

STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA HAJI SAKARAN BIN DANDAI,
Yang di-Pertua Negeri.

30TH DECEMBER, 1996.

No. 15 of 1996

An Enactment to provide for the establishment and administration of City of Kota Kinabalu and for matters incidental hereto.

ENACTED by the Legislature of the State of Sabah as follows:

Short title and commencement.

1. This Enactment may be cited as the City of Kota Kinabalu Enactment 1996 and shall come into force on such date as the Minister may, by notification in the *Gazette* appoint.
[20.1.2000]

Interpretation.

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

“Advisory Board” means the Advisory Board of the City of Kota Kinabalu established under section 6; and

“Mayor” means the Mayor of the City of Kota Kinabalu or in Bahasa Malaysia “Mayor Bandaraya Kota Kinabalu” appointed under section 4.

Area of the City of Kota Kinabalu.

3. (1) The area of the City of Kota Kinabalu shall comprise of the area described in Schedule A.

(2) The Yang di-Pertua Negeri may, by notification in the *Gazette*, divide the City of Kota Kinabalu into districts or other subdivisions and exempt from the operation of this Enactment or of any written law affecting the City of Kota Kinabalu such place or places within the boundaries of the City of Kota Kinabalu as may be specified in such notification.

Appointment of Mayor and Deputy Mayor.

4. (1) The municipal affairs of the City of Kota Kinabalu shall be administered by the Mayor.

(2) The Mayor shall be appointed by the Yang di-Pertua Negeri for a term not exceeding three years subject to such terms and conditions as he may determine.

(2A) Subject to the provision of this Enactment, a person is disqualified for be appointed as Mayor —

- (a) he is a non-citizen of Malaysia;
- (b) he is and has been found or declared to be of unsound mind;
- (c) he is an undischarged bankrupt;
- (d) he has been ordinarily resident outside Sabah for five years immediately preceding the date of his appointment;
- (e) he is disqualified for appointment as a member of an Authority under the provision of the Local Government Ordinance 1961 [*Ord. No. 11/1961.*]; or
- (f) he has been convicted of an offence by a court of law in any part of the Federation and sentenced to imprisonment for a term not less than one year or to a fine of not less than two thousand ringgit and has not received a free pardon in respect thereof.

(3) The appointment of the Mayor may at any time be revoked by the Yang di-Pertua Negeri without assigning any reason therefor.

(4) The person appointed to be the Mayor shall be eligible for reappointment upon the expiry of his term of office.

(5) The Yang di-Pertua Negeri may appoint any person temporarily to exercise the functions of the Mayor during the period in which the Mayor is for any reason unable to exercise his functions or during the period of absence of the Mayor on leave and such person shall, during the period in which he is exercising the functions of the Mayor under this subsection, be deemed to be the Mayor.

(6) The Mayor and the acting Mayor shall be paid such remuneration and allowances as the Yang di-Pertua Negeri may determine.

(7) Where by or under this Enactment or any other written law the Mayor is empowered to exercise any powers or perform any duties he may by instrument in writing delegate, subject to such conditions and restrictions as may be prescribed in such instrument, the exercise of such powers or the performance of such duties to any committee or body or to any person described by name or office:

Provided that nothing in this section shall apply to any power to make any subsidiary legislation conferred upon him by or under this Enactment or any other written law.

(8) The Mayor may appoint or constitute a committee to be known as Consultative Committee for any such general or special purpose as in the opinion of the Mayor necessary and the number of the members of such committee and their term and condition of office shall be as may from time to time be fixed by the Mayor.

Mayor to be a body corporate.

5. (1) The Mayor and his successors in office shall be for all purposes a corporation sole under the name of the Mayor of the City of Kota Kinabalu or in Bahasa Malaysia "Mayor Bandaraya Kota Kinabalu".

(2) The Mayor shall have an official seal which shall be authenticated by the signature of the person for the time being holding the office of Mayor, or by any other person

authorized by the Mayor in that behalf.

(3) The seal of the Mayor shall be officially and judicially noticed, and every document purporting to be issued or made by the Mayor and sealed with the seal of the Mayor, authenticated as provided under subsection (2), shall in any litigation or proceeding be deemed to be so made or issued without further proof, unless the contrary is shown.

