THE PUBLIC FINANCE MANAGEMENT ACT (No. 18 of 2012)

IN EXERCISE of the Powers conferred by Section 116 of the Public Finance Management Act, 2012, the County Executive Committee Member for Finance makes the following Regulations:-

THE PUBLIC FINANCE MANAGEMENT (MOMBASA COUNTY EXECUTIVE MEMBERS AND STAFF CAR LOAN AND MORTGAGE FUND) REGULATIONS, 2016

ARRANGEMENT OF SECTIONS

Section

PART I – PRELIMINARY

1- Citation and commencement
2- Interpretation

PART II - ESTABLISHMENT AND ADMINISTRATION OF THE FUND

3- Establishment of the Fund
4- Objective of the Fund
5- Sources of funds

PART III-ESTABLISHMENT AND FUNCTIONS OF THE FUND COMMITTEE

6- Establishment of the Mombasa County Executive Car Loans and Mortgages Fund Committee
7- Composition of the Committee
8- Functions of the Committee
9- Meetings of the Committee
10- Delegation by the Committee

PART IV- APPLICATION FOR CAR LOANS AND MORTGAGES

11- Application for and grant of loans and/or mortgage
12- Interest rate
13- Registration of charge
14- Quality of property
15- Use of mortgage property
16- Grant of loans and mortgage
17- Conditions for granting loans
18- Notification to applicant
19- Loan guarantors

PART V – FINANCIAL PROVISIONS

20- Account and audit

PART VI- MISCELLANEOUS PROVISIONS

21- Protection from personal liability
22- Insurance Policies and mortgage protection cover
23- Custody of documents
24- Offence
25- Recovery
26- Guidelines
27- Remuneration

SCHEDULES

FIRST SCHEDULE – MORTGAGE AND CAR LOAN RATES
SECOND SCHEDULE – MORTGAGE APPLICATION FORM
THIRD SCHEDULE – CAR LOAN APPLICATION FORM

THE MOMBASA COUNTY EXECUTIVE MEMBERS AND STAFF CAR LOAN AND MORTGAGE FUND REGULATIONS, 2016

Regulations to provide for the disbursement of funds for car loans and mortgages to Members of the County Executive Committee and employees of the Executive Arm of the County Government of Mombasa and for matters connected therewith.

PART I - PRELIMINARY

1. These Regulations may be cited as the Public Finance Management (Mombasa County Executive Members and Staff Car Loan and Mortgage Fund) Regulations, 2016 and shall come into operation upon publication. Citation and commencement

2. In this Regulations, unless the context otherwise requires— Interpretation

"Applicant "means a Member of the County Executive Committee or employee of the County Public Service Board or staff in the executive arm of the County Government of Mombasa;

"Committee" means the the Mombasa County Executive Car Loans and Mortgage Committee established under regulation 6;

"County Government" means County Government of Mombasa

"Borrower" means an applicant in receipt of a car loan and or mortgage out of the Fund;

"Fund" means the Mombasa County Executive Car Loan and Mortgage Fund established under regulation 3;

"Member of Executive Committee" means County Executive Committee Member responsible for Finance;

"Prescribed form" means the application form in the Second or Third Schedule of these Regulations;

PART II-ESTABLISHMENT AND ADMINISTRATION OF THE FUND

3. There is established a Fund to be known as the Mombasa County Executive Car Loan and Mortgage Fund. Establishment of the Fund

4. The object and the purpose of the Fund shall be to provide funds for granting car loans and mortgages to Members of the County Executive Committee and employees of the County Public Service Board or staff in the County Executive as may be prescribed from time to time by the Salaries and Remuneration Commission. Objective of the Fund

5. (1) The sources of funds for the Fund shall consists of— Sources of funds

a) sums of money which may, from time to time be appropriated for that purpose by the County Assembly;
b) all sums of money borrowed by the Fund with the approval of the County Assembly for the purpose of exercising any of its functions or discharging any of its obligations;
c) any gifts, donations, grants and endowments made to the Fund; and
d) any interests that may accrue from or to the Fund;
e) all money that may accrue to the Fund from any source in the course of exercise or performance of the functions of the Fund.

(2) There shall be paid out of the Fund any expenditure approved by the Committee and incurred in connection with the management and operation of the Fund.

