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SPECIAL ISSUE

Kenya Gazette Supplement No. 143 (National Assembly Bills No. 34)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2017

NAIROBI, 18th September, 2017

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THE PHYSICAL PLANNING BILL, 2017

A Bill for

AN ACT of Parliament to make provision for the planning, use, regulation and development of land and for connected purposes.

PART I—PRELIMINARY

1. This Act may be cited as the Physical Planning Act, 2017.

Short title.

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

Interpretation

“advertisement” means any word, letter, devise, model, sign, placard, board, notice or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purpose of the advertisement of proprietary article and without prejudice to the foregoing includes any hoarding or similar structure used or adapted for use for the display of advertisement, and references to the display of advertisements shall be construed accordingly:

Provided that any advertisement displayed inside a building shall not be included;

“building” means any structure or erection and any part of any structure or erection of any kind whatsoever whether permanent, temporary or movable, and whether completed or uncompleted;

“building operations” include rebuilding operations, structural alterations or additions to buildings and other similar operations and the making of access roads, railways, waterworks, sewerage and drainage works, electrical and telephone installations and any road works preliminary to, or incidental to, the erection of buildings;

“building or works” include waste materials, refuse and other matters deposited on land and reference to the erection or construction of building or works shall be construed accordingly;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to physical planning;

“commercial use” includes shops, offices, hotels, restaurants, bars, kiosks and similar business enterprises but does not include petroleum filling stations;

No. 6 of 2012

“Commission” means the National Land Commission established under Article 67 of the Constitution;

“density” means the maximum amount of development permitted or the maximum number of persons permitted to reside, as the case may be, on any area of land;

“development” means carrying out any works on land or making any material change in the use of any structures on the land;

“development control” means the process of managing or regulating the carrying out of any works on land or making of any material change in the use of any land or structures and ensuring that operations on land conform to spatial development plans as well as policy guidelines, regulations and standards issued by the planning authority from time to time in order to achieve a purposeful utilization of land in the interest of the general welfare of the public;

No. 6 of 1996.

“dwelling” means a building or any part or portion of a building, used or constructed, adapted or designed to be used for human habitation.

“emerging technologies” include telecommunication installations, information and communications technology parks and aviation services;

Cap. 536.

“existing building” or “existing works” means, respectively, a building or works erected, constructed or carried out before the date this Act becomes applicable to the area in which the building or works are situated, and includes a building or works, as the case may be, commenced before, but completed after such date;

“existing use” means in relation to any building or land the use of that building or land for any purpose of the same character as that for which it was used before the date this Act becomes applicable to the area in which the building or land is situated:

Provided that where an existing use of land is, after such date, extended onto, under or over adjoining land, whether such adjoining land is held under the same title or

not, such extension shall not be an existing use for the purposes of this Act;

“industrial use” includes manufacturing, processing, distilling, brewing, warehousing and storage, workshops and garages, mining and quarrying, power generation and similar industrial activities including petroleum filling stations;

“land use planning” refers to a branch of physical planning encompassing various disciplines which seek to order and regulate land use in an efficient and ethical way;

“local physical planning development plan” means a plan for the area or part thereof of a city, municipal, town or urban council and includes a plan with reference to any trading or marketing centre;

“National Director of Physical Planning” means the National Director appointed under section 10 of this Act;

“physical planning” refers to the active process of organizing the structures and function to ensure orderly and effective sitting or location of land uses, and it encompasses deliberate determination of spatial plans with an aim of achieving the most optimum level of land utilization in a sustainable manner.

“planning authority” includes-

- (a) the Cabinet Secretary; and
- (b) the County Executive Committee Member responsible for matters relating to physical planning;

“private land” has the meaning assigned to it the Land Act, 2012;

“public purposes” means the purposes of –

- (a) transportation including roads, canals, highways, railways, bridges, wharves and airports;
- (b) public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;
- (c) public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;

- (d) public parks, playgrounds, gardens, sports facilities and cemeteries;
- (e) security and defence installations;
- (f) settlement of squatters, the poor and landless, and the internally displaced persons; and
- (g) any other analogous public purpose.

“regional physical development plan” means a plan for the area covering two or more counties or parts thereof;

“registered physical planner” means a person who is holding a certificate as a registered physical planner under section 7 of the Physical Planners Registration Act, 1996; and

“spatial planning” means a plan that outlines the spatial expression to national and county development policies and integrates proposals from various sectors and includes identified priority investments.