(4) A certificate signed by the Mayor certifying that any instrument purporting to be made or issued by him was so made or issued shall be conclusive evidence of the fact so certified.

(5) The Mayor as a corporation sole shall for the purposes of the Land Ordinance [Cap. 68.] be deemed to be a Native of Sabah.

Advisory Board.

6. (1) There shall be established for the purpose of this Enactment a body, to be known as the Advisory Board of the City of Kota Kinabalu, to advise the Mayor upon such matters connected with the administration of the City of Kota Kinabalu as the Chief Minister may by order prescribe, and upon any questions referred to the Advisory Board by the Chief Minister or the Mayor.

(2) Subject to this Enactment and any regulations made thereunder, the meetings and procedure of the Advisory Board shall be determined by the Advisory Board.

(3) The Mayor, every member of the Advisory Board and every authorised officer, employee or agent of the Mayor shall be deemed to be a public servant within the meaning of the Penal Code [F.M.S. Cap. 45.].

Constitution of Advisory Board.

7. (1) The Advisory Board shall consist of not less than five and not more than fifteen persons to be appointed by the Yang di-Pertua Negeri on such terms and conditions as he may determine.

(2) The Mayor shall, as far as is practicable, attend and preside at all meetings of the Advisory Board, and in his absence any person appointed by the Yang di-Pertua Negeri

under subsection (5) of section 4, or in the absence of any such person, the senior member of the Advisory Board actually present shall preside.

(3) The Mayor or other person presiding at any meeting of the Advisory Board shall cast his vote whenever necessary to avoid an equality of votes but shall not vote in any other case.

(4) The Mayor or other person presiding at any meeting of the Advisory Board may request any person who is not a member of the Advisory Board to assist in the discussion on any question that may arise in the course of any proceedings, and such person shall be permitted to speak thereon but shall not be entitled to vote.

Minutes.

8. (1) Minutes shall be kept of all proceedings of the Advisory Board.

(2) At every ordinary meeting of the Advisory Board the minutes of the last preceding meeting shall be confirmed, with or without amendment, as the case may require, before proceeding to the despatch of any other business.

Mayor may act in opposition to Advisory Board.

9. (1) The Mayor may, after consultation with the Chief Minister, act in opposition to the advice given to him by the Advisory Board, if in any case he shall think fit to do so, but in any such case —

(a) he shall record fully in writing, for inclusion in the minutes, the grounds and reasons for his decision; and

(b) it shall be competent for any member of the Advisory Board to require that there shall be recorded in the minutes any advice or opinion that he may have given upon the question in dispute and the grounds therefor.

Public Authorities Protection Act 1948.

10. The Public Authorities Protection Act, 1948 [Act 198.] shall apply to any action, suit, prosecution or proceeding against the Mayor or any member of the Advisory Board or against

any officer, servant or agent of the Mayor in respect of any act, neglect or default done or committed by him in such capacity.

Powers and duties of Mayor.

11. (1) The Mayor shall, subject to this Enactment, have and may exercise all the powers and perform all the duties conferred or imposed upon the Kota Kinabalu Municipal Council under the Local Government Ordinance, 1961 [Ord. No. 11/1961.] and any subsidiary legislation made thereunder.

(2) Notwithstanding the provisions of subsection (1) and any other written law regulating the powers and duties of a local authority, the powers and functions of local authority under such written law shall be exercisable within the City of Kota Kinabalu by the Mayor; and accordingly references to local authority in the written law aforementioned shall be construed as including the Mayor.

(3) All persons within the City of Kota Kinabalu shall be subject to the jurisdiction of the Mayor and shall be bound to comply with all the subsidiary legislation referred to in section 13 and those made by the Mayor under the powers conferred on him by this section.

The Chief Minister to issue directions.

12. (1) The Chief Minister may from time to time give the Mayor directions of a general character, and not inconsistent with this Enactment, on the policy to be followed in the exercise of the powers conferred and the duties imposed on the Mayor by or under this Enactment in relation to matters which appear to him to affect the interests of the City of Kota Kinabalu, and the Mayor shall as soon as possible give effect to all such directions.

(2) The Mayor shall furnish the Chief Minister with such returns, accounts and other information with respect to the property and activities of the Mayor as the Chief Minister may from time to time require.