PART III-ADMINISTRATION OF THE MOMBASA COUNTY EXECUTIVE CAR LOAN AND MORTGAGE FUND COMMITTEE

6. There is established a Committee to be known as the Mombasa County Executive Car Loan and Mortgage Fund Management Committee. Establishment of the Committee

7. (1) The Committee shall comprise— Composition of the Committee

(a) the Chief Officer in charge of Finance who shall be the Chairperson and Fund Manager/Administrator;
(b) the County Secretary;
(c) the Chairperson of the County Public Service Board;
(d) the Director, Human Resource in the County Executive; and
(e) the Director, Legal Services in the County Executive;

(2) The Committee may co-opt any person to attend any of its meetings for purposes of assisting or advising the Committee but any such person co-opted has no right to vote on any decision.
(3) The Director, Legal Services shall be the secretary to the Committee.

8. The functions of the Committee shall be— Functions of the Committee

(a) To process applications for a car loan or mortgage in accordance with the existing terms and conditions of borrowing;
(b) to formulate sound policies for regulating the management of the Fund;
(c) to raise and solicit for funds and other assistance to promote the functions of the Committee;
(d) to receive any gifts, donations, grants or endowments made to the Fund and to make legitimate disbursements therefrom;
(e) to establish links with financial institutions for the furtherance of the purposes for which the Fund is established;
(f) to grant loans and mortgages, as the Committee may deem fit to eligible applicants;
(g) to perform and exercise all other functions and powers conferred to the Committee by these Regulations or any other law.

9. (1) The Chairperson shall convene and preside over all the meetings of the Committee and in his or her absence a person elected by the Committee shall preside over the meeting. Meetings of the Committee

(2) The Committee may meet at least, once a month but the Chairperson shall, upon requisition in writing by at least four members of the Committee, convene a special meeting of the Committee at any time.

(3) The resolutions of the Committee shall be by simple majority.

(4) The quorum for a Committee meeting shall be a half of the Committee members.

(5) The Secretary shall cause minutes and proceedings of all the Committee's meetings to be entered in the minute-book kept for that purpose.

10. (1) The Committee may delegate the functions of appraising and approving loans and managing the Fund to a commercial bank approved or designated by the Committee as an agent of the Committee. Delegation by the Committee

(2) Where the Committee delegates the functions of appraising and approving loans and managing the Fund to a commercial bank, the bank shall strictly be an agent of the Committee.

PART IV-APPLICATION FOR MORTGAGE AND CAR LOAN

Application for and grant of loans and or mortgage

11. (1) Any applicant wishing to be considered for a car loan or mortgage shall make an application to the Committee in the prescribed form or in such other manner as the Committee may prescribe.

(2) A mortgage obtained under these Regulations shall be utilized for the purchase or development of residential property for the occupation of the applicant and his or her immediate family.

(3) A mortgage for the development of residential property may be granted by Committee—

(a) to an applicant who is in possession of a title deed to the land on which the development is intended to be carried out; or

(b) if the applicant is in possession of other ownership documents that are authentic and certified by the County Executive Committee Member in charge of Lands, Physical Planning and Housing.

(4) If subsection (3)(a) and (b) above don't apply, the Committee may issue the first instalment for the purchase of the land at which the residential property is to be developed and a subsequent instalment for the development of the property.

(5) The amount of the first instalment granted for the purchase of land under subsection (4) above shall not exceed forty per cent of the maximum loan amount for which the applicant is eligible.

(6) An application for a loan for construction purposes shall be accompanied by the following documents where applicable-

(a) copies of the designs of the proposed residential property duly approved by the County authority within whose area it is to be situated;
(b) bills of quantities in respect of the proposed development;
(c) an official search of the title to the property intended to be purchased;
(d) a certified copy of the sale agreement relating to the property; and
(e) any other document that the committee may require for the purposes of determining the application.

(7) Where the property intended to be purchased through a mortgage from the Fund is leasehold property, such mortgage shall be granted where the expiry date of such lease is at least forty-five years beyond the final mortgage repayment date.

(8)The borrower shall bear the costs of stamp duty, transfer fees, legal fees and other related charges.

(9) A mortgage granted under these Regulations shall be payable over a maximum duration of twenty years as provided for in the Salaries and Remuneration Commission Circular dated 17th December, 2014.

(10) The Committee may, where it deems appropriate, recommend the appointment of an Advocate to act on its behalf in respect of transactions relating to the property under these Regulations.

(11) If the Committee rejects the application, it shall notify the applicant of such rejection in writing and the reasons thereof and shall promptly communicate its decision to the applicant.

Interest Rate

12. The rate of interest applicable on both car loan and mortgage shall be three (3%) per cent per annum on a reducing balance for the duration of the loan or as may be revised by the Salaries and Remuneration Commission.

Registration of charge

13. The Committee shall register a charge on any mortgage property financed through a loan granted under these Regulations and such charge shall impose an obligation on the charge—

(a) not to mortgage, charge, surrender the lease, or sell or agree to sell or part with possession of the charged property or part thereof without the prior written consent of the Committee;
(b) to meet and pay all rates, rents, insurance and any other outgoings in respect of the property and send proof of such payments to the committee; and
(c) to provide a transfer deed duly signed by the borrower and a letter authorising the Committee to sell the property to recover the arrears in case of default in payment.

Quality of property

14. All residential properties purchased or developed through the Fund shall be of such standards and constructed of such materials the Committee may approve.

Use of mortgage property

15. During the tenant purchase or loan repayment period, every borrower shall—

(a) ensure that he property is used for residential purposes only;
(b) maintain the property in a satisfactory state or repair; and
(c) make no extension or any structural alteration to the property or title thereto without the prior approval of the Committee.

Grant of car loan

16. (1) The Committee may grant a car loan to any applicant and in so granting impose conditions, demand security and require repayment in installments at such times and within a period that the Committee deems fit.

(2) Notwithstanding the provisions of subsection (1) but subject to the provisions of this section the Committee may, upon the request by an applicant to whom a car loan has been granted, at any time vary—

(a) the conditions subject to which the car loan was made;
(b) any security given in relation to the car loan; or
(c) any of the terms of repayment of the car loan.

Conditions for granting car loan from the Fund

17.(1) An applicant for a car loan may be required to comply with the following—

(a) be a State or public officer serving in the County Executive arm of the County Government;
(b) a public officer must have been in employment for at least six months prior to making the application for a loan;
(c) must fill the prescribed form;
(d) avail identification document such as national identity card, passport or certificate of incorporation or registration in case of a business entity;
(e) avail Kenya Revenue Authority PIN certificate, Credit Reference Bureau clearance certificate or such other documents as the Committee may require;
(f) secure the loan through any one of the following—
(i) logbook of motor vehicle; or
(ii) title deed; or
(iii) share certificate; or
(iii) life insurance policy; or
(iv)chattels mortgage of machinery or some other movable property; or
(v) guarantee from guarantors.
(vi) joint ownership between the Fund and the applicant so that in case of default the Fund may repossess the car to recover the loan deficit.

Notification to applicant

18. (1) Where the Committee has resolved to grant a mortgage or car loan to any eligible applicant, the Committee shall notify the applicant in writing, and require the applicant to comply with any conditions and provide any security which the Committee may impose or demand within a specified period not exceeding six months.

(2)Where an applicant fails to comply with the requirement of the Committee notified to the applicant under subsection (1) within the prescribed period, the application shall be deemed to have lapsed.

Loan guarantors

19. Where in granting a loan to an applicant the Committee considers it prudent to request for a guarantor to guarantee the loan, the guarantor shall, in case of any default of repayment by the applicant, automatically be fully liable to pay any outstanding amount with interest accrued in full as shall be notified to the guarantor by the Committee.

PART V - FINANCIAL PROVISIONS

Account and audit

20. (1) The Committee shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Fund and prepare annually statements of account in the format approved by the County Treasury.

(2) The annual accounts referred to under this section shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 299 of the Constitution and the Public Audit Act.

PART VI – MISCELLANEOUS PROVISIONS

Protection from personal liability

21. No act, matter or thing done or omitted to be done by any member of the Committee; any member of staff or other person in the service of the Fund; or any person acting under the direction of the Committee; shall, if that act, matter or thing was done or omitted to be done in good faith in the execution of a duty or direction, render that member or person personally liable to any civil liability.

Insurance policies and mortgage protection cover

22.(1) A borrower shall take and maintain a life insurance policy and fire insurance policy with an insurance company approved by the Committee, the cost of which shall be paid out of the Fund and debited in the borrower's account.

(2) Every borrower of a house under construction shall take a mortgage protection cover for the provisional sale price of the property.

Custody of documents

23. The originals of all documents relation to property financed by a loan from the Fund shall be kept in safe custody by the officer administering the Fund/Fund Manager.

Offence

24. (1) Any person who makes or causes to be made a false statement or representation to induce or attempts to induce the Committee to grant a loan commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

(2) Nothing in this section precludes the institution of any suit or other proceedings under any other law.

Recovery of money due

25.(1) Where a repayment of a car loan and or mortgage is not made in accordance with the terms and conditions of the car loan and or mortgage as provided for under these Regulations, the sums of money due and owing to the Fund may be recoverable without prejudice to any other remedy, in civil proceedings in a court of law.

(2) Such recovery shall include—
(a) the sums of money specified as outstanding with respect to the principal sum initially advanced;
(b) interest accrued on the sum of money that remains unpaid; and

(c) all costs and charges incurred by the Fund to recover the unpaid money and interest.

26. The Committee may propose to the County Executive Committee Member for Finance to make guidelines generally for the proper carrying out the objectives and purposes of the Fund and the guidelines shall be tabled before the County Assembly for approval before implementation. Guidelines

27. The Committee members and other persons appointed to perform any function under these Regulations shall be paid such allowances as determined by the the Salaries and Remuneration Commission. Remuneration

Dated this.......................day of................................2016

...
Hazel Koitaba
COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE

SCHEDULES

FIRST SCHEDULE

MORTGAGE	
BENEFICIARIES	**MORTGAGE LOAN**
Chief Executive Officer of a Government Agency/Organ	Up to Ksh. 25 Million
Civil Service Grades S,T,U and Equivalent grades in Public Service	Up to Ksh. 20 Million
Civil Service Grades P,Q,R and Equivalent grades in Public Service	Up to Ksh.15 Million
Civil Service Grades K,L,M,N and Equivalent grades in Public Service	Up to Ksh.10 Million
Civil Service Grades G,H,J and Equivalent grades in Public Service	Up to Ksh. 6 Million
Civil Service Grades A,B,C,D,E,F and Equivalent grades in Public Service	Up to Ksh.4 Million

CAR LOAN	
BENEFICIARIES	**CAR LOAN**
Chief Executive Officer of a Government Agency/Organ	Up to Ksh. 5 Million
Civil Service Grades S,T,U and Equivalent grades in Public Service	Up to Ksh. 4 Million
Civil Service Grades P,Q,R and Equivalent grades in Public Service	Up to Ksh.3 Million
Civil Service Grades K,L,M,N and Equivalent grades in Public Service	Up to Ksh.1.5 Million
Civil Service Grades G,H,J and Equivalent grades in Public Service	Up to Ksh.800,000
Civil Service Grades A,B,C,D,E,F and Equivalent grades in Public Service	Up to Ksh.600,000

SECOND SCHEDULE

COUNTY GOVERNMENT OF MOMBASA
APPLICATION FORM FOR COUNTY EXECUTIVE MORTGAGE SCHEME FUND

CONFIDENTIAL

I. PARTICULARS OF APPLICANT

Name in Full .... Age ....

Address... * ....

ID No .... Personal Identification No ....

Amount of Loan Required .... for .... Years

II. EMPLOYMENT DETAILS

(a) Position .... Years of service .... terms of Service ....

(b) Current Net Salary/House Allowance received (attach recent pay Slip) ....

(c) I confirmed that the information above is as per records in our file

Sign..

Director, Human Resource

III.TRANSFER OF EXISTING MORTGAGE

Existing Mortgage Account No .... Name of Company providing Outstanding amount Ksh .... Do you want to transfer this amount to County Executive Mortgage Scheme Fund? Yes..................No............................

IV. PARTICULARS OF PROPERTY

1. Address of property to be mortgage L.R .... street/Road

2 .. .. Estate .... Description of property (Land or existing buildings) ....

2. State if the property is Freehold ( ) Leasehold ( )

3. If Leased, state length or unexpired item ....

V IF THE APPLICANT IS ON EXISTING BUILDING

State if'. Bungalow ( ) Maisonette ( ) Flat ( ) with main Rooms **......................**

Bedrooms **....................** WCs **.........................** Kitchen/s **............................**

Servant quarters **...........................** Garage **.................** Purchase Price **............**

Vendor name **.......................................** Address **................................**

Is property now mortgaged? Yes ( ) No ( ) If Yes, please attach a letter of consent from the issuing company.

IF THE APPLICATION IS ON BUILDING UNDER CONSTRUCTION

1.Purchase price of land Ksh .... Estimate cost of building Ksh ....

2. Name and Address of Architect...

3. Name and Address of Contractor..

4. Has the building work commenced? Yes ( ) No ( ) If yes, date of completion....................

Return the application with thefollowing: - 1. EXISTING PROPERTY. Copy of Sale/purchase Agreement Duly signed and stamped. Copy of Title Document, Official Search, Valuation report, Or 2. UNDER CONSTRUCTION: copy of Title Document, Specifications of works, Approved Building Plans, Registration Certificates for Contractor and Architects valuation report.

I declare theforegoing statement andparticulars to be true. I can maintain tile Mortgage payment the other outgoings in connection with the property.

Applicant Signature .... Date ....

VI. FINANCIAL APPRAISAL

1 - A third of Net salary/House Ksh ....

2. Monthly Deductions including interest and cost of mortgage insurance Ksh ....

3. 1 Certify that after the monthly installments, there will be remaining a net salary of Ksh .... which is more/less than one third of total earnings.

I recommended Mr./ Hon./ Mrs./Miss .... proposal be/is not approved.

Signature .... Date ....

Chairperson Mortgage Scheme Fund

VII FUND ADMINISTRARTOR

Date docurnent received .... Date of Search ....

Date charge registered .... Reference No ....

Loan agreement signed and registered on ....

Is Transfer Deed signed by borrower and letter authorizing sales in case of default ....

Receipt for deposit, Stamp Duty and legal fees No ....

CONFIDENTIAL REPORT:

....

....

....

Signature.. Date ....

Approval by Fund Administrator

X. ACCOUNTS TRANSACTIONS/MORTGAGE PROCESSING

Date documents received from Fund Administrator ....

Cheque No .... Amount .... ID/No ....

Signature.. Date ....

FUND ACCOUNTS SECTION

Return the application with the followings:-

1. EXISTING PROPERTY: Coy of sales, Valuation report, or

2. UNDER CONSTRUCTION: Copy of Title Document, Specifications of Works, Approved Building Plans, Registration Certificates for contractor and Valuation report, official search.

THIRD SCHEDULE

COUNTY GOVERNMENT OF MOMBASA

APPLICATION FORM FOR COUNTY EXECUTIVE CAR LOAN SCHEME FUND

PART I

TO: OFFICER ADMINISTERING CAR LOAN FUND

I .... Age .... o f P.0 Box ...., hereby apply for a car loan to purchase the motor vehicle described below.

DESCRIPTION.

1. Make ....Model .... Type of Body ....
Engine No .... Chassis No .... Registration ....
2. State if New or Second-hand ....

(If second hand, AAA Valuation Report should be attached).

3. Particulars of accessories and value if included in the cost price of vehicle:
Cost price of the vehicle Ksh ....
Less Deposit to be paid by me Ksh ....
Balance of vehicle loan Ksh ....
((Add insurance Premium) only to be added if to be paid by the Fund) Ksh ....
4. Name of insurance company ....

5. Name of supplier ....

6. Address of Supplier ....
(in the event of a supplier not being a recognize motor vehicle dealer, vendor must produce proof that he is owner of the motor vehicle. This should be a receipt, invoice or other such evidence of ownership as may satisfy the Fund Administrator approximate date of delivery) ....

7. 1 undertake to have the car registered in the name of the Fund and myself.

8. 1 undertake to register a charge in favor of the Fund entitling the Fund to sell the Motor Vehicle in the event of breach of the terms and condition of loan agreement.

9. 1 wish to pay the amount due under that purchase Agreement by monthly instalments recovered from rny salary of Ksh ....

10. 1 agree to hold the vehicle covered by full comprehensive insurance through-out the period of the loan repayment.

Signature... Date ....

Car Loan Applicant

PART II

RECOMMENDATION BY THE OFFICER ADMINISTERING THE FUND

I . I Certify that Hon/Mr/Mrs/Miss .... is eligible for a motor vehicle loan and has a current net salary of Ksh ....

2. 1 certify that payment of the monthly installments will not cause financial embarrassment /constraints

3. 1 recommend that Hon/Mr/Mrs/Miss .... application be approved in full up to a limit of Ksh .... Payable in .... months

Signature.................. Date ....

Officer Administering the Fund

PART III

APPROVAL BY LOANS MANAGEMENT COMMITTEE

TO : COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE

The loan Management Committee in their meeting of .... approved Hon/Mr/Mrs/Miss .... s application of Ksh .... in respect of car loan to be repaid over a period of .... months and further surn of Ksh .... in respect of insurance premium to be paid over 12 months the loan.

Signed......... .... Date..

Chairperson of Car Loan Scheme Fund