3. The objects of this Act are to provide –

Objects of the Act

- (a) the principles, procedures and standards for the preparation and implementation of physical development plans at the national, regional, county, urban, rural and cities level;
- (b) the administration and management of physical planning in Kenya;
- (c) the procedures and standards for development control and the regulation of physical planning and land use;
- (d) a framework for the co-ordination of physical planning by county governments;
- (e) a mechanism for dispute resolution;
- (f) a framework for equitable and sustainable use, planning and management of land; and
- (g) the functions of and the relationship between planning authorities.

4. Every State organ, State officer, public officer and person engaged in physical planning or land use regulation is bound by the Constitution and in particular—

Principles and norms

- (a) the national values and principles set out in Articles 10 and 232 of the Constitution;

- (b) the principles of land policy set out in Article 60 of the Constitution;
- (c) the leadership and integrity principles set out in Articles 73 and 75 of the Constitution; and
- (d) the principles, procedures, and standards of physical planning contemplated in this Act.

PART II – PHYSICAL PLANNING INSTITUTIONS

5. (1) There is established the National Physical Planning Consultative Forum.

National Physical
Planning
Consultative
Forum.

(2) The National Physical Planning Consultative Forum shall comprise of –

- (a) the Cabinet Secretary for the time being responsible for matters related to physical planning, who shall be the chairperson and shall provide the secretariat;
- (b) the National Director of Physical Planning;
- (c) a representative of the Council of Governors;
- (d) the Chairperson of the National Land Commission;
- (e) one County Executive Committee Member from each County being a member responsible for physical planning, environment, or infrastructure;
- (f) the Cabinet Secretary for the time being responsible for matters related to economic planning;
- (g) the Cabinet Secretary for the time being responsible for matters related to the environment;
- (h) the Cabinet Secretary for the time being responsible for matters related to roads and infrastructure;
- (i) the Cabinet secretary for the time being responsible for matters related to social and community development;
- (j) the Cabinet Secretary for the time being responsible for matters related to culture;
- (k) a person nominated by the Kenya Institute of Planners;

- (l) a person nominated by the Institution of Surveyors of Kenya;
- (m) a person nominated by the Architectural Association of Kenya;
- (n) a person nominated by an association representing the private sector in Kenya as shall be determined by the Cabinet Secretary;
- (o) a person nominated by a registered body representing a national association of residents;
- (p) a person nominated by the National Council for Persons with Disability; and
- (q) any person co-opted by the Forum for that person's special skills, interest and knowledge.

(3) The institutions or organizations nominating members under subsection (2), (k), (l), (m) and (n) shall nominate two persons, one each of either gender, from which the Cabinet Secretary shall appoint the members of the Forum.

6. The functions of the National Physical Planning Consultative Forum shall be to—

- (a) provide a forum for consultation on the national physical development plan;
- (b) promote effective coordination and integration of physical development planning and sector planning;
- (c) advise on the mobilization of adequate resources for the preparation and implementation of physical development plans and strategies; and
- (d) advise on strategic physical development projects of national, inter-county, county, or transnational importance.

Functions of the
National Physical
Planning
Consultative
Forum

7. (1) The National Physical Planning Consultative Forum shall meet at least four times in a year.

National Physical
Planning
Consultative
Forum Meetings.

(2) Subject to this Act, the National Physical Planning Consultative Forum may regulate its procedure.

(3) The National Physical Planning Consultative Forum may establish committees for the effective performance of its functions.

8. The National Land Commission shall, in relation to the matters set out in this Act—

Functions of the National Land Commission.

- (a) monitor and oversee physical planning in Kenya;
- (b) prepare status reports on the preparation and implementation of physical development plans in Kenya; and
- (c) develop monitoring framework and formulate oversight parameters relating to physical planning.

9. The Cabinet Secretary shall be responsible for—

Functions of the Cabinet Secretary.

- (a) formulating a national policy on physical planning;
- (b) issuing in the Gazette policy statements, guidelines and circulars on general and specific aspects of physical planning;
- (c) approval of national physical development plans;
- (d) monitoring and overseeing the technical arm at the national level in the performance of their functions; and
- (e) coordinating the national and county levels of planning.

10. (1) There shall be established the office of the National Director of Physical Planning which shall be an office in the public service.

National Director of Physical Planning

(2) The National Director of Physical Planning shall advise and be responsible to the Cabinet Secretary responsible for physical development planning.

11. A person is qualified for appointment as the National Director of Physical Planning if that person—

Qualifications of the National Director of Physical Planning.

- (a) is a citizen of Kenya;
- (b) possesses a postgraduate degree in urban and regional planning or related discipline from a recognized university;
- (c) is registered as a physical planner under the Physical Planners' Registration Act, 1996;
- (d) has at least ten years' post-qualification professional experience in physical planning; and

No. 6 of 1996.

- (e) is not otherwise disqualified under the provisions of Chapter 6 of the Constitution or any other written law.

12. The National Director of Physical Planning shall be responsible for—

Responsibilities of the National Director of Physical Planning.

- (a) advising the government on strategic physical planning matters that impact on the whole country;
- (b) formulating national physical planning policies, guidelines and standards;
- (c) preparation of national physical development plans;
- (d) coordination of the preparation of regional physical development plans; and
- (e) undertaking capacity building and technical support for county planning authorities.

13. The County Executive Committee member responsible for physical planning shall be responsible for—

Responsibilities of the County Executive Committee Member responsible for Physical Planning

- (a) formulating a county policy on physical planning;
- (b) approving county physical development plans;
- (c) monitoring and overseeing the planning function; and
- (d) promoting the integration of county physical planning functions and sectoral planning levels.

14. (1) There is established the office of the County Director of Physical Planning which shall be an office in the county public service.

County Director of Physical Planning.

(2) The County Director of Physical Planning shall advise and be responsible to the County Executive Committee Member in charge of physical planning.

15. The qualifications for appointment as a County Director of Physical Planning shall be similar to those for the appointment of the National Director of Physical Planning.

Qualifications of the County Director of Physical Planning.

16. The County Director of Physical Planning shall be responsible for—

Responsibilities of the County Director of Physical

- (a) advising the county government on physical planning matters that impact on the whole country;
- (b) formulating county physical planning policies, guidelines and standards;
- (c) preparation of county physical development plans;
- (d) preparation of local physical development plans;
- (e) participating in the preparation of regional physical development plans;
- (f) undertaking research on matters relating to physical development planning at the county level; and
- (g) recommending to the county government the establishment of planning units as may be necessary.

Planning.

PART III – TYPES OF PHYSICAL DEVELOPMENT PLANS

17. (1) The Cabinet Secretary shall initiate, and the National Director of Physical Planning shall finalize, the preparation of a National Physical Development Plan.

The National Physical Development Plan.

(2) The National Physical Development Plan—

- (a) shall cover an implementation period of twenty years; and
- (b) may be reviewed after ten years or as necessary when special needs arise.

18. (1) The National Physical Development Plan shall define strategic policies for the determination of the general direction and trends of physical development and sectoral development in Kenya and provide a framework for the use and development of land.

Purpose and objects of the National Physical Development Plan.

(2) The National Physical Development Plan is the basis for—

- (a) environmental conservation, protection and improvement;
- (b) promoting social and economic development including national competitiveness;

- (c) promoting balanced national development;
- (d) optimal use of land and natural resources;
- (e) formulation of national physical development planning policies;
- (f) guiding regional, county and local planning;
- (g) coordinating sectoral planning and development;
- (h) managing human settlements; and
- (i) providing a framework for guiding the location and development of strategic national investments and infrastructural development.

19. (1) In preparing a National Physical Development Plan, the National Director of Physical Planning shall—

- (a) consider relevant national policies;
- (b) ensure effective participation by the public and relevant stakeholders; and
- (c) consult the National Physical Planning Consultative Forum prior to the initiation of the National Physical Development Plan and submit the proposed plan to the National Physical Planning Consultative Forum for consideration and input before its final approval.

Procedure for preparation of the National Physical Development Plan.

(2) The Cabinet Secretary shall, at least fourteen days before commencement of the preparation of a National Physical Development Plan, publish a notice in the *Gazette* and in at least two newspapers of national circulation of the intention to prepare a National Physical Development Plan.

(3) A notice published in accordance with this section shall state the objectives of National Physical Development Plan, the purpose of the National Physical Development Plan and the matters to be addressed in the plan; and the places where members of the public may provide written proposals for the National Physical Development Plan

20. (1) A National Physical Development Plan shall include—

- (a) the objectives of the plan;
- (b) situation analysis including—
 - (i) an analysis of the state of physical development in Kenya; and

Content of National Physical Development Plan

- (ii) the relevant studies and reports concerning physical development in Kenya;
- (c) policies, strategies and measures necessary to optimize opportunities and potentials and resolve challenