of 1980, s. 16.)

Date of casual vacancies

34E. For the purpose of filling a casual vacancy in any office for which an election is held under the provisions of this Act the date upon which the vacancy shall be deemed to have occurred shall be----

- (a) in the case of resignation the date upon which notice of resignation is received by the town clerk;
- (b) in the case of death, upon the date of death;
- (c) in the case of a conviction, upon the expiry of the period allowed for making an appeal or if an appeal is made the date upon which the appeal is finally disposed of or abandoned;

(d) in any other case, upon the date the office I declared to have been vacated by a declaration made by the council under the provisions of subsection (1) of section 16A.

(Inserted by Act 26 of 1980, s. 16.)

Terms of office of persons filling casual vacancies

4F. A person elected under this Part to fill a casual vacancy shall hold office until the date upon which the person in whose place he is elected would regularly have retired and he shall then retire.

(Inserted by Act 26 of 1980, s. 16.)

PART VI - OFFICERS

Officers and servants

35.----(1) Every council shall appoint fit and proper persons to be town clerk, health inspector and building surveyor and may appoint such other officers and servants as the council considers necessary for the efficient discharge of the functions.

(2) One person may hold two or more of such offices.

(2A) The town clerk who shall also be chief executive officer of a council shall be paid such salary as is determined from time to time by the Higher Salaries Commission. *(Inserted by Act 11 of 1983, s. 27, Sch. 2.) (Amended by Act 3 of 1997, s. 10.)*

(2B) Subject to the provisions of the Higher Salaries Commission Act other officers and servants of the council shall be paid such salaries as the council from time to time determines.

(Cap. 2A)

(Inserted by Act 11 of 1983, s. 27, Sch. 2.)

(3) Subject to the terms of any agreement in writing requiring notice to be given by either party of the termination of the appointment, all persons appointed under the provisions of this section shall hold office at the pleasure of the council.

(4) A councilor shall be disqualified from appointment by the council to any paid office of the council other than that of mayor.

Offences by officers

36.----(1) If it comes to the knowledge of an officer or servant employed by council that a contract in which he has pecuniary interest direct or indirect not being a contract to which he himself is a party, has been or is proposed to be entered into by the council, he shall as soon as practicable give notice in writing to the council of the fact that he is interested therein.

(2) For the purposes of this section, an officer or servant shall be treated having indirectly a pecuniary interest in a contract or proposed contract if he would have been so treated under the provisions of section 17 had he been a councilor.

(3) Except with the approval of the council previously obtained, an officer or servant of a town council shall under colour of his office or employment exact, or accept any fee or reward whatsoever other than his lawful remuneration.

(4) If any person fails to comply with the provisions of subsection (1) contravenes the provisions of subsection (3) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200.

PART VI – FINANCE

Municipal fund

7. There shall be for every municipality a fund to be called the municipal fund.

Particulars of fund

38. The municipal fund shall consist of the following moneys:---
- (a) all rates collected by the council under the provisions of this or any other Act;
 - (b) all rents and profits from the property of the council;
 - (c) all fines, penalties and forfeitures, recovered by the council under the provisions of this Act or any other written law or declared to form part of the revenues of or directed to be paid to the council by the provisions of any written law;
 - (d) all moneys received by way of a duly authorized loan;
 - (e) all moneys received by way of subscription or voluntary contribution;
 - (f) all moneys paid to the council by the Government by way of grant or in lieu of rates;
 - (g) all other moneys which may become the property of the council.

Bank account

39.----(1) All moneys belonging to a council shall be paid into such bank as the council may from time to time appoint.

(2) Subject to the provisions of section 45, all moneys paid by a council shall be drawn from the council's bank by cheque signed by the mayor, or the deputy mayor, or one councilor authorized in that behalf by the council.

(3) All cheques signed in accordance with subsection (2) shall be countersigned by the town clerk or in the absence of the town clerk the treasurer or any other officer authorized in that behalf by the Council.

(Amended by Act 26 of 1980, s. 17.) (Amended by Act 3 of 1997, s.11.)

Overdrafts

40.----(1) A council may from time to time raise loans or overdraft from a bank or otherwise for such purposes and in such amounts or on such terms and conditions as shall---

- (a) be approved by the council in the case of a loan or loans not exceeding in the aggregate 5 per cent of the recurrent estimated gross revenue of the council;
- (b) be approved by the Minister in the case of a loan or loans not exceeding in the aggregate 15 per cent of the recurrent estimated gross revenue of the council;
- (c) be approved by the Minister in consultation with the Minister responsible for finance in any other case;

Provided that the Minister may exempt any council from the conditions imposed by this subsection.

(2) Any loans raised under the provisions of this section which are required to be secured and any interest on such loans shall be a charge on the funds of the council.

(3) If, at any time, any principal, money and interest due and payable under any loan raised under the provisions of this section by a council remains unpaid for a period of two months after a demand has been made in writing the person entitled thereto may without prejudice to any other remedy apply to the Supreme Court for the appointment of a receiver on such terms and with such powers as the court may think fit.

(4) Without prejudice to the generality of the provisions of subsection (3), the Supreme Court may confer upon the receiver any such powers of collecting, receiving and recovering the revenues of the council and by making, levying, collecting and recovering rates as are possessed by a council or its officers.

Borrowing powers

41.----(1) A council may from time to time raise loans for such purposes, in such amounts and on such terms and conditions as shall be approved by the Minister responsible for finance.

(2) Such loans shall be secured on the property and revenues of the council.

(3) If at any time any principal, money or interest due and payable under any loan raised under the provisions of this section remains unpaid for a period of two months after demand in writing has been made, the person entitled thereto may without prejudice to any other remedy apply to the Supreme Court for the appointment of a receiver on such terms and with such powers as the court may consider fit.

(4) Without prejudice to the generality of subsection (3), the Supreme Court may confer upon the receiver any such powers of collecting, receiving and recovering rates as are possessed by the council or its officers.

(5) The power to raise loans under the provisions of this section shall be in addition to and not in derogation of any such powers conferred by the other provisions of this Act or by any written law for the time being in force.

Advance from Consolidated Fund

42. The Minister responsible for finance may, subject to the provisions of the Finance Act, authorize payment from the Consolidated Fund of grants or loans of money to a council for the purpose of enabling the council to carry out its duties and responsibilities arising under the provisions of this Act of such amount and upon such conditions as the Minister responsible for finance may determine

(Cap. 69.)

Powers of investment

43. A council may, with the consent of the Minister, invest any part of the municipal fund in any stock, bonds, debentures or other securities and may sell any such stock, debentures or other securities.

Powers as to expending income

44.----(1) The whole of the income of any council shall be expended solely in doing or carrying out those things which the council is empowered or required to do or carry out of such portion of the municipal fund as is not allocated under the provisions of this Act for any special purposes any moneys for the purpose of-----

(a) subsidizing any scheme or system of endowment assurance or other forms

of retirement benefit which may be approved by the council for the benefit of all or any of its employees;

Provided that the moneys so expended shall not, except with the approval of the Minister, exceed, exceed in the case of any employee 5 per cent of his salary or wages;

- (b) granting gratuities in individual cases or in accordance with any scheme or system instituted by the council to nay of its employees who shall not be entitled to contribute to any subsidized scheme or system of endowment assurance or other form of retirement benefit established by any other Act or b the council under the foregoing provisions of this section or for whose case such last mentioned scheme or system in the council's opinion is not suitable or should not be applicable to an employee or to any dependants of any sc employee;
- © contributing, subject to the prior approval of the Minister, to any charitable purpose within the meaning of the Charitable Trusts Act.

(Cap. 67.)

(Amended by 26 of 1980, s. 18.)

(2) The provisions of subsection (1) shall not invalidate or affect any scheme or system of retirement benefits adopted by any council prior to the commencement of this Act.

Imprest account

- 45.----** (1) A council may by resolution establish an imprest account.
- (2) The imprest account shall be held jointly in the names of, and operated on by the town clerk and one other person to be appointed in that behalf by the council.
- (3) The council shall from time to time fix the maximum amount that may be held at any tie in an imprest account.
- (4) Moneys in the imprest account shall be available only for the payment of casual wages and emergency and minor expenditures. (Amended by Act 3 of 1997, s.12.)
- (5) A statement of all payments made from the imprest account shall be submitted to the council at its first ordinary meeting after such payments have been made.

Estimate of expenditure

- 46.----**(1) Every council shall during the month of November in every year, prepare and approve an estimate of the income and expenditure of the council for the next succeeding year whether on account of property, contributions, rates, loans or otherwise.
- (2) A council shall submit a copy of the estimate referred to in subsection (1) to the Minister. (Amended by Act 3 of 1997, s.13.)
- (3) Every council may at any time during the years for which an estimate has been made cause a revised or supplementary estimate to be prepared and, where appropriate, submitted for approval.
- (4) Re-appropriation of funds referred to in an estimate may be made from time to time with the sanction of the council.

PART VIII – ACCOUNTS AND AUDIT

Control of asset and accounts

- 47.----**(1) Every Council shall in the transaction of its business and the carrying

out of its functions do all things necessary or expedient to protect adequately its property and assets and property in its custody, and to control its expenditure so to ensure that all payments out of its funds are properly authorized and correctly made.

(2) Every Council shall keep proper accounts and records which shall be kept in such manner as may be directed by the Minister but so that---

- (a) a general account shall be kept and credited with all moneys not required by this Act or otherwise to be carried to any other account and debited with expenditure in payment of the general debts and liabilities of the Council which are not included in any special appropriation and of the general expenses incident to the administration of this Act and the affairs of the municipality;
- (b) separate accounts shall be kept of all monies raised or levied for or appropriated or allocated to or held for any special purpose.

(Substituted by Act 26 of 1980, s. 19.)

Transfer from general fund to meet deficiencies

48. If the balance in any of the separate accounts referred to in paragraph (b) of section **47** is at any time insufficient to meet the lawful charges thereon, the council may, subject to the approval of the Minister, transfer such sums as and necessary from the general account to meet such charges and may at any time report such advances out of any excess in the receipts over the liabilities of any such account, but no transfer shall be made from any one to any other of such separate accounts.

Provided that the Minister may exempt any municipality from the necessity obtain his approval before a transfer takes place from the general account under the provisions of this section.

Transfer from separate account to general account

49. The council may, with the approval of the Minister, from time to time transfer to the general account any cash surplus remaining to the credit of any separate account which the council is obliged or authorized by law to keep shown the moneys accruing from any public works or trading undertakings executed, maintained or carried on by the council or may transfer the whole or any part of such surplus to a separate account for the maintenance or renewal of such works;

Provided that---

- (a) no moneys shall be so transferred until the provision has been made for all sums with which the separate account is by law chargeable and for the payment out of the separate account of the interest or interest and sinking fund of any loan raised in connection with the works undertaking to which the separate account relates;
- (b) the Minister may exempt any municipality from the necessity to obtain his approval before a transfer under the provisions of this section takes place.

Inspection of accounts

50. Any ratepayer or elector or person holding any security charged upon the property of council may inspect the accounts and minutes of the council and take copies from any part thereof at all reasonable times. *(Amended by Act 3 of 1997, s.13.)*

Audit

51.----(1) The accounts of every council shall be audited by an auditor who shall unless the Minister otherwise directs, be the Auditor-General.

(2) No member of a council may be appointed an auditor for the council of which he is a member.

(3) The appointment of an auditor shall be in respect of the account of one financial year, but his appointment may be renewed from year to year.

Power of auditor to require production of documents

52.----(1) For the purpose of any audit, an auditor may by notice in writing require any person holding or accountable for any books, records, accounts, vouchers, deeds, contracts or other documents which he may require for the purpose of such audit or examination to appear before him at the time and place specified in the notice and to produce any such document as aforesaid for his inspection.

(2) Any such person who fails without reasonable cause to appear and produce any such document when required so to do shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100.

Auditor to report errors and deficiencies

53. If the auditor finds the account or statement submitted for audit to be erroneous or deficient in any particular, he shall---

- a) report thereon, and forward a copy of his report and findings, to the Minister; and
- (b) forward a copy of his report by registered post to the mayor.

Matters required to be mentioned in report

54. The auditor shall in respect of the accounts for the full financial year, satisfy himself--

- (a) whether or not in his opinion---
 - (i) due provision has been made for the repayment of loans;
 - (ii) the value of assets has, so far as the auditor can judge, been in all cases fairly stated;
 - (iii) due diligence and care has been shown in the collection and banking of income;
 - (iv) the expenditure incurred has been duly authorized, vouchered and supervised;
 - (v) any of the moneys or other properties of the council have been misappropriated or improperly or irregularly dealt with; and
- (c) as to any other matters which in his judgment call for special notice or are prescribed.

Auditor may take legal advice

55. The auditor may at the expense of the council obtain and act upon legal opinion on a question arising in the course of an audit.

Destruction of any book, etc.

56. A council may, with the approval of the auditor, destroy used or obsolete receipt books, bank pass books or statements, cheque books, registered, cash books and documents relating to the accounts of the municipality if they have not been in use for more than six years.

Annual Statement

57.----(1) An annual statement showing the financial position as regards the general and special accounts of the municipal fund in a form approved by the Minister shall be prepared by the council on or before 31 May in every year showing the assets and liabilities of the council on 31 December immediately preceding and the income from all sources and expenditure during the immediately preceding year. (Amended by Act 26 of 1980, s. 20.)

(2) The annual statement prepared by the council shall be audited and if found correct shall be certified by the auditor as correct. (*Inserted by Act 26 of 1980, s. 20.*)

(3) On or before 31 August in every year the council shall cause to be published in an English language newspaper published in Fiji and circulating with the municipality—

- (a) a balance sheet and a summarized statement of income and expenditure of the council on 31 December immediately preceding, together with any report by the auditor thereon; and
- (b) notification that any ratepayer or any person holding any security charged upon the property of the council may, at all reasonable time inspect, at the council's office, the full annual statement as certified by the auditor and the council's annual report prepared pursuant to the provisions of section **19** and may take copies from any part of the statement or report.

(*Inserted by Act 26 of 1980, s. 20*)

PART IX—RATING—GENERAL

General rate

58. A council may from time to time make and levy a general rate not exceeding in any one year 10 cents in the dollar on the unimproved value of all rateable land within the municipality assessed in accordance with the provisions of this Act.

(*Amended by Act 26 of 1980, s. 21.*)

Special and local rates

59.----(1) A council may make and levy special rates in all or any part of the municipality for the purpose of undertaking any works or services which may be lawfully undertaken by the council or for the payment of interest and sinking fund of any loan raised by the council for such purposes:

Provided that---

- (a) such special rates so levied shall not in the aggregate exceed 5 cents in the dollar on the unimproved value of any rateable land within the municipality;
- (b) where a special rate is levied in respect of part only of a municipality, shall be known as a local rate and the purpose of such rate shall be for the undertaking of any works or services in or for the benefit of such part only.

