

MUNICIPAL CORPORATIONS.

2^d and 3^d GEO. VI., No. XLIX.

No. 49 of 1938.

AN ACT to amend the Municipal Corporations Act, 1906, and for other purposes relative thereto.

[Assented to 31st January, 1939.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Municipal Corporations Act Amendment Act*, 1938, and shall be read as one with the Municipal Corporations Act, 1906 (No. 32 of 1906), hereinafter referred to as the principal Act. Short title.

2. This Act shall come into operation on a day to be fixed by Proclamation. Commence-
ment.

Amendment
of s. 6.

3. Section six of the principal Act is amended as follows:—

(a) by inserting therein after the definition of “Occupier” a definition of “Officer” as follows:—

“Officer” means any clerk, treasurer, engineer, surveyor, assessor, collector, pound-keeper, inspector, ranger, constable, or other person appointed to an office by a council;

(b) by deleting the definition of owner and inserting in lieu thereof a new definition as follows:—

“Owner” as applied to land means:—

(1) any person who is in possession as—

(a) the holder of a legal or equitable estate of freehold in possession therein (including any estate or interest under any contract or arrangement with the Crown or any other person by virtue whereof the land is held or occupied with a right to acquire the fee simple by purchase or otherwise); or

(b) a Crown lessee or a lessee or tenant under a lease or tenancy agreement of land which in the hands of the lessor is non-rateable land within the meaning of this Act, but which in the hands of such lessee or tenant and by reason of such lease or tenancy is declared by this Act or any other Act to be rateable land for the purposes of this Act; or

(c) a mortgagee of the land; or

(d) a trustee, attorney, or authorised agent of any such holder, lessee, tenant or mortgagee:

Provided that if there is no such person in possession the term means the person who is entitled to possession in any of the aforesaid capacities, except that of mortgagee, and that, for the purposes of this definition, receipt of the rents and profits is equivalent to possession;

(2) any person who, under a license or concession relating to any specific Crown land, has the right of taking any profit of the land:

Provided that, if any person is lawfully entitled to occupy any land which is vested

cf. Road
Districts Act,
1919-1933,
s. 5.

in the Crown, and which has no other owner as above defined, or is in the actual occupation (with or without title) of the surface of any portion of a mining tenement within the meaning of the Mining Act, 1904-1933, or has, without title, any tent, camp, or other habitation on any land belonging to another person, or is in the unauthorised occupation of any Crown land, he shall be deemed for the purposes of this Act to be the owner of the land occupied or in which the habitation stands.

4. Section twelve of the principal Act is amended by adding thereto a new paragraph as follows:—

Amendment
of s. 12.

(14) describe the boundaries of any municipal district as existing for the time being.

To describe
existing
boundaries.

5. Section twenty-five of the principal Act is amended by adding to subsection (1) a new paragraph as follows:—

Amendment
of s. 25.

(k) to describe the boundaries of any municipal district as existing for the time being, with the common seal of the municipality.

6. Section fifty-five of the principal Act is amended by inserting at the commencement of subsection (1) the words "Subject to section sixty-two A of this Act."

Amendment
of s. 55.

7. Section sixty of the principal Act is amended as follows:—

Amendment
of s. 60.

(a) by deleting subsection (7);

(b) by deleting from subsection (9) the words "subsections six and seven" in line two of the subsection and inserting in lieu thereof the words "subsection six."

8. Section sixty-two of the principal Act is amended by inserting in subsection (2) after the word "mayor" in line one of the said subsection the words "or an officer authorised by the mayor."

Amendment
of s. 62.

New section.

9. A section is inserted in the principal Act after section sixty-two as follows:—

Revision
Court need
not be held
in certain cir-
cumstances.

cf. No. 38 of
1919, s. 42.

62A. If no application or objection under section fifty-three of this Act is received within the prescribed time, it shall not be necessary to hold a revision court, and the mayor, or an officer authorised by the mayor, and two members of the council may forthwith after the expiration of the time prescribed for making applications or objections sign and certify the electoral list as prepared by the town clerk in accordance with the provisions of section fifty-two of this Act, and such list shall thereupon be deemed to have been duly certified within the meaning of and for the purposes of section sixty-two of this Act.

Amendment
of s. 66;
repeal and
new section.

10. Section sixty-six of the principal Act is repealed and a new section is inserted in lieu thereof as follows:—

Clerk to
supply copy
of electoral
roll to Chief
Electoral
Officer.

66. In each year, as soon as reasonably may be after the delivery to the mayor of the electoral roll for that year as provided for in section sixty-three of this Act, the town clerk of every municipality shall deliver a duplicate copy of the electoral roll of such municipality to the Chief Electoral Officer of the State.

Amendment
of s. 76.

11. Section seventy-six of the principal Act is amended by deleting the word "Wednesday" in line two and inserting in lieu thereof the word "Saturday."

Amendment
of s. 91.

12. Section ninety-one of the principal Act is amended by deleting the word "seventh" in line one and inserting in lieu thereof the word "fourteenth."

Amendment
of s. 96.

13. Section ninety-six of the principal Act is amended by deleting the words "shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face, and" in the fourth, fifth, and sixth lines.

Amendment
of s. 102.

14. Section one hundred and two of the principal Act is amended by deleting from subsection (1) the word "nine" in line two of the subsection and also the word "seven" in line three of the subsection and inserting in lieu thereof respectively the word "eight."

15. Section one hundred and five of the principal Act is repealed and a new section is inserted in lieu thereof as follows:—

Amendment
of s. 105;
repeal and
new section.

105. At every election voting shall be by means of a preferential ballot and the following provisions shall apply:—

Preferential
voting.
cf. No. 42 of
1919, s. 8.

- (a) Every elector not being an elector voting in absence shall indicate his vote on the ballot paper by placing the numeral “1” opposite the name of the candidate for whom he votes as his first preference, and he shall give contingent votes for all the remaining candidates by placing the numerals “2,” “3” and so on opposite their names (as the case requires), so as to indicate by such numerical sequence the order of his preference.
- (b) When an elector votes in absence under the provisions of section one hundred and nine of this Act, the elector shall first write on the ballot paper the name of the candidate for whom he votes as a first preference, and he shall mark the numeral “1” against such name, and he shall then write on the ballot paper the names of all the other candidates and mark the numerals “2,” “3” and so on (as the case requires) against each such name respectively in the order of his preference.

Provided that—

(i) A vote taken in absence shall not be invalid by reason only of the name appearing thereon of a candidate who, after nomination day and before polling day, has withdrawn his nomination or has died, but effect shall be given to the preference shown on the ballot paper according to the arithmetical sequence of the marking after the exclusion of the number set against the name of the candidate who has withdrawn his nomination or has died; and

(ii) An elector voting in absence shall not be required to write on the ballot

paper any name other than the surname of every candidate, unless there are two or more candidates having the same surname; in which case he shall write such Christian name, initial, occupation, or residence opposite the surnames of such candidates respectively as shall be necessary to indicate the order in which his votes for such candidates are intended to be cast; and

(iii) A vote by an elector voting in absence shall not be invalid by reason of any mistake in spelling or other omission (not being a non-compliance with paragraph (b)) on the elector's part, when his intention is clear.

- (c) An elector shall be deemed to have duly complied with the provisions of paragraph (a) or (b) hereof if he places the numeral "1" opposite the name of one candidate and omits to place the numeral "2" against the name of the other candidate when only two candidates are nominated, or if he places numerals as provided for in the said paragraphs against the names of all of the candidates nominated except one when more than two candidates are nominated. In any case mentioned in this paragraph, the candidate against whose name no numeral appears shall be deemed to rank last in the elector's order of preference.

Amendment
of s. 108.

16. Section one hundred and eight of the principal Act is amended by deleting from subsection (2) thereof all the words after the word "destroyed" in line two of the said subsection.

Amendment
of s. 109:
repeal and
new section

17. Section one hundred and nine of the principal Act is repealed and a new section is inserted in lieu thereof as follows:—

Voting in
absence.
cf. No. 38 of
1919, s. 87.

109. (1.) Any elector whose name is on an electoral roll and—

- (a) intends to be absent from the district on the day of election; or
(b) resides more than five miles from the polling place; or

(c) is prevented by illness or infirmity from attending the polling place, may at any time after the nomination day make application in writing to the returning officer of the district in which he is entitled to vote, or to the returning officer or the town clerk or the road board secretary of any other municipal or road district, or to any person whom the Minister may appoint for the purpose, to vote under the provisions of this section.

(2.) The returning officer, town clerk, road board secretary, or other person appointed as aforesaid to whom such application is made shall then write on each of two counterfoils the name of the district and the ward, if any, for which the applicant desires to vote, together with the name in full and address of the applicant, and shall sign the back of the ballot paper, and on the face thereof shall write the name of the district and the ward, if any, as on the counterfoils, and shall give the ballot paper to the elector.

(3.) On one of the counterfoils the prescribed form of declaration shall be printed and the returning officer, town clerk, road board secretary, or other person appointed as aforesaid proposing to take the vote shall fill in such declaration with the necessary particulars, and the elector shall, before voting, sign and make such declaration before the returning officer, town clerk, road board secretary, or other person appointed as aforesaid.

(4.) The elector shall then indicate his vote on the ballot paper in the manner mentioned and prescribed in paragraph (b) of section one hundred and five of this Act, specifying whether he is voting for the office of mayor or councillor, and shall then fold up the ballot paper in the presence of the returning officer, town clerk, road board secretary, or other person appointed as aforesaid who is taking the vote, and put it in an envelope.

(5.) The returning officer, town clerk, road board secretary, or other person appointed as aforesaid shall then seal up the envelope and write "ballot paper" thereon, and shall put one counterfoil into an envelope and seal it

and write "counterfoil" thereon, and shall then enclose both such envelopes in another envelope and seal it, and, if he is not the returning officer of the district in which the applicant is entitled to vote, shall send or cause to be sent the envelopes enclosed as aforesaid to the returning officer of such district.

(6.) All ballot papers and counterfoils used under this section shall be in the form prescribed in the Eleventh Schedule to this Act and be issued by the Minister, and no other form shall be used, and the Minister shall supply to the town clerk of every municipality such number of ballot papers and counterfoils as shall be necessary, and such town clerk shall be charged with the duty of keeping the safe custody thereof, and shall permit the same to be taken out of his custody by returning officers, road board secretaries or other persons appointed as aforesaid only for the purposes of this section. Every ballot paper issued during any year shall bear a distinct number, and its counterfoils shall bear the same number.

(7.) It shall be unlawful for any returning officer, town clerk, road board secretary, or other person appointed as aforesaid to visit any elector, except an elector applying by virtue of paragraph (c) of subsection (1) of this section for the purpose of taking his vote, or to take the vote of any elector, except as aforesaid, in any place other than the returning officer's, town clerk's, road board secretary's, or such other person's office, place of business or place of residence.

(8.) The returning officer, after enclosing such envelopes as aforesaid or on receiving the same, as the case may be, shall, without opening them, retain them in his possession until the commencement of the poll, and shall at any convenient time or times during or immediately after the taking of the poll, in the presence of the scrutineers, if any, proceed to open the same, and shall in each case proceed as follows:—

- (a) He shall compare the counterfoil with the electoral roll or a copy thereof;
- (b) If satisfied from an inspection of the electoral roll or a copy thereof that the person named

in the counterfoil is entitled to vote, he shall make a mark against the name of such person on the electoral roll or a copy thereof, and shall then take the ballot paper from its envelope and, without unfolding the ballot paper, deposit it in the ballot box;

- (c) He shall keep the counterfoil in the same manner as counterfoils of ballot papers are kept.