Existing law, etc.

13. (1) Subject to this Enactment, all subsidiary legislation made or deemed to have been made by the Kota Kinabalu Municipal Council under the Local Government Ordinance,

1961 [Ord. No. 11/1961.] or under any other written law affecting that part of the City of Kota Kinabalu which immediately before the commencement of this Enactment were under the jurisdiction of the Kota Kinabalu Municipal Council, shall, until amended or revoked by the Mayor, apply to and continue to have effect in the respective areas in the City of Kota Kinabalu after the commencement of this Enactment as if made under this Enactment and, unless the context otherwise requires, references therein —

- (a) to the Kota Kinabalu Municipal Council or to the President, Chairman or to any Councillor or officer thereof shall be construed as references to the Mayor; and
- (b) to the Minister shall be construed as references to the Chief Minister as the circumstances may require.

(2) In their application to the City of Kota Kinabalu, the Chief Minister may, by Order published in the *Gazette*, make such modifications as appear to him necessary or expedient to any subsidiary legislation applicable as aforementioned.

Transfer and secondment of Council staff.

14. (1) The appointment of any officer or employee of the Kota Kinabalu Municipal Council subsisting immediately before the coming into operation of the Enactment, shall be deemed to be made by the Mayor under the provisions of this Enactment, and for the purpose of determining the rights of pension or gratuity or provident fund on retirement, the service of such officer or employee shall be regarded as continuous from the time he was appointed by the Kota Kinabalu Municipal Council.

(2) The Kota Kinabalu Municipal Council may, at the request of the Mayor, second any of its officers or employees to the service of the Mayor. Any officer or employee so seconded shall remain a member of the service to which he belongs, but his remuneration shall be paid by the Mayor to whose service he is seconded.

Transfer of properties.

15. All lands, buildings, projects, works and other properties in that part of the City of Kota Kinabalu which immediately before the commencement of this Enactment were owned by or

vested in the Kota Kinabalu Municipal Council shall, on the commencement of this Enactment, be deemed to have been transferred to and vested in the Mayor without further conveyance.

Licence and permit to continue to have effect in the City of Kota Kinabalu.

16. (1) Every licence and permit granted or issued by the Kota Kinabalu Municipal Council by virtue of any written law affecting that part of the City of Kota Kinabalu before the commencement of this Enactment and still in force shall, during the currency thereof and until the date of expiry, have effect in the City of Kota Kinabalu.

(2) All fees, rates, cesses and other revenues as may be levied and collected by the Kota Kinabalu Municipal Council in respect of the period commencing from the date of operation of this Enactment and affecting the areas referred to above shall be paid into the Funds of the Mayor.

Existing contracts.

17. All deeds, bonds, agreements, instruments and working arrangements subsisting immediately before the commencement of this Enactment and affecting any of the property transferred under section 15, shall be in full force and effect against or in favour of the Mayor and enforceable as fully and effectually as if, instead of the Kota Kinabalu Municipal Council, the Mayor had been named therein or had been a party thereto.

Continuance of Civil proceedings.

18. (1) Any civil proceedings or cause of action pending or existing immediately before the commencement of this Enactment by or against the Kota Kinabalu Municipal Council as administrators of the property transferred under section 15 may be continued or instituted by or against the Mayor as it might have been by or against the abovementioned Council.

(2) Any appeal brought or any leave to appeal applied for, on or after the commencement of this Enactment against a decision given before the commencement of this Enactment in any legal proceedings to which the Kota Kinabalu Municipal Council was a party may, if the appeal relates to any property transferred under section 15, be brought against the Mayor.

Prevention of difficulties or anomalies.

19. (1) If any difficulty or anomaly arises in connection with the implementation of the provisions of this Enactment, the Chief Minister may by order make such modification therein as may appear to him necessary for removing or preventing such difficulty or anomaly.

(2) The Chief Minister shall not exercise the powers conferred by subsection (1) after the expiration of three years from the commencement of this Enactment.

(3) Subject to the provision of this Enactment, the Minister may make rules for the purpose of carrying into effect the provision of this Enactment.

Local Government Ordinance 1961 to be applicable to the City.

20. (1) The Local Government Ordinance 1961 [*Ord. No. 11/1961.*] shall, on the commencement of this Enactment, apply to the City of Kota Kinabalu and shall have effect therein subject to the modifications set out in Schedule B.

(2) The Chief Minister may, from time to time by Order published in the Gazette, amend the Schedule B.

SCHEDULE A
(Section 3(1))

LIMITS OF THE CITY OF KOTA KINABALU
As specified in the FIRST SCHEDULE to the
Kota Kinabalu Municipal Council Instrument, 1978

SCHEDULE B
(Section 20(1) and (3))

MODIFICATIONS OF THE LOCAL GOVERNMENT ORDINANCE 1961
AS APPLICABLE TO THE CITY OF KOTA KINABALU

GENERAL MODIFICATION TO THE WHOLE ORDINANCE
(EXCEPT WHERE IT IS PROVIDED OTHERWISE HEREINAFTER)

- (a) The references to the "Council" or " Authority" or "an Authority" shall be construed as references to the "Mayor" and wherever the word "its" (meaning the Council or Authority) appears therein it shall be construed as references to "his" (meaning the Mayor).
- (b) The references to the "Minister" shall be construed as references to the "Chief Minister".
- (c) The references to the "Municipal" or "Municipality" shall be construed as references to the "City of Kota Kinabalu".
- (d) The references to the "Councillors" shall be construed as references to the Mayor".
- (e) The references to the "Secretary" or "Municipal Secretary" shall be construed as references to the "Mayor".
- (f) The references to the "President" or "Chairman" shall be construed as references to the "Mayor".
- (g) The references to the "Minister of Financial Planning and Development" shall be construed as references to the "Minister of Finance".

SPECIFIC MODIFICATION TO BE MADE

	<u>Provisions</u>	<u>Modifications</u>
1.	Part II, III and IV	- Not applicable.
2.	Sections 36 - 50	- No change, except for general modifications.
3.	Section 50A	- Not applicable.
4.	Sections 50B - 52	- No change, except for general modifications.
5.	Section 53	- (a) General modifications. (b) Substitute for the words "Municipal Council Fund, the Town Fund or the District Council Fund preceded by the name of the Municipality, the Town or the District as the case may be "appearing in the 2 nd , 3 rd and 4 th line thereof the words "Mayor's Fund".
6.	Section 54	- (a) General modification. (b) Substitute for the words "Municipal Council, the Town or District Council Fund as the case may be, "appearing in line 3 and 4 thereof the words "Mayor's Fund".
7.	Section 55	- No change, except for general modifications.
8.	Section 56	- (a) General modification. (b) Substitute for subsection (2) the following — “(2) Whenever rates are levied by the Mayor under the provisions of section 82, a copy of the order of the Mayor shall be forwarded to the Minister of Finance

- together with a statement of amount payable under the provisions of subsection (1)".
9. Section 57 - No change, except for general modifications.
10. Section 58 - (a) General modifications.
(b) In subsection (1), delete the words "when authorised by resolution in that behalf passed by a two-thirds majority of the members present and voting at a meeting of which due notice, including wording of such resolution, shall have been given, "appearing in line 1 to line 5 thereof.
11. Sections 59-60 - No change, except for general modifications.
12. Section 61 - (a) General modifications.
(b) In subsection (1) substitute for the word "resolution" appearing in line 3 the words "an order".
13. Section 62 - (a) General modifications.
(b) In subsection (4) —
(i) delete the word "No" appearing in line 1;
(ii) insert the word "not" immediately after the word "shall" appearing in line 1; and
(iii) delete the words "in the case of each Authority" appearing in the last line to the proviso.
14. Sections 63 - 65 - No change, except for general modifications.
15. Section 66 - Delete the word "any" appearing in line 3.
16. Section 67 - (a) In subsection (1) delete the word "every" appearing in line 3.

- (b) In subsection (2), delete the words “District Council, Town or” appearing in line 1 and 2.
17. Section 68 - No change, except for general modifications.
18. Section 68A - No change, except for general modifications.
19. Section 69 - Substitute the following —
- 69. “Appointment of officers, employees or agents, etc.**
- (1) The Mayor may appoint and employ such number of executive officers and such other officers or employees as he may consider necessary for the purposes of this Enactment:
- Provided that no such officers or employees shall be appointed to any post in any “Klasifikasi Perkhidmatan dalam Kumpulan Perkhidmatan Sokongan” in the salary scale of RM1,254.00 and above per month, without the approval of the Chief Minister.
- (2) Officers and employees of the Mayor shall hold office for such period or periods, receive such salaries and allowance and be subject to such other terms and conditions of service as may be determined by the Mayor.
- (3) All officers and employees of the Mayor shall be under the control of the Mayor.
- (4) The mayor may employ and pay agents and technical advisers including advocates and solicitors, bankers, stockbrokers, surveyors or valuers or other persons, to transact any business or to do any act

required to be transacted or done by the Mayor in the execution of his duties under this Enactment.

(5) The Mayor may, with the approval of the Chief Minister, by General Orders provide for the terms and conditions of service of officers and employees of the Mayor and in particular such General Orders may provide for —

(a) the appointment, tenure of office, duties and terms and conditions of service including matters relating to maternity benefits, rest days, hours of work, overtime, holidays, leave, dismissal and retrenchment of its officers and employees;

(b) the provisions of payments or other allowances on death, resignation, retirement or discharge to persons who have been in the service or employment of the Mayor;

(c) for the contribution of monies by the Mayor for superannuation or provident fund; and

(d) any appeals by any such officer or employee against his dismissal or against any other disciplinary measure taken against him”.

20. Sections 69A - - No change, except for general modifications.
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21. Section 71 - (a) General modifications.
(b) Substitute for the words “District Council Town or Municipal Council Fund” appearing in line 4 and 5 the words

“Mayor’s Fund”.

- 22. Section 72 - No change, except for general modifications.
- 23. Section 72A - No change, except for general modifications.
- 24. Sections 73 - 85 - No change, except for general modifications.
- 25. Section 86 - (a) General modifications.
(b) In subsection (1), substitute for the word “resolution” appearing in line 1 the word “order”.
- 26. Sections 87-89 - No change, except for general modifications.
- 27. Section 90 - (a) In subsection (1), substitute for the word “resolution” appearing in line 7 the word “order”; and
(b) In subsection (2), delete the words “the executive officer or Chairman of” appearing in line 4.
- 28. Sections- 91 - 95 - No change, except for general modifications.
- 29. Section 96 - (a) General modifications.
(b) Delete the words “Chairman or executive officer of an” appearing in line 7.
- 30. Section 97 - No change, except for general modifications.
- 31. Section 98 - (a) General modifications.
(b) In subsection (1), delete the words “executive officer or Chairman of” appearing in line 10.
- 32. Section 99 - No change, except for general modifications.
- 33. Sections 100 - Not applicable.
- 34. Sections 101 - 102E - No change, except for general modifications.

35. Section 103 - (a) General modifications;
(b) The references to the "Chairman" shall be construed as reference to the "Mayor".
36. Sections 104 - 104A - No change, except for general modifications.
37. Section 105 - Delete the words "or any Chairman or member of an Authority" appearing in line 2 and 3.
38. Section 106 - (a) General modifications;
(b) Insert the words "Legal Officer" immediately after the word "the" appearing in line 4;
(c) Insert the word, "or any advocate" immediately after the words "any officer" appearing in line 4;
(d) Insert the words ", if the State Attorney-General certifies in writing that it is in the public interest that the Mayor should be represented by the State Attorney-General, or by any Legal Officer of the State Attorney-General's Chambers" immediately after the word "proceedings" appearing in line 5;
(e) Delete the words "by resolution of and of the Authority," appearing in line 5 and 6;
(f) Insert the words "Legal Officer", immediately after the word "Chairman" appearing in line 7;
(g) Insert the word "above-mentioned" immediately after the word "person" appearing in line 8; and
(h) Delete the words "in charge of the office of an Authority" and the words "on such Authority" appearing in line 8 and line 9 respectively.

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| 39 | Section 106A | - No change, except for general modifications. |
| 40. | Section 107 | - Not applicable. |
| 41. | Sections 108 -
110 | - Not applicable. |

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Tuesday, the 19th November, 1996.

DATUK FRANCIS T.N YAP,
Deputy Speaker,
State Legislative Assembly.