(*Amended by Act 14 of 1975, s. 73; 26 of 1980, s. 22.*)

(2) A council may by notice in the Gazette from time to time define any area of the municipality within which a special rate may be levied under the provisions of subsection (1).

(*Amended by Act 14 of 1975, s. 73.*)

(3) Moneys raised on a special rate shall be accounted for separately in the books of council and such moneys shall not be used for any other purpose than that for which the rate is imposed.

Rateable land

60.----(1) All land, including Crown land, within a municipality shall be rateable land for the purposes of this Act;

Provided that the following lands shall not be assessed for general rates:----

- (a) Crown lands not leased or licensed to any person;
 - a. Native lands not leased or licensed to any person;
- (c) lands used exclusively for the purpose of recognized or registered schools of other educational institutions, not run for profits, certified to be such by the Minister responsible for education;
- © lands used for the purpose of hospitals; maintained out of public funds or other medical institutions, nor run for profit, approved buy the Minister responsible for medical services for this purpose;
- (d) lands used for the purpose of mental homes or mental hospitals and orphanages not run for profit;
- (e) lands used exclusively for purposes of public worship;
- (f) cemeteries and crematoria not run for profit;
- (g) prisons;
- (g) lands used exclusively by registered charitable institutions for public charitable purposes;
- (h) lands used for purposes which the Minister may be notification in the Gazette specify.

(Amended by Act 26 of 1980, s. 23.)

*[(2)**** Repealed by Act 26 of 1980, s. 23.]*

(3) Notwithstanding the provisions of subsection (1), any land which has been assessed for general rates for a particular year and which, under such provisions, has become exempt from general rates during the course of that year shall not become so exempt until 1 January then next succeeding, *(Amended by Act 26 of 1980, s. 23.)*

Rates to be assessed on rateable land

61.----(1) Subject to the provisions of section **60**, every rate made and levied by a council under the provisions of this Act shall be assessed at a uniform amount upon all rateable land within the municipality or within that area of a municipality to which the rate applies

(2) The rate levied under the provisions of subsection (1) shall be assessed upon the unimproved value of such land. .

Agricultural land

62.----(1) Where upon the application of the person liable for payment t of the rate a council is satisfied that any piece of agricultural land within a municipality being separately rateable is not fit or ready for subdivision for building purposes and is not likely to be required for such purposes within any reasonable time, the council shall by resolution reduce the rate payable in respect of such land to such amount as is far and reasonable in the circumstances, *(Amended by Act 26 of 1980, s. 24.)*

(2) An applicant aggrieved by any decision of the council under subsection (1) may appeal to the Minister who may confirm, vary or reverse the decision of the council. *(Inserted by Act 26 of 1980, 2. 24)*

PART X ---- RATING---VALUATIONS

Meaning of unimproved value

63. For the purpose of ascertainment of unimproved value under the provisions of this Act "unimproved value" means the capital sum which the land, if it were held for an estate in fee simple unencumbered by any mortgage or charge thereon, might be expected to realize at the time of valuation or revaluation if offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to require and assuming that the improvements, if any, thereon or appertaining thereto had not been made.

(Amended by Act 26 of 1980, s. 25.)

Sexennial valuation

64.----(1) For the purpose of ascertaining and determining the unimproved value of rateable land, every council shall cause a valuation hereinafter called general valuation, of all such land to be made at least once in every six years.

(2) A general valuation shall not be invalid by reason of the fact that any rateable land has been erroneously omitted from a valuation.

(3) The council may at any time cause a valuation to be made of any rateable land where----

(a) such land has been erroneously omitted from the most recent general valuation; or

(b) such land was not rateable at the date of the most recent general valuation; or

© there has been any alteration in the unimproved value of the land since the last general valuation by reason of----

(i) the existence of any street which has since the time of such valuation been declared to be a street by the council; or

(ii) the sealing by the council of an official survey plan or subdivision; or

iii) the sale or letting since the time of such valuation of any land on which work has been done to bring it into a condition suitable for building; or

(iv) a change in the use for which the land is zoned under any planning scheme:

Provided that a council shall cause a valuation to be made under this paragraph on being so requested by the person liable for payment of the rates in respect of the land.

(Amended by Act 26 of 1980, s. 26.)

(3A) Where a valuation under paragraph © of subsection (3) is made on the application of the person responsible for payment of the rates in respect of the land the expenses of such valuation shall be met by the person who applied therefore.

(Inserted by Act 26 of 1980, s. 26.)

(4) The Council may at any time cause a valuation to be made of any rateable land where the unimproved value of the land has for any reason decreased since the most recent general valuation. (Amended by Act 26 of 1980, s. 26.)

(5) Any valuation made between general valuations shall be made on the basis.

Of values subsisting as at the date of the last preceding general valuation so that the new valuation will preserve uniformity with existing rateable value of comparable parcels of land.

Appointment of valuers

65.----(1) For the purposes of valuation, a council shall appoint a valuer approved by the Minister, and, if necessary, an assistant valuer. The assistant valuer shall have all the powers and may exercise the duties of the valuer.

(2) Any valuer who willfully makes or returns a valuation not impartial or not true according to the best of his judgment or not according to the provisions to this Act shall be guilty of an offence and liable on conviction to a fine not exceeding \$200 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) Every valuer shall, for the purpose of making a valuation, have power to enter at all reasonable hours in the day time into and upon all rateable property.

(4) For the purpose of making a valuation of the land in an area proposed to be constituted into a municipality under the provisions of sections 5 or 6 or in any area proposed to be incorporated into an existing municipality the valuer shall have the same power to enter upon land including all buildings and other structures or property thereon as is specified in the subsection (3).

(5) A valuer may put to any person in occupation or charge or being the owner of any rateable property which such valuer is authorized under the provisions of this Act to value, questions upon all such matters as shall be necessary for the purpose of making such valuation with regard to such property, and if after being informed by such valuer of his purpose in putting such questions and of his authority under this Act to put the same, any such person in occupation or charge or any such owner refuses or willfully omits to answer the same to the best of his knowledge and belief, or willfully makes any false answer or statement in reply to any such question, such person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30.

Valuations and assessments of rates to be entered in the rate book

66.----(1) All valuations made under the provisions of this Part shall be entered in a rate book to be kept for the purpose together with such particulars of the rateable land as the council may determine.

(2) Subject to the other provisions of this Act, a valuation when entered in the rate book shall be the value of the land upon which all rates made by the council shall be assessed and shall remain in force until the land is again valued under the provisions of section 64. All rates so assessed shall be entered in the rate book.

(3) The rate book shall be open to the inspection of the public at all reasonable times and the owner or occupier of rateable land and or his agent may take copies of the entries relating to such land without fee. (*Amended by Act 26 of 1980, s. 27.*)

Publication of notice of valuation

67. The council shall cause to be published twice in a newspaper published in Fiji and circulating in the municipality a notice informing all persons interested in the fact that a general valuation has been made and entered in the rate book and shall in such notice declare a date not being less than one month after the last of such publications before which appeals may be brought against the valuation of any rateable land.

Liability for rates

75. – (1) Subject to subsection (1A), rates assessed and recorded in a rate book together with the costs of proceedings, if any, for the recovery of such rates shall be a first charge on the land rated and shall be recoverable by the council from –

- (a) the owner at the time of the making of the rate; or
- (b) a person who, whilst rates are or remain unpaid, becomes the owner of the whole of the land rated or the owner of part of the land rated as to the rates on that part only,

but a person who by virtue of any written law relating to bankruptcy or insolvency or the winding up of companies, has become the owner of rateable land in the capacity of a trustee or liquidator shall not on that account be personally liable to pay, out of his own moneys or otherwise than out of the estate in his hands, rates already due on the land when he became the owner in that capacity or rates which became due on the land while he was owner in that capacity. (*Amended by Act 26 of 1980, s. 31.*)

(1A) Subsection (1) so far as it has effect to create a first charge on the land rated shall not apply to land which is the subject of a registered lease as defined in section 7A and in relation to such land the rates and cost referred to in that subsection shall be recoverable from the registered lessee instead of the owner or other person referred to in the subsection. (*Inserted by Act 26 of 1980, s. 31.*)

(2) If any person without the permission of the council knowingly or willfully removes from or demolishes or destroys a building or a structure on the land which is the subject of a charge under the provisions of this section he shall commit an offence and be liable on conviction to a fine not exceeding \$200.

Payment of rates by mortgagee

76. If a mortgagee of rateable land pays rates levied under the provisions of this Act in respect of such land, the amount so paid by the mortgagee shall become part of and be added to the principal sum due to him under the mortgage and shall be recoverable as such with interest accordingly.

Persons liable to be resorted to in succession

77. An unsatisfied judgment or order of the court for the recovery of rates from a person shall not be a bar to the recovery of such rates from another person liable to pay them under the provisions of this Act.

Rates recoverable by action

78. – (1) A council may recover rates which have been levied under the provisions of this Act and are payable to the council and payment of which are in arrear and also the costs of proceedings, if any, for their recovery from a person liable to pay them, by action at the suit of the council in a court of competent jurisdiction.

(2) Any rates which are overdue shall bear interest at the rate of *7 percent per annum and such interest charged shall be included in the expression "rates" ; the Minister may by order vary the rate of interest.

(3) Rates due by the same person to the council may be included in one writ, summons or other process.

* Varied to 11 per cent by Order published as Legal notice no. 82 of 1982.

- (4) For the purposes of this section rates shall be deemed to be overdue -----
 (a) where payment is to be made otherwise than the installments, on the

- expiration of thirty days from the date of service of the demand notice;
- (b) where payment may be made by installments in terms of a resolution of the council under subsection (2) of section **73**, on the expiration of fourteen days from the due date of each installment. (*Inserted by Act 26 of 1980, s. 32.*)

Non-compliance with procedure not to prevent recovery

79. In proceedings by or on behalf of a council for recover of an amount due in respect of rates, failure by the council to comply with the provisions of this Act in respect of such rate shall not be a defence when it appears that the council had the power to levy and did in fact assent to the levying of the rate.

Power to write off including interest

80. A council may, in case of hardship, with the approval of the Minister write off rates which have been levied and any interest payable thereon in respect of rateable property, payment of which rates or interest is in arrear.

Attornment of leases

81.—(1) In this section –

“lease” includes an agreement whether made orally or in writing for the leasing or sub-leasing of premises and includes a licence or arrangement for the use of premises but does not include a registered lease as defined in section **71A**;

“lessor” and “lessee” mean the respective parties to a lease and their respective successors in title or assigns;

“rent” means the annual consideration in money or money’s worth derived under the lease and passing to the lessor from the lease.

(Amendment by Act 26 of 1980, s. 33.)

(2) If payment of rates levied by a council in respect of any land is in arrear, the council may give notice to the lessee thereof requiring the lessee to pay to the council the rent, if any, accrued due and the rent as it accrues due under the lease until the amount of the arrears of rates has been paid and the council shall serve on the lessor a copy of such notice informing him that the original thereof has been served on the lessee.

(3) On receipt of the notice referred to in subsection (2), the lessee shall pay to the council the rent, if any, accrued due and shall continue to pay to the council rent as it accrues due under the lease to such extent as is necessary to satisfy the amount of the outstanding rates.

(4) If, after receiving the notice, the lessee pays the rent otherwise than to the council while payment of the rates is in arrear, he shall commit an offence and shall be liable on conviction to a fine not exceeding \$50 and may be ordered to pay the amount of any rates so in arrear to the council.

(5) If, after receiving a copy of the notice, the lessor receives the rent from, or paid on behalf of, the lessee while payment of the rates is in arrear and does not within seven days of the receipt thereof pay to the council the amount of rates in arrear, he shall commit an offence and shall be liable on conviction to a fine not exceeding \$50 and may be ordered to pay the amount of any rates so in arrear to the council.

(6) The prosecution of an offence under the provisions of either subsection 94) or subsection (50 shall not affect the power of the council to recover the rates.

Authority for lessee to set off rates

82. —(1) Where a lessee, required to pay rent to the council under the provisions of section **81**, pays the rent to the council accordingly, and as between himself and his lessor, the lessor is bound to pay the rates, the lessee may set off the amount so paid to the council against the rent payable by him to his lessor.

(2) If the amount so paid to the council exceeds the rent due, or if there is no rent due, the lessee may set off the amount so paid against the accruing rent or recover the balance from his lessor in a court of competent jurisdiction.

(3) The receipt of the town clerk or of any person authorized by him in that behalf shall be a discharge of rent to the amount shown in the receipt and shall be evidence of payment of that amount to the council

Contracting out to be prohibited

83. To the extent that an agreement purports to preclude a lessee from setting off, or recovering payments or the balance of payments made to a council under the provisions of section **82**, such agreement shall be of no effect.

Rates longest outstanding to be first paid

84. Where money is paid to a council in respect of rates, the council shall apply such money for or towards the rates due on the rateable property in the order in which they became or become due.

Refusal to give name of person liable

85. If, on the request of the council, or a servant or agent of the council authorized by the council in that behalf-

(a) the occupier of property or the agent of the owner refuses or willfully omits to disclose or willfully mis-states to the council, or its servant or agent making the request, the name of the owner or of the person receiving or authorized to receive the rents of the property or the name of the registered lessee; or

(b) a person receiving or authorized to receive the rents of the property refuses or willfully mis-states the name of the owner of the property,

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50.

(Amended by Act 26 of 1980, s. 34.)

Notice of transfer

86. – (1) Subject to the provisions of this section –

(a) the person liable to pay rates and the transferee in any case where the person so liable transfers his estate or interest in rateable land;

(b) the mortgagee of rateable land in any case where under the provisions of the mortgage he enters into possession of the land;

(c) the trustee, executor or administrator of the estate or interest in rateable land of a deceased person,

shall within one month of such transfer, entry into possession, grant of probate or letters of administration, as the case may require, give notice thereof to the town clerk.

(2) subject to the provisions of the paragraph (b) of subsection(1), it shall be necessary for a mortgagee to give notice of any mortgage nor of the discharge thereof.

Council may lodge caveats

87. Where payment of rates imposed is in arrear, the council may in accordance with the provisions of any written law which authorizes the lodging of caveats, lodge a caveat to preclude dealings in respect of land not being land which is the subject of registered lease as defined in section **71A** and may withdraw caveats so lodged by it, but the express inclusion of this right shall not prejudice or otherwise affect the right of a council under any written law to lodge and withdraw caveats in respect of any other charge upon or interest in land or other property.

(Amended by Act 26 of 1980, s. 35)

PART XII – POWERS AND DUTIES OF COUNCILS

Division 1 – General

General powers and duties of councils

88. –(1) Every council shall do all such things as it lawfully may and as it considers expedient to promote the health, welfare and convenience of the inhabitants of the municipality and to preserve the amenities or credit thereof.

(2) The provisions of this Act relating to the powers and duties of councils are in addition to, and not in derogation of, the provisions of any other written law relating to such powers and duties and in the exercise of their powers and the performance of their duties in relation to any matter for which provision is made by any other law, a council shall act in conformity therewith.

References in other laws to local authorities

89. Where, by the provisions of any written law in force at the commencement of this act, a duty is imposed or a power conferred upon the local authority of a town or township by whatever name such local authority is described, such power or duty shall be deemed to have been imposed or conferred upon a city or town council constituted under the provisions of this Act, as may be appropriate.

Public utility services

90. A council may, with the approval of the Minister, whether alone or in conjunction with the Government or any other statutory public body and whether within or without the boundaries of the municipality -

- (a) promote or establish and maintain public utility services including public transportation;
- (b) construct or maintain any public works which in the opinion of the council may be necessary or beneficial to the municipality;
- © contribute to the cost of the matters referred to in paragraphs (a) and (b).

Division 2 –Land

Acquisition of land by agreement

91.- (1) A council may for the purpose of any of its functions under this or any other law by agreement, acquire, whether by way of purchase, lease, or exchange any land whether situate within or without the boundaries of the municipality.

(2) Subject to the provisions of any written law relating to town planning and the subdivision of lands and to the consent of the Minister, a council may—

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-
- (a) acquire whether by way of purchase, lease, exchange or otherwise, any Land whether situate within or without the boundaries of the municipality and lay out building plots upon or otherwise subdivide such land for the purpose of housing schemes or for the purpose of factory, residential, commercial, industrial, business, workshop or recreational sites or build houses for its employees or factories, houses, commercial, industrial and business premises and workshops for letting to persons approved by the council; and
 - (b) sell, let or otherwise dispose of any plots or subdivisions of land and any buildings thereon.

Power to let land

92. Subject to the provisions of subsection 920 of section 91, a council may let any land which it may possess -

- (a) with the consent of the Minister, for any term;

- (b) without the consent of the Minister, for a term of not exceeding ten years.

Power to sell or exchange land

93. Subject to the provisions of subsection (2) of section **91**, a council may, with the consent of the Minister -

- (a) sell any land which it may possess and which is not required for the Purpose for which it was acquired or is being used; or
(b) exchange any land which it may possess for other land, either with or without paying or receiving any money for equality of exchange.

(Amended by Act 14 of 1975, s. 73.)

Compulsory acquisition of land

94. If a council is unable to purchase by agreement and on reasonable terms suitable land for any purpose for which it is authorized to acquire land, the council may represent the case to the Minister and if the minister is satisfied, after such inquiry, if any, as he may deem expedient, that suitable land for the said purpose cannot be purchased on reasonable terms by agreement and that the circumstances are such as to justify the compulsory acquisition of the land for the said purpose and that the said purpose is a public purpose within the meaning of the crown Acquisition of Lands Act, he may authorize the council as an acquiring authority to apply to the Supreme court under the provisions of that act for an order authorizing compulsory acquisition of land in which case the provisions of such Act shall apply. *(Cap. 135)*

Division 3 – Housing schemes to provide Dwellings for Persons of Small Means

Power to provide dwelling-houses

95. – (1) Subject to the provisions of sections **96** to **105**, inclusive, and in accordance with a housing scheme, a council may, within or outside its area, and whether on its own or in collaboration with any statutory or other authority or organization, provide dwelling-houses for eligible persons and such other buildings as may be necessary for the purpose of such a housing scheme.

(2) For the purpose of housing schemes, the council may borrow any sum or sums, not exceeding in the aggregate such amount as the Minister responsible for finance may determine, over and above the amount which the council is otherwise authorized to borrow under the provisions of this or any other Act.

How land and buildings may be dealt with

96. A council may, in accordance with any housing scheme-

- (a) demolish, repair or reconstruct any buildings or erections on any land;
(b) purchase or erect buildings or dwelling-houses thereon;
(c) construct and open any new street thereon;
(d) alter the levels of the land;
(e) alter existing drains and sewers and construct new drains and sewers thereon;
(f) lay out, plant and beautify any part of land or otherwise make the same suitable for gardens or recreational purposes;
(g) maintain in good repair buildings, dwelling-houses, or erections on the land; and
(h) generally alter, re-model and improve land or any part thereof and any dwelling-houses, buildings or other erections on the land.

Power to sell or let dwelling-houses

97.—(1) Notwithstanding the provisions of sections **92** and **93**, a council may sell or let to any eligible person a dwelling-house together with the land on which such dwelling-house is constructed in any housing scheme.

(2) The council may let such dwelling-house for such period and subject to such covenants and conditions and upon such rent and upon such other terms as the council shall think fit.

(3) No tenant shall be permitted to sub-let any such dwelling-house without the written consent of the council.

Cost of dwelling-houses

98. The total capital cost to the council of any dwelling-house which, pursuant to the housing scheme is sold or let by the council to any eligible person, together with the cost of the land on which the dwelling-house is erected, shall not exceed the maximum amount for the time being determined in that behalf by the Minister and applicable to such house and the Minister may determine different maximum amounts in respect of different classes of house, according to size, materials used in the construction and the method of construction.

Sale of dwelling-houses

99. The following provisions shall apply to the sale, pursuant to a housing scheme, of any dwelling-house together with the land on which it is constructed: -

- (a) the sale may be upon such terms and subject to such covenants and Conditions and the payment of such cash deposit, if any, as shall be Prescribed or a fixed by the council;
- (b) the price shall not exceed the capital cost to the municipality of the dwelling-house and land;
- (c) the purchaser shall be permitted to occupy the dwelling-house and the land as a weekly tenant and shall pay therefore a rental at such rate per cent per annum on the capital cost thereof, or where the council has required the payment of a deposit on the difference between that capital cost and the amount of the deposit paid as may be determined by the council and approved by the Minister and the purchaser shall also pay all rates and taxes and the cost of insurance, repairs and maintenance;

-
- (d) the council shall appropriate a sum from the rental to cover interest at such rate per cent per annum as may be determined by the council and approved by the Minister on the amount of the capital cost from time to time outstanding and shall allot the remainder of the rental towards the payment of the capital cost;
 - (e) at any time after the purchaser-
 - (i) has paid in reduction of the purchase price a sum amounting to not less than 20 per cent of the purchase money;
 - (ii) has paid to the council the amount due from him up to that time by way of instalments; and
 - (iii) has complied to the satisfaction of the council with the covenants and conditions contained in the contract of the sale, he may, if he so desires upon giving to the council notice in writing of his intention so to do, execute in favor of the council a mortgage in such a form as the council shall require for the balance of the purchase money and thereupon he shall be entitled to obtain from the council a transfer of the land, but except as in this paragraph provided, he shall not be entitled to obtain from the council a transfer of the land unless he has paid the full amount of the purchase money and has complied, to the satisfaction of the council, with the covenants and conditions contained in the contract for sale;
 - (f) the cost and expenses of any transfer of mortgage executed in pursuance of The provisions of this section shall be borne by the purchaser;
 - (g) so long as any land and dwelling-house is subject to a contract of sale, Mortgage or other security, the council may at any time make additions and improvements to such dwelling-house or may repair, renovate, alter or

enlarge the same and the amount expended thereon with interest shall together with the unpaid balance of the purchase money of the dwelling-house be and, until paid, remain a first charge thereon and, in order to provide for the repayment of such expenditure and interest, the weekly rental may, without prejudice to any remedy or proceeding for the recovery or enforcement of the amount so expended and interest thereon, be increased by such amount spread over the remainder of the period in respect of which the rental shall continue as determined by the council:

Provided that the unpaid balance, together with the amount expended pursuant to this paragraph shall not exceed the maximum amount for the time being prescribed under the provisions of section 98 and applicable to such house.

Action in cases of hardship

100. In cases of hardship, the council may extend for such period and on such terms and conditions as it thinks fit, the time for making payment required by the provisions of section 97 or 99.

Power to compound

101. The council may compound and agree with any person who has entered into any contract in pursuance of or under the authority of section 97 or 99 or against whom any action or suit is brought for any penalty contained in the contract

Or in any bond or other security for the purposes of the contract or for or on account of any breach or non-performance of the contract, bond or security for a sum of money or other consideration as the council shall think proper.

Conditions operative so long as money owing

102. – (1) As between the council and the purchaser with respect to the land and dwelling-house forming the subject of a contract of sale, mortgage or other security, the following conditions shall be imposed so long as any money due to the unpaid: -

- (a) the land and dwelling-house shall not be sub-let or mortgaged by the Purchaser without the prior consent in writing of the council; and
- (b) every lease, sub-lease, mortgage or agreement entered into or made in contravention of the provisions of this section shall be void and of no effect.

(2) If the purchaser lets, sub-lets or mortgages the land and dwelling-house or any part thereof in contravention of the provisions of this section, the council may cancel the contract of sale and, in its discretion, forfeit the instalments previously paid by the purchaser.

Sale where purchaser insolvent

103. When the purchaser's title to any land and dwelling-house over which the council holds a mortgage in pursuance of section 99 is divested from him under any written law relating to bankruptcy or insolvency, the council may cause his estate and interest in the land and dwelling-house to be sold at such time and place and in such manner and on such terms and conditions as it shall think fit.

Restrictions of transfer

104.- (1) So long as any land and dwelling-house is subject to a contract of sale, mortgage or other interest in accordance with the provisions of section **99**, a transfer of such land or dwelling-house or of any estate or interest therein shall not have any force or effect unless it –

- (a) arises through the operation of any written law relating to bankruptcy or Insolvency;
- (b) is made to a devisee by a person acting in the capacity of executor or Administrator of the estate of the purchaser; or
- © is made with the consent in writing of the council.

(2) In this section “transfer” includes assignment and surrender.

General power as to housing schemes

105. For the purposes of any housing scheme, a council-

- (a) may from time to time advance any moneys required out of the municipal fund;
- (b) shall once in every year prepare a separate balance sheet and statement of accounts setting out full particulars of the operation of the scheme.

Power to sell or let buildings other than dwelling-houses

106. –(1) The council may sell or let to any person any building, other than a dwelling-house, on any land included in any housing scheme for such period and subject to such exceptions, reservations, covenants and conditions and at such rent and on such terms as the council shall think fit.

(2) No tenant of any building referred to in subsection (1) may sub-let any such building without the written consent of the council.

(3) On the sale of any building referred to in subsection (1), the council may take such securities for the payment of any balance of purchase money and interest thereon or allow such period for the payment of the sum as it shall think fit.

Division 4 –Streets

Streets vested in a council

107. All streets declared by a council to be streets within the boundaries of a municipality and the soil thereof and all materials of which they are composed shall, by force of this act, vest in fee simple in the council or such municipality.

Council to maintain streets

108. Except as provided by section **110**, every council shall be responsible for care, maintenance, repair and control of streets within the municipality.

Powers of council in relation to streets

109. – (1) A council may, subject to the provisions of any other law for the time being in force, after such public notice as may be prescribed –

- (a) make and declare new streets;
- (b) alter, widen, or divert any street;
- © stop up a street and declare it no longer to be a street.

- (2) A council may, if necessary or expedient for the purpose of the exercise of its functions under this Act temporarily stop up or divert the traffic upon any street.
- (3) A council may name or alter the name of any street and may number the buildings therein.
- (4) Where a street is declared by a council not to be or no longer to be a street-
- (a) the public shall cease to have right of way over such street;
 - (b) the declaration shall not affect the title of the council in the land comprising the street and such land may be disposed of under the powers conferred on the council by the provisions of section **93**.

Unformed streets

110. Where any land has been or is at any time dedicated by the owner as a road or street by an instrument in writing deposited with the Registrar of Titles, the following provisions shall have effect: -

- (a) where the road or street (including any footways, drains, or other works required by the council) is laid out, made up and formed to the satisfaction of the council, the council shall declare such road or street to be a street;
- (b) the council may lay out, form and make up the road or street (including any footways, drains or other works required by the council) to their own satisfaction or may, where work has been done to the

road or street, do any additional work required to lay out, form and make up the street to their satisfaction as aforesaid and thereupon the council shall declare such road or street to be a street;

- © the provisions of section **108** shall not apply to such road or street until it has been declared by the council to be a street in accordance with the foregoing provisions;
- (d) if the road or street is not required as such, the council may with the approval of the Minister, declare such street not to be a street for the purpose of this Act and the provisions of subsection (4) of section **109** shall apply thereto.

By-laws as to standard of streets

111. A council may, with the approval of the Minister, make by-laws prescribing the minimum standards to which roads or streets are to be laid out, made up and formed before such council shall declare any such road or street to be a street:

Provided that any road or street declared to be a public road under the provisions of any Act relating to roads and which is a standard not less than that prescribed in such by-laws shall be taken over by the council and shall be maintained to the standard required under the provisions of this Act.

Special provision as to dedication

112. – (1) Where upon any plan deposited with the Registrar of Titles prior to the 25 July 1933 any land is shown as a street, road or road reserve and a dedication in writing of such land as a road or street has not been deposited with the Registrar of Titles and such land is not for the time being under the management and control of the council, the council may request the Minister to declare that such land has been dedicated as a road or street.

(2) The Minister may declare such land or any part thereof in respect of which he is satisfied, as hereinafter provided, to have been dedicated, as a road or street.

(3) Before making a declaration under subsection (2), the Minister shall be satisfied after such inquiry as he deems fit that private rights of ownership or occupation were not at that time being exercised over the land or part thereof to which the declaration relates.

(4) The provisions of section **110** shall apply to land which is the subject of a declaration under this section.

(5) Where a declaration is made under this section the Minister shall send a copy of the notice to the Registrar of Titles and the Registrar of Titles shall enter a memorial of the declaration in the register and on the duplicate certificate of title or grant.

Power of Minister to declare streets on Crown land to be vested in the council

113. The Minister may, with the consent of the council concerned, by notification in the Gazette, declare that any piece of Crown land described in such notification and being within a municipality vests as a street in the council and from and after the date of such notification such land shall vest in fee simple in the council.

Precautions to be taken against danger when obstructing a street

114. Any person who, in the course of any work obstructs a street without taking adequate precautions to prevent danger being caused thereby to persons

Lawfully using the street shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100 without prejudice to the right of any person to take proceedings for damages or compensation in respect of any injury caused thereby.

Penalties for injuries to streets and obstructions

115. – (1) Every person who without proper authority –

- (a) encroaches on a street by making or erecting any building, fence, ditch or other obstacle or work of any kind upon, over or under the street or planting any tree or shrub thereon;
- (b) places or leaves on a street any timber, earth, stones or other thing;
- (c) digs up, removes, or alters in any way the soil or surface or scraping of a street;
- (d) allows any water, tailings, or sludge or any filthy or noisome matter to flow from any building or land in his occupation onto a street;
- (e) causes or permits any timber or other heavy material not being wholly raised above the ground on wheels to be dragged on to a street;
- (f) allows any retaining-wall, foundation, well, or fence, or slope of earth, or any building, erection, material or thing to give way or fail so as to injure or obstruct any street; or
- (g) does or causes or permits to be done any act whatsoever by which any injury is done to any street or any work or thing in, on or under a street,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20 for every day upon which such offence is committed or suffered or continued:

Provided that no penalty shall be imposed unless the information or complaint is laid by authority of the council or some officer thereof duly authorized in writing in that behalf by the town clerk.

(2) The council may, by order in the prescribed form directed to and served upon any person causing any encroachment or obstruction in contravention of the provisions of subsection (1), require that person to remove such encroachment or obstruction:

Provided that where such person is not known, the council may serve such notice by affixing such order to the encroachment or obstruction or on any part of the land adjacent thereto.

(3) If any person fails to comply with any order issued under the provisions of subsection (2), the council may cause the encroachment or obstruction to be removed and may recover from such person the costs and expenses incurred in such removal and all costs and expenses incurred in repairing or making good any injury done to any street by reason of such encroachment or obstruction.

Council may recover expenses for repair to streets damaged by excessive weight

116. Where damage is caused to a street as a result of an unusual or excessive load being dragged or conveyed thereon and extraordinary expenses are incurred by the council in repairing the damage so caused, the council may recover such expenses as a debt from any person responsible therefore.

Powers of council in relation to land abutting upon streets

117. It shall be lawful for a council by notice writing to require the owner or occupier of any land abutting upon a street-

-
- (a) re-cover, enclose, or fill any hole, well, excavation or other place which in the opinion of the council is dangerous to persons using the streets;
 - (b) to remove, lower, or trim to the satisfaction of the council any tree or hedge overhanging such street in cases where, in the opinion of the council, such removing, lowering, or trimming is necessary in order to prevent injury to the street or obstruction to the traffic thereon or to any channel, ditch, or drain appertaining thereto;
 - (c) to cut down or grub up as the council directs and remove all obstructions to traffic or the spreading of roots upon or under such street up to the middle line thereof along the whole frontage of the land occupied or owned by him;
 - (d) to remove any matter or thing fronting a street where such matter or thing is unsightly or constitutes a disfigurement of the locality;

Appeal from order of council

118.----(1) Within ten days after service of any order under the provisions of section 117, the occupier or owner may by summons require the council to appear before a magistrate to show cause why the order should not be set aside.

(2) On the hearing of the summons, the magistrate shall determine where the order should or should not be set aside and in the former case the order shall be void.

(3) In the case of an order which is not set aside as aforesaid, if the owner or occupier fails to do any such act in compliance therewith within two months from the service thereof or within two months after the hearing of the summons, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding for every day thereafter during which failure continues, and the council may enter on the land and do such act and recover the cost from him.

(4) The provisions of the law relating to the trial of a civil action in a magistrate's court shall apply in so far as they may be applicable to the hearing of a summons under the provisions of this section and the magistrate shall have and may exercise the jurisdiction and powers conferred upon him by such law.

Division 5---Drainage

Public drainage

119.----(1) The council or any person authorized by it may maintain, clear or cleanse any public drain, surface drain, ditch, creek, watercourse, culvert or channel within the municipality.

(2) The council or any person authorized by it may dig, construct or lay a drain, sewer, culvert, ditch or waterway required for the better sanitation of municipality.

(3) For the purposes of this section, the council or any person authorized by may, subject to the provisions of section 8 of the Constitution enter any private lands and dig, lay or construct any drain, sewer, culvert, ditch or waterway that may be required for the better sanitation of the municipality.

(4) The council or any person authorized by it shall pay reasonable compensation for any damage to fences, crops, trees or other property caused by work done under the provisions of this section and shall take all reasonable precautions to minimize the extent of such damage.

(5) Nothing in this section shall authorize a council to do any construction or other work on or over or under a public road or sufficiently near to a public road to ----- damage to such road without the written approval of the Permanent Secretary for Works or any person authorized by him.

Public drains

120.----(1) No drain shall be deemed to be a public drain until it has been declared by the council to be a public drain and thereupon any such drain shall vest the council for an estate in fee simple.

(2) Before a drain is declared to be a public drain, such drain shall be properly instructed to the satisfaction of the council.

(3) It shall be lawful for a council to construct or reconstruct such drains as it may deem necessary for the efficient drainage of the municipality and to declare such drains to be public drains.

(4) Each council shall be responsible for the maintenance, repair and control of public drains within its municipality.

(5) Nothing in this section shall affect the provisions of the Sewerage Act.

(Cap. 128.)

Private drainage

121.----(1) The council may require the owner or occupier of any building, premises or plot to lay, build, dig or construct and maintain at his own expense all drains necessary for carrying off storm and slop water and waste from his own land and properly to connect them with public drains and to keep the building, premises or plot drain4d. If the owner or occupier fails to comply with a requirement made under this section within such time s the council may prescribe, the council my undertake the work and the cost shall be a debt to the council and may be sued for in a court of competent ju4isdiction.

PART XIII----BY-LAWS AND REGULATIONS

Council's powers of making by-laws

122.----(1) A council may make by-laws prescribing forms, fees, mattes and things which are contemplated by this Act or are required or permitted by this Act to be prescrib3d, or which appear to the council to be necessary or convenient for the peace, good order and government of the municipality and for the purpose of effectually carrying out the provisions of this Act, or for better effecting the cooperation, objects and purposes thereof.

(2) All by-laws made by a municipality under the provisions of this Act, or under the provisions of any other written law by virtue of which the council is authorized to act, shall be of no effect until such by-laws have been approved by the Minister.

(3) Any person who contravenes or fails to comply with the provisions of any by-law made by a municipality under the provisions of this Act, or under the provisions of any other written law by virtue of which the council is authorized to act, shall be guilty of an offence and, if no penalty is otherwise provided therefore, shall be liable on conviction to a fine not exceeding \$50 and to a further fine of \$10 for every day during which such contravention or failure to comply continues.

(Inserted by Act 4 of 1976, s.13)

Regulations

123.----(1) Notwithstanding the provisions of section 122 the Minister make regulations----

- (a) providing for the maximum amount of financial loss allowance which may be paid to a member of a council in respect of loss of earning necessarily suffered or incurred for the purpose of enabling him perform any approved duty as a member of the council;
 - (b) prescribing the maximum amount which may be paid to a member or expenditure on traveling or subsistence is necessarily incurred to him for the purpose of enabling him to perform any approved duty as a member of the council;
 - (c) prescribing any thing which may be prescribed under any of provisions of this Act;;
 - (d) generally for the better carrying out of any of the provisions of this Act.
- (2) In paragraphs (a) and (b) of subsection (1), "approved duty" means:-
- (a) attendance at a meeting of the council or any committee thereof;
 - (b) attendance at a meeting of any joint committee constituted under section 30;
 - © the doing of any other thing which the Minister has previously approved in writing, either generally or specially, as being in the interest of municipality as a whole.

(Substituted by Act 26 of 1980, s. 36)

Minister's powers

124. The Minister may, by order served upon a council, require such council to make such by-laws as are specified in the order and to amend or revoke any set by-laws.

PART XI ----SPECIAL PROVISIONS FOR FIJIAN VILLAGES

Incorporation of Fijian villages

125. A council may, subject to the approval of the Fijian Affairs Board and the Minister, make by-laws concerning the manner in which Fijian villages may be incorporated in the municipality for the method by which rates may be levied such Fijian villages and for the minimum standard which is required to be attained in the construction of building therein.

PART XV----MISCELLANEOUS

126.----(1) The council of a newly constituted municipality may, with approval of the Minister and subject to such conditions as the Minister may impose exercise the powers and carry out the duties and obligations granted to imposed upon a council by the provisions of this Act having regard to the respect intervals of time where prescribed by or under this Act for the doing of a respective things required.

(2) For the purposes of this section the council of a newly constitution municipality may prepare an estimate in respect of so much of the then current

Financial year as remains unexpired from the date of the constitution of the municipality and may levy rates the maximum of which hears to the maximum of the rate, which the council could levy under the provisions of section 58 had it been constituted for the necessary period, the rates which the portion of the current financial year unexpired at the date of the constitution of the municipality bears to a full year.

Certificate as to amount due to council

127.----(1) Any person may apply for a certificate under this section s to the amount (if any) due or payable to the council for rates or otherwise in respect of any land.

(2) Application for the certificate shall be made in writing, and shall state the name and address of the applicant, and the particulars of the land in respect of which the information is required.

(3) The council shall, upon payment of such fee as may be prescribed by the council, by resolution, for a certificate having reference to a parcel f land separately assessed, as soon as may be, give or post to the applicant a certificate in writing assigned by the town clerk. Such certificate shall state----

- (a) what rates, charges, or sums of money if any, are due or payable to the council in respect of the land with the particulars thereof and when the same became due or payable, or that no such rates, charges or sums are then due or payable, as the case may be;
- (b) the amount of the cost of any work which may be recovered by the council under this Act from the own4r or occupier of the land which has been carried out by the council, or that no such work has been carried out, s the case may be.

(4) The production of the certificate shall for all purposes be deemed conclusive proof in favour of a *bona fide* purchaser for value that at the date thereof no rates, charges or sums other than those stated in the certificate were due or payable to the council in respect of the land and that no work the cost or part of the cost of which may be recovered by the council under this Act from the owner or occupier of the land other than that stated in the certificate has been carried out by the council.

(5) For the purpose of this section, rates, charges or sums of money shall be deemed to be due or payable, notwithstanding that the requisite period after service of any notice may not have expired.

[128.*****(*Repealed by Act 26 of 1980, s. 37.*)]

Power to prohibit work

129. If in the opinion of the Minister, the execution of any order or resolution by a council or the doing of anything which is about to be done by or on behalf of a council is likely to cause

serious injury or annoyance to the public, the Minister may, having notified the council and given consideration to any representations made by it, by order published in the gazette, suspend the execution or prohibit the doing thereof and the council shall comply with such order.

Appointment of inspector

130. The Minister may appoint any fit and proper person to investigate and report upon the manner in which a council is exercising all or any of its functions

under this Act and for the purposes of such investigation the person appointed shall have power---

- (a) to enter on and inspect any real property occupied or owned by a council or any institution under its control or management or any work in progress under its direction;
- (b) to call for any return, statement, account or report which he may think fit to require;
- © to call for and inspect any extract from the proceedings of any council or from the proceedings of any committee thereof and any books or documents in the possession of or under the control of a council.

(Substituted by Act 26 of 1980, s. 38)

Appointment of committee of inquiry

131.---(1) If, after consideration of a report submitted to him under section **130**, the Minister is satisfied that there is reason to believe that a council is in default on the grounds that the revenues of the council are not being used in the best interests of the municipality as a whole or that the administration of the council is inefficient, wasteful or corrupt or that the council has in any other way failed to act in conformity with the provisions of this Act, he may appoint a committee of inquiry to investigate the affairs of the council.

(2) A committee of inquiry shall consist of not less than two but not more than five members one of whom shall be nominated by the Minister as chairman.

(3) For the purpose of carrying out its functions under this section, the committee of inquiry shall have the same powers and authority to summon witnesses and to admit and receive evidence as are conferred upon the commissioners of a Commission of Inquiry by section 8 of the Commission of Inquiry Act and the provisions of sections 14 and 17 of that Act shall apply ----- in relation to the powers and authority vested in the committee of inquiry under this subsection.

(Cap 47)

(4) A council shall be entitled to be heard at any inquiry held under the provisions of this section and may be represented by any inquiry held under the provisions of this section and may be represented by any member or officer of the council authorized by the council for that purpose or buy a barrister and solicitor.

(5) At the conclusion of the inquiry the committee of inquiry shall submit written report of its findings to the Minister.

(Submitted by Act 26 of 1980, s. 38.)

Powers in relation to council in default

131A.---(1) If after consideration of the findings of a committee of inquiry, the Minister is satisfied that a council is in default in terms of subsection (1) of section **131**, he may---

- (a) issue directions prescribing the action to be taken by the council specifically to

remedy any default or generally to ensure the proper discharge by the council of its functions under this act;

- (b) reduce the amount of any grant payable to the council for the next succeeding financial year by such sum as he shall determine; or
- © dissolve the council and by order appoint two or more persons to the administration of the municipality for such period as the Minister may consider necessary.

(2) The persons appointed as administrators under paragraph © of subsection (1) shall be deemed to be the duly constituted council of the municipality and shall, subject to any general or special directions issued by the Minister, have performed and discharge all the rights, privileges, powers, duties and functions vested

Confirmed by the council at the immediately ensuing meeting thereof and shall be forwarded to the Minister within seven days after the date upon which they are confirmed by the council
(Amended by Act 26 of 1980, s. 40.)

Transitional

139. Any reference in any written law at force immediately before the commencement of this Act to any "township", "township board", "board" or "township clerk" shall be read and construed as if it were a reference to a "town", "town council", "council" or "town clerk", respectively.

Repeal and Saving

140.----(1) The Towns Ordinance and the Townships Ordinance are thereby repealed: Provided that all by-laws, regulations, orders, notices, appointments and licences made or issued under the provisions of either of the two repealed Ordinances shall be deemed to have been made under the corresponding provisions of this Act and shall remain of full force and effect until such time as they are revoked or amended under the provisions of this Act.

- (2) Any regulations or by-laws made under the provisions of either of the two repealed Ordinances in respect of which there are no corresponding provisions in this Act, shall remain of full force and effect as though they had been made under the authority of this Act until such time as they have been revoked or amended under the provisions of this section or of any other Act and may be amended or revoked under the provisions of this subsection.

Amendment, etc., of subsidiary legislation made under repealed Ordinances

141. Notwithstanding anything contained in any subsidiary legislation made under the Ordinances repealed by section 140 and remaining in force pursuant to the provisions of that section, no such subsidiary legislation shall be amended in any way, or revoked, nor shall any resolution be passed or any proceedings taken thereunder or in pursuance thereof for the purpose of imposing, altering or rescinding any fee, charge, or pecuniary obligation unless such amendment or revocation or the intent of such resolution or proceeding is effected by means of by-laws made under and in accordance with section **122**.

(Inserted by Act 28 of 1980, s. 41.)