(9.) The returning officer, town clerk, road board secretary, or other person appointed as aforesaid proposing to take the vote of an applicant under this section may put to every such applicant any of the questions prescribed in sections one hundred and six and one hundred and seven of this Act, and the provisions of the said sections shall apply to every such applicant.

(10.) In the case of an election to fill an extraordinary vacancy, an application to vote under the provisions of this section may be made either to the returning officer for the district in which the election is to be held, or to the town clerk or road board secretary of any other municipal or road district, or to such other person appointed as aforesaid, and the foregoing provisions of this section shall apply.

(11.) Any person who has applied to a returning officer, town clerk, road board secretary or other person appointed as aforesaid for the purpose of voting under this section, and has complied with the provisions of this section, shall not be entitled to vote otherwise at the election, although the said envelopes or either of them may not have been sent to the returning officer of the district for which the election is held, or although they or either of them have been lost or miscarried.

(12.) The provisions of section one hundred and eight of this Act shall apply, *mutatis mutandis*, to ballot papers issued to an elector under this section.

18. Section one hundred and ten of the principal Act is amended as follows:—

Amendment
of s. 110.

- (a) by deleting subsection (2) and inserting in lieu thereof a subsection as follows:—

(2) The returning officer may reject as informal any ballot paper which is not marked

in compliance with the provisions of section one hundred and five of this Act which relate to the marking thereof, or on which is written any matter or thing which is not authorised by this Act to be written thereon; but, save and except as aforesaid, no ballot paper shall be rejected for mere want of form if in other respects it clearly indicates the vote and order of preference in the voting by the elector;

- (b) by inserting after subsection (3) a new subsection as follows:—

(3a) For the purpose of ascertaining the result of the election, the following provisions shall apply:—

(i) Where at any election only one candidate is to be elected, the returning officer shall—

(a) arrange the ballot papers under the names of the respective candidates, and place in a separate parcel all those on which a first preference is indicated for the same candidate, rejecting any informal ballot papers;

(b) count all the first preference votes given for each candidate respectively; and

(c) make and keep a record of the number of first preference votes counted by him;

(ii) The candidate who then has the largest number of first preference votes, shall, if such number constitutes an absolute majority of votes as hereinafter defined, be declared by the returning officer duly elected;

(iii) If no candidate has an absolute majority of first preference votes, on the first count, the returning officer shall declare the candidate who has obtained the fewest first preference votes to be an excluded candidate, and each ballot paper counted to him on the first count shall be distributed among the remaining candidates according as they are next in order of preference as indicated in such ballot papers;

(iv) After such distribution aforesaid, the number of votes thus given to each remaining candidate shall be again ascertained;

(v) If no candidate then has an absolute majority of votes, the process of declaring the candidate who has the fewest votes to be excluded and distributing his ballot papers among the then remaining candidates next in order of the elector's preference shall be repeated, and the votes recounted after every such redistribution until one candidate has obtained an absolute majority of votes, whereupon such candidate shall be declared by the returning officer duly elected;

(vi) Where at any election two candidates are to be elected, the foregoing provisions shall apply until the first candidate has been declared elected as aforesaid and thereafter the following additional provisions shall apply—

(a) The ballot papers counted on the first preference count to the said first elected candidate shall be distributed among the other candidates next in order of the elector's preference on such ballot papers, and after such distribution the number of votes thus given to each of such other candidates shall again be ascertained;

(b) If after such distribution one of such other candidates has an absolute majority of votes over the remaining candidates he shall be declared by the returning officer to be duly elected;

(c) If after the distribution referred to in subparagraph (b) of this paragraph no candidate has an absolute majority of votes as aforesaid, then the candidate who then has the fewest votes shall be declared by the returning officer to be an excluded candidate, and the ballot papers counted to him on the count of first preference votes shall be distributed among the remaining candidates next in order of the elector's preference as indicated on such ballot papers, and

thereafter the number of votes given to such then remaining candidates shall be again ascertained;

(d) If after the distribution referred to in the next preceding subparagraph, one candidate has obtained an absolute majority of votes over the other candidates, he shall be declared by the returning officer to be duly elected;

(e) If, after the distribution referred to in the next two preceding paragraphs no candidate has obtained an absolute majority of votes as aforesaid, the process of declaring the candidate who has the fewest votes to be excluded and distributing his ballot papers among the then remaining candidates next in order of the elector's preference shall be repeated and the votes recounted after every such redistribution until one candidate has obtained an absolute majority of votes, whereupon such candidate shall be declared by the returning officer duly elected;

(vii) Where at any election more than two candidates are required to be elected, the provisions of paragraphs (v) and (vi) hereof shall apply until the first and second candidates have been declared elected as aforesaid, and thereafter the following additional provisions shall apply:—

(a) The ballot papers counted on the first preference count to the second candidate declared elected shall be distributed among the candidates then remaining next in order of the elector's preference on such ballot papers, and after such distribution the number of votes thus given to each of such remaining candidates shall be again ascertained, and thereafter, according as the case may require, subparagraphs (b), (c), (d) and (e) of the next preceding paragraph (vi) shall apply and be applied until a third candidate is declared by the returning officer duly elected;

(b) The foregoing paragraphs (v) and (vi) and the next preceding subparagraph (a) of this paragraph shall apply and be applied in respect of each additional candidate required to be elected until all the candidates required to be elected have been declared duly elected, save and except that only the first preference ballot papers of the then latest elected candidate shall be distributed for the purpose of ascertaining the next candidate to be elected;

(viii) For the purpose of the foregoing paragraphs of this subsection, a candidate shall be deemed to have an "absolute majority of votes" when at the conclusion of any progressive count in the counting of the votes the number of votes obtained by him exceeds the aggregate number of the votes obtained by all the remaining candidates added together;

(ix) If at the completion of any progressive count in the counting of votes two or more candidates have an equal number of votes, and one of them has to be declared defeated, the returning officer shall, by his casting vote, decide which one of such candidates shall be declared defeated;

(x) At any time before the declaration of the result of the election, the returning officer may, if he thinks fit, at the request of a scrutineer, or of his own motion, recount the ballot papers contained in any parcel; and when conducting any recount the returning officer shall have the same powers as if the recount were a scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot paper;

(c) by deleting subsection (5) and inserting in lieu thereof a subsection as follows:—

(5) Section eight of the Municipal Corporations Act Amendment Act, 1919 (No. 42 of 1919), is hereby repealed.

Repeal of
s. 8 of No. 42
of 1919.

Repeal of
s. 111.

19. Section one hundred and eleven of the principal Act is hereby repealed.

Amendment
of s. 112.

20. Section one hundred and twelve of the principal Act is amended by deleting from subsection (2) the word "three" in line two of such subsection and inserting in lieu thereof the word "two."

Amendment
of s. 155.

21. Section one hundred and fifty-five of the principal Act is amended as follows:—

- (a) by inserting after the word "officer" where the same appears in lines one, two, three and six, the words "or other employee";
- (b) by inserting after the word "office" in line two the words "or position";
- (c) by inserting after the word "salary" in line five the words "or wages";
- (d) by inserting at the end of this section a proviso as follows:—

Provided that, except in the case of physical or mental incapacity or death, no such gratuity shall be paid unless the officer or employee has served for at least ten years, and no amount exceeding twelve months' salary or wages shall be paid under this section in respect of any officer or employee.

Amendment
of s. 156.

22. Section one hundred and fifty-six of the principal Act is amended as follows:—

- (a) by deleting subsection (1) and inserting in lieu thereof a subsection as follows:—

(1) The council shall hold a general meeting of ratepayers in every year in the month of November and before the day of the annual election;

- (b) by adding to subsection (2) a proviso as follows:—

Provided that every requisition or request made under this subsection shall state clearly

the nature of the matter to be discussed at the special meeting of ratepayers, and the council may refuse such requisition or request if the matter stated therein is in its opinion not a matter of concern or interest affecting the municipality or the ratepayers as residents of the municipality;

- (c) by deleting from subsection (3) the word "seven" in line one of the subsection and inserting in lieu thereof the word "fourteen."

23. Section one hundred and fifty-eight of the principal Act is amended by deleting paragraph (b) of subsection (2) and inserting in lieu thereof a paragraph as follows:—

Amendment
of s. 158.

(b) At a meeting of ratepayers, one of the councillors present and chosen by the ratepayers present, or, if there be no councillor present, one of the ratepayers present chosen by the ratepayers present.

24. Section one hundred and sixty-one of the principal Act is amended as follows:—

Amendment
of s. 161.

- (a) by inserting in subsection (1) after the word "No." in line one of this subsection the words "mayor or";
- (b) by inserting in subsection (1) after the word "such" in line four of the subsection the words "mayor or";
- (c) by inserting after the word "partner" in line 5 of the section the words "or in which any person of whom he is an employee has";
- (d) by adding after the word "interest" in line 5 of the section the words "apart from any interest in common with the public."
- (e) by inserting in subsection (2) after the word "any" in line one of the subsection the words "mayor or."

25. Section one hundred and sixty-eight of the principal Act is amended by adding to subsection (1) a proviso as follows:—

Amendment
of s. 168.

Provided that the number of members appointed to any occasional or standing committee under paragraph (a) of this subsection shall not exceed the largest minority of the councillors.

New section.

26. A new section is inserted in the principal Act after section one hundred and seventy-eight, as follows:—

Council may pay expenses of one delegate to any municipal conference.

178A. Any council may from time to time with the approval of the Minister pay out of municipal funds the reasonable expenses incurred by not more than one delegate appointed by such council to attend and attending any municipal conference as the representative of such council.

Amendment of s. 179.

27. Section one hundred and seventy-nine of the principal Act is amended as follows:—

(a) by deleting paragraph (14) and inserting in lieu thereof a paragraph as follows:—

Fencing.

(14) (a) regulating and prescribing the manner in which and the materials of which walls and fences shall be erected; and

(b) prescribing what shall be deemed dangerous fences and prohibiting the erection of dangerous fences abutting on or within ten feet of any public place;

(b) by deleting paragraphs (18) and (37) and inserting in lieu thereof after paragraph (17) paragraphs as follows:—

Hawkers.

(18) (a) for regulating the hawking of any goods, wares, or merchandise, and requiring licenses to be obtained by hawkers, and enforcing the obligation of hawkers to carry scales;

(b) for prescribing the annual fees (not exceeding ten pounds) to be paid for hawkers' licenses and for differentiating in such fees according to the description of goods, wares, or merchandise hawked, and the localities or portions of municipal districts in which the same are hawked;

(c) for limiting the number of licenses to be issued and for refusing to grant any license, either when such limit is reached or for any other reason;

(d) for requiring a badge with a number and the year of issue displayed thereon to be issued to persons licensed to hawk, at a fee to be prescribed, not exceeding five shillings.

(e) for requiring hawkers to display the prescribed badge when hawking or offering or exposing goods for sale or hire;

(f) for prohibiting hawking in any prescribed street, road, way or other part of the district;

For the purposes of this paragraph the term "hawker" means any hawker, pedlar or other person who with or without any horse or other beast bearing or drawing burden or with or without any vehicle of any kind travels and trades and goes from town to town or to other men's houses there soliciting orders for or carrying to sell or exposing for sale any goods, wares, or merchandise which are either the property of himself or of some other person who does not carry on the business of selling goods, wares, or merchandise in a shop or other permanent place of business situated within the State.

(18a) regulating movable or temporarily Stalls.
fixed stalls in or near any street, road, or way or other place in the district for the sale of any goods, wares, or merchandise, and the management thereof, and the conduct of the persons in charge thereof, and the time when and positions of places in which stallholders shall be allowed to carry on business, and prescribing the fees to be paid for stallholders' licenses and for differentiating in such fees, according to the description of goods, wares, or merchandise sold and the position or place on which the stall is situate and for requiring stallholders to use scales;

(c) by inserting in paragraph (34) after the word "For" in line one of the paragraph the words "prohibiting or" and by inserting in paragraph (34) after the word "quarrying" the word "excavating";

- (d) by inserting in paragraph 42 after paragraph (h) a new paragraph, to stand as paragraph (i), as follows:—

(i) prohibiting or regulating the making of noises, in the nature of a nuisance, caused by persons for advertisement purposes addressing the public or by the use of motor cycles, gramophones, amplifiers, wireless appliances, bells or other instruments or appliances either on or in any street, road, way, or other public place, or upon or in any private property near or adjacent to any street, road, way, or other public place;

- (e) by inserting after paragraph (47) a new paragraph as follows:—

Lawns and
gardens.

(47a) Permitting and regulating the planting of lawns and gardens in streets by the owners or occupiers of premises abutting thereon, and the laying of pipes under and the installation of taps in streets for watering such lawns and gardens, with water drawn from the private water supply belonging to the owner of such pipes and taps, or with water lawfully obtained by such owner from the Minister or statutory body controlling the supply of water in the district in which such water is required for such purposes, and prohibiting the riding or driving of animals or vehicles over such lawns and gardens;

- (f) by deleting paragraph (48) and inserting in lieu thereof a paragraph as follows:—

(48) for regulating the construction and use of verandahs now or hereafter erected over any part of a street, road, or way, for requiring proper maintenance of verandahs and balconies, and prescribing for the removal at the expense of the owner after a maximum period of ten years from the date of the commencement of this paragraph of verandahs or balconies supported on posts and projecting over the footway of any street, road, or way in any part of the municipality, whether such verandahs or balconies were erected before the commencement of this paragraph or not.

28. Section one hundred and eighty-one of the principal Act is amended by deleting from paragraph (h) of subsection (1) the words "meat, fish, poultry, game, fruit, and vegetables, or any articles of" and inserting in lieu thereof the words "goods, wares, and."

Amendment
of s. 181

29. Section two hundred and eighteen of the principal Act is amended by adding thereto a subsection as follows:—

Amendment
of s. 218.

(2) The council may sell or otherwise dispose of stone and materials obtained from quarries belonging to it to any Government department or other statutory body for such purposes as it or they may require, and to any other person who requires such stone or materials for use in the construction, maintenance, or repair of the footpaths, streets, roads, or ways in the district of the council:

30. A section is inserted in the principal Act, after section two hundred and ninety-six, as follows:—

New section.

296A. (1) Whenever a plan and copy of specification in respect of a building to be constructed are laid before the council for its approval in accordance with the provisions of section two hundred and ninety-six of this Act, there shall also be deposited with and retained by the council a statement in writing signed by the person for whom the building, to which the said plan and specification relate, is to be constructed, setting forth the purpose or purposes for which such building or any part thereof is, or is intended, to be used.

Statement of
purpose for
which building
is erected
to be
deposited
with council.

(2) After such statement has been deposited with the council as aforesaid, neither the building nor any part thereof shall be used for any purpose other than the purpose set forth in the said statement in relation to such building or such part thereof, except by the written authority of the council.

(3) Any person who uses or permits or suffers to be used any building or any part of a building for any purpose other than the purpose set forth in relation to such building or part of a building in the statement deposited with the council as aforesaid and relative thereto, without first obtaining the

written authority of the council so to do, shall be guilty of an offence.

Penalty: Fifty pounds.

Provided that there shall be an appeal to the Minister against any refusal of the council to grant any such consent as in this section mentioned, and if such appeal is allowed the Minister may grant the requisite consent in the name of the council.

Amendment
of s. 311.
Repeal and
new section.

31. Section three hundred and eleven of the principal Act is repealed and a new section is inserted in lieu thereof as follows:—

Notice of
required
alterations.

311. (1) The council may at any time during or after the erection of any building give to the builder or owner thereof notice—

- (a) of any matter or thing in the construction of such building which tends to render such building unsafe or prejudicial to the public interest; or
- (b) of any matter or thing in the construction of such building which is a non-compliance with or a departure from the plans and specifications for such building which have been passed and approved by the council as required by this Act, or is a contravention of by-laws of the council

and thereupon such builder or owner shall pull down or so alter or add to the said building as to remove the ground of objection unless with due diligence he prosecutes an appeal or brings an action under the provisions of section three hundred and thirty-three of this Act when under the said section such an appeal may be prosecuted or such an action may be brought:

Provided that, where the ground of objection stated in any notice given by the council under this section is a non-compliance with or departure from the plans and specifications for a building, there shall not be any appeal or right of action under the provisions of section three hundred and thirty-three of this Act, but any person aggrieved by such notice or any requisition contained therein may appeal

from such notice or requisition to the Minister, who may uphold, rescind or vary the notice of the council and the decision of the Minister shall be binding and final.

(2) Whenever any building has been constructed or altered (whether pursuant to a notice from the council or not) the builder or owner thereof shall serve a notification thereof upon the surveyor.

(3) If, after inspection and survey, the surveyor is satisfied that the said building as constructed or altered conforms with the plans and specification relating thereto approved by the council and with the provisions of this Act and with the by-laws of the council and is otherwise free from any ground of objection which may lawfully be raised under this Act, the surveyor shall, subject to payment of the prescribed fee, give in the prescribed form a certificate in writing signed by him to that effect to the builder or owner from whom he has received the notice provided for by subsection (2) of this section.

(4) The certificate given by the surveyor under subsection (3) hereof shall be admissible in evidence and shall be *prima facie* proof of the particulars contained therein.

(5) Provided that any inspection made and any certificate given by the surveyor under this section may be limited and relate only to fire escapes, ventilation and light and air provisions.

32. Section three hundred and thirty of the principal Act is amended by adding thereto a subsection as follows:—

Amendment
of s. 330.

(2) The powers conferred by this section may be exercised both in respect of houses, buildings and premises, the construction of which has been completed and also in respect of houses, buildings and premises which are in the course of being constructed.

33. Section three hundred and thirty-three of the principal Act is amended by inserting at the beginning of subsection (1) the words "Subject as otherwise expressly provided by this Act."

Amendment
of s. 333.

Amendment
of s. 335.

34. Section three hundred and thirty-five of the principal Act is amended as follows:—

- (a) by deleting paragraph (c) of subsection (1) and inserting in lieu thereof a paragraph as follows:—

(c) (i) The thickness and height and the description and quality of the substance of walls and party walls and the type of construction to be adopted and used in the construction of walls and party walls;

(ii) The thickness and span and the description and quality of the substance of floors, roofs and ceilings and the type of construction to be adopted and used in the construction of floors, roofs, and ceilings;

- (b) by deleting paragraph (e) of subsection (1) and inserting in lieu thereof a paragraph as follows:—

(e) regulating in respect of buildings erected after the commencement of this paragraph:—

- (i) the height of buildings;
- (ii) the means of escape from buildings in case of fire;
- (iii) the prevention of fire in buildings;
- (iv) the ventilation and lighting of buildings;
- (v) the exits from and stairways in buildings, other than private dwelling-houses;
- (vi) the minimum size of rooms in a dwelling-house.
- (vii) requiring any work or thing in connection with the construction of buildings to be executed or done with such materials, in such manner and within such period of time as may be directed or required, in the case of any particular building by the council or any officer or person authorised in that behalf by the council;
- (viii) the appointment of referees to determine disputes between the council's

officers or surveyors and any other person concerning any matter within this by-law;

- (c) by deleting paragraph (f) of subsection (1) and inserting in lieu thereof a paragraph as follows:—

(f) the removal of any wall, party wall, floor, roof, ceiling, parapet, flue, or fireplace erected or constructed contrary to any by-law;

- (d) by inserting in subsection (1) after paragraph (j) new paragraphs as follow:—

(j1) prescribing the minimum area and the minimum depth and the width and frontage of land upon which buildings of any specified class may be erected;

(j2) requiring that every building of any specified class erected after the commencement of this paragraph shall have attached thereto for the exclusive use of the occupiers thereof a prescribed area of open land;

- (e) by adding at the end of subsection (2) the words “or any specified area or specified areas of such district or to any specified class or specified classes of buildings in such district.”

- (f) by deleting from subsection (3) the word “twenty” in the last line of the subsection and inserting in lieu thereof the words “one hundred.”

35. Section three hundred and forty-seven of the principal Act is amended by adding the following paragraph:—

*Amendment
of s. 347.*

For the erection and maintenance of camps or bungalows for letting or leasing on or near any beach or pleasure or health resort within the municipality.

36. A section is inserted in the principal Act after section three hundred and forty-seven as follows:—

New section.

347A. The council may from time to time—

(1) set aside any portion of any land belonging to the council (not being a reserve created under the Land Act, 1933-1937), or any portion of a reserve

*Children's
playgrounds
and women's
grounds.*

for recreation vested in or placed under the control of the council, for either or both of the following purposes:—

(a) a children's playground;

(b) a women's ground;

(2) enclose and reserve any such children's playground for the exclusive use of children of either sex, or of both sexes, and of children under a specified age or of varying ages, as determined by the council;

(3) enclose and reserve any such women's ground for the exclusive use of women and girls;

(4) cancel any reservation under either paragraph (1) or paragraph (2) hereof, and throw the area so reserved open to the people for the purposes for which prior to such reservation it was available to the people;

(5) In addition to any by-laws which the council is authorised to make, either under the Land Act, 1933-1937, or the Parks and Reserves Act, 1895, make any by-laws under this section as may in the opinion of the council be necessary or convenient to be made, for regulating and controlling the use of any such children's playground or women's ground and the conduct of persons using the same;

(6) provide a site for the re-erection of historical buildings.

Amendment
of s. 377;
repeal and
new sections.

37. Section three hundred and seventy-seven of the principal Act is repealed and new sections are inserted in lieu thereof as follow:—

Annual
valuations of
rateable pro-
perty.

cf. No. 38 of
1919, s. 222.

377. Subject to this Act every council shall in or before the month of December in each year make a valuation of all rateable land within the district on the annual value, or, with the consent of the Governor, on the unimproved value, in accordance with the rules hereinafter set forth; and every such valuation shall remain in force until a new valuation has been made.

Provided that—

(i) notwithstanding that the system of valuation on the unimproved value is not adopted throughout the district—

(a) the council may adopt in any portion of the district defined for that purpose by

proclamation the system of valuation on the unimproved value;

(b) the council may adopt in respect of all or any land within the municipal district, and also within the limits of a proclaimed goldfield, or held under mining lease from the Crown, the system of valuation on the unimproved value;

- (ii) The council may in its discretion, instead of causing fresh valuations to be prepared in any year, use the valuations of the last or any previous year, with such alterations and additions as appear necessary, and no valuation need be made which is not requisite for the purpose of assessing rates.

377A. Except as hereinafter provided, the unimproved value of land shall be the capital sum which the fee simple of such land might be expected to realise if offered for sale on such reasonable terms and conditions as a *bona fide* seller would require, assuming that the improvements (if any) thereon had not been made.

Mode of
making
unimproved
value.

cf. No. 38 of
1919, s. 223.

Provided that—

- (i) town lots held under Crown lease shall be assessed on the unimproved value of such land as if in fee simple; and
- (ii) in respect of land held under Crown lease or of which any profit may lawfully be taken by virtue of a Crown lease, the unimproved value shall, subject as herein provided, be deemed to be a sum equal to twenty times the annual rent reserved by the lease; but when such annual rent is reduced under the provisions of the Land Act, 1933-1937, the valuation shall nevertheless be made on the annual rent originally reserved by the lease;
- (iii) if any lease referred to in the next preceding paragraph of this proviso is sublet at a higher rent, the value shall be calculated upon the rent reserved by the sublease.

38. Section three hundred and seventy-eight of the principal Act is amended as follows:—

Amendment
of s. 378.

- (a) by deleting from paragraph (f) the words
“seven pounds ten shillings” in line three of

the paragraph and inserting in lieu thereof the words "ten pounds".

- (b) by deleting from paragraph (g) the words "two pounds ten shillings" in lines two and three of the paragraph and inserting in lieu thereof the words "three pounds."

Amendment
of s. 886.

39. Section three hundred and eighty-six of the principal Act is amended as follows:—

- (a) by adding to subsection (1) a proviso as follows:—

Provided that, instead of keeping a book as mentioned in this subsection, the Council may cause the particulars prescribed in paragraphs (a) and (b) of this subsection to be recorded by means of any system of recording and accounting approved by the Minister, and such system may be called and referred to as the rate book;

- (b) by deleting subsection (2) and inserting in lieu thereof a subsection as follows:—

(2) The rate book, howsoever kept, shall be made up and completed in December in each year, and the mayor shall then initial the bottom of each page, folio or card, as the case may require, either in his handwriting or by means of a stamp, and by such means initial any alteration or erasure in any such page, folio, or card, and thereafter the rate book shall at all times be open for inspection.

Amendment
of s. 389;
repeal and
new section.

40. Section three hundred and eighty-nine of the principal Act is repealed and a section is inserted in lieu thereof as follows:—

Power to
amend valua-
tion and
adjust rate in
certain cases.

389. Where in any year any rateable land is assessed on the annual value, and during the currency of such year it appears to the council that by reason of any improvements made to or erected upon such land the amount of the annual value has become greater than the amount of the annual value then assessed, or that by reason of the destruction, damage, or demolition of improvements previously made and standing upon the said land, the amount of the

annual value has become less than the amount of the annual value then assessed, the council may cause the annual value to be reassessed for and in respect of the then unexpired portion of such year, and amend and adjust, either by increase or reduction, as the case may require, the amount of the rates payable upon the said land, to the extent by which such reassessment of the annual value justifies the making of such amendment or adjustment as aforesaid.

41. Section three hundred and ninety-nine of the principal Act is amended by adding thereto a subsection as follows:—

Amendment
of s. 399.

(5) Except by special leave of the local court hearing an appeal under this section, neither party to such appeal shall on such hearing be entitled to lead any fresh evidence or call any witnesses which was not led or who were not called at the hearing of the prior appeal before the council under section three hundred and ninety-seven of this Act.

42. Section four hundred and eleven of the principal Act is hereby repealed.

Repeal of s.
411.

43. Sections four hundred and twenty-nine and four hundred and thirty are hereby repealed and in lieu thereof a new section is inserted as follows:—

Repeal of ss.
429 and 430
and new
section.

429. (1) The moneys arising from the sale of the land shall be paid into the local court, and shall in priority to every mortgage encumbrance, lien, caveat, judgment, writ, warrant or other charge, agreement or process registered against or in any way affecting the land, and notwithstanding the disability of any person or any statute of limitations, be applied by the clerk under the direction of the magistrate.

Application
of proceeds.

cf. s. 282 of
No. 38 of
1919.

Firstly—In payment of the costs and expenses of the clerk of the local court and of the council of and incidental to the proceedings in the local court and the sale of the land:

Provided that, if the moneys arising from the sale of the land are insufficient to pay such costs and expenses, the same or the balance

unpaid shall be a debt due by the council to the clerk of the local court and may be recovered by him accordingly;

Secondly—In payment of all unpaid rates and taxes at the time of the sale due to or imposed in favour of the Crown in right of the State or any department or agency of His Majesty's Government of the State, and also of all unpaid rates due to or imposed by the council and the local authority under the Health Act, 1911-1933, in respect of the land at the time of the sale: Provided that, where the moneys remaining after the payments provided for in the next preceding paragraph have been made are not sufficient for the payment in full of all the rates, taxes, and expenses mentioned and provided for in this paragraph, such moneys shall be distributed between the Crown, the department, the agency, the council and the local authority under the Health Act, 1911-1933, *pro rata* with the amounts of their claims respectively;

Thirdly—In payment of any moneys due under any mortgage to the Agricultural Bank;

Fourthly—In payment of all vendor's costs and expenses of and in connection with conferring upon the purchaser a clear title to the land;

Fifthly—In or towards the discharge of all or any other mortgages or mortgage or encumbrances or encumbrance proved to the satisfaction of the magistrate of the local court to exist over the land, due regard being had to the respective priorities of any such mortgages or encumbrances;

Sixthly—In payment to the person who would, but for the proceedings for sale, be entitled to the land, or if there are several persons who would be so entitled, then to such persons in the proportions in which they would be respectively so entitled:

Provided that, if any person is entitled to an estate in reversion or remainder in the said

land, the money may be paid into the Supreme Court under section forty-six of the Trustees Act, 1900.

(2) Notwithstanding anything to the contrary contained in subsection (1) of this section, but subject to the consent of the Governor or of the Minister controlling any department or agency of the Government of the State (as the case may require) the magistrate may order that any unpaid rates and taxes due to or imposed in favour of the Crown or any such department or agency as aforesaid shall be postponed to or shall rank on an equal footing with the unpaid rates due to or imposed by the council or by the local authority under the Health Act, 1911-1933, in respect of the land, and such order shall be given effect to.

44. Section four hundred and thirty-eight of the principal Act is amended as follows:—

Amendment
of s. 438.

(a) by deleting from paragraph (7) the words “motor-cars” and inserting in lieu thereof the words “aero and motor vehicles”;

(b) by deleting paragraph (11) and inserting in lieu thereof a paragraph as follows:—

(11) the providing of public libraries and public museums, and the providing, laying out and improvement of pleasure grounds, and places of public resort and recreation;

(c) by adding after paragraph (19) new paragraphs as follow:—

(20) the construction or purchase of concrete mixers, tar-sprayers, grit spreading machines, gully flushers, street sweepers, scarifiers, tar mixers, bituminous road plant and any other plant or appliance requisite for constructing, repairing, cleaning or flushing roads or footpaths;

(21) the construction and providing of municipal depots, stables, aero and motor garages and workshops; and

(22) any other works, plant or machinery approved by the Governor.

Amendment
of s. 445.

45. Section four hundred and forty-five of the principal Act is amended by deleting the words "rate of interest" in line five and inserting in lieu thereof the words "maximum rate of interest proposed."

Amendment
of s. 450.
cf. s. 245,
ss. (5),
of No. 38 of
1919.

46. Section four hundred and fifty of the principal Act is amended by adding thereto a proviso as follows:—

Provided that, when the proceeds of a loan have been invested in a reproductive undertaking the income of which is sufficient to pay interest and sinking fund contribution on the money borrowed, the Minister may for such period as he thinks fit exempt the council from its obligation to make and levy a special rate as in this section provided for.

Amendment
of s. 453.

47. Section four hundred and fifty-three of the principal Act is amended by adding thereto a proviso as follows:—

cf. s. 302 of
No. 38 of
1919.

Provided that it shall be lawful for the council, and it shall be deemed to have been lawful for a council, on the raising of any loan and the issue of debentures, to provide for the repayment of the principal money with interest by half-yearly or other periodical instalments in lieu of the formation of a sinking fund, in which case such sum as may be necessary for the repayment of such instalments shall be set aside from time to time and applied to that purpose; and sections four hundred and thirty-nine to four hundred and forty-four both inclusive of this Act shall have effect, *mutatis mutandis*, subject to this proviso.

Amendment
of s. 476;
repeal and
new section.

48. Section four hundred and seventy-six of the principal Act is repealed and a new section is inserted in lieu thereof as follows:—

Power of
council as to
spending its
income.

476. (1.) The council may in any year do either or both of the following things:—

(a) Expend out of the ordinary revenue of the municipality any sum not exceeding three per cent. of such ordinary revenue for any purpose connected with the municipality and for the benefit or credit thereof, although such purpose is not within the scope of this Act;

(b) with the approval of the Governor expend out of the ordinary revenue of the municipality any sum or sums not exceeding in the aggregate ten per cent. of such ordinary revenue for any or all of the following purposes, namely:—

(i) providing or constructing, maintaining, and improving upon any land, estuary, river, lake or watercourse situated outside the district of the council but adjoining or adjacent to such district, but, as to land, not being within the boundary of any other municipal district or of any road district, and, as to an estuary, river, lake, or watercourse, not being situated within any irrigation district constituted under the Rights in Water and Irrigation Act, 1914, any road, aviation landing ground, pleasure resorts, places of recreation and other similar works, which in the opinion of the council are necessary for and will benefit persons residing within the district of the council;

(ii) subsidising the council of any adjoining municipal district or the road board of any adjoining road district in respect to the expense to be incurred by such last-mentioned council or road board in providing or constructing, maintaining and improving within the district of such last-mentioned council or road board any road, aviation landing ground, pleasure resorts, places of recreation, and other similar works, which in the opinion of the first-mentioned council are necessary for and will benefit persons residing within the district of the first-mentioned council granting a subsidy as aforesaid; and

(iii) providing all forms of tourist propaganda both within the district of the council and elsewhere in connection

with or in relation to any tourist resort within the district of the council.

(2) Subject to subsection (1) hereof, the whole of the ordinary revenue of any municipality shall be applicable solely to doing or carrying out those things which by this Act the council is empowered or required to do or carry out.

Amendment
of s. 477.

49. Section four hundred and seventy-seven of the principal Act is amended by adding at the end of subsection (2) the words “but save and except as aforesaid, any adult person who is a natural born or naturalised subject of His Majesty (whether he be the owner or occupier of rateable land in the municipality or not) and who holds a certificate of competency from a recognised institute of accountants, or the approval in writing of the Minister, shall be qualified for election as auditor for the municipality.”

Repeal of
Seventh
Schedule.

50. The Seventh Schedule to the principal Act is hereby repealed.

Amendment
of Ninth
Schedule.

51. The Ninth Schedule to the principal Act is amended by deleting the words “counterfoil number” where they appear in each of the forms contained in the said Ninth Schedule and by deleting all the words contained in lines one and two of the “Directions” at the foot of the form in such schedule and inserting in lieu thereof the words “If there are only two candidates nominated for election the elector shall mark his vote on the ballot paper by placing the numeral ‘1’ opposite the name of the candidate for whom he votes first in the order of his preference. If there are more than two candidates, the elector shall mark the ballot paper by placing the numeral ‘1’ opposite the name of the candidate for whom he votes as his first preference, and he shall give contingent votes for all the remaining candidates by placing the numerals ‘2,’ ‘3’ and so on (as the case requires) opposite their names so as to indicate by such numerical sequence the order of his preference.”

Amendment
of Seventeenth
Schedule.

52. The Seventeenth Schedule to the principal Act is amended by inserting in the form in such Schedule next to the column with the headline “Net Annual Value” an

additional column with the headline "Unimproved Value."

53. The Eighteenth Schedule to the principal Act is amended by inserting in the form in such Schedule next to the column with the headline "Annual Value" an additional column with the headline "Unimproved Value."

Amendment
of Eighteenth
Schedule.

54. (1) The principal Act as amended by this Act and by all prior amending Acts may be reprinted under the supervision of the Clerk of the Parliaments.

Reprinting of
principal Act
with amend-
ments.

(2) In any such reprint—

- (i) the sections may be renumbered in arithmetical sequence and the cross references adjusted;
- (ii) alphabetical or numerical references before paragraphs or subsections of sections may be relettered or renumbered in sequence, and where the letters of the alphabet are exhausted the succeeding paragraphs may be lettered (Za), (Zb), and so on;
- (iii) the Schedules may be renumbered, and any reference to the Schedules may be altered to conform to such renumbering.

(3) The principal Act as amended by this Act and by all prior acts amending the principal Act may be cited as the Municipal Corporations Act, 1906-1938.

Citation of
principal Act
as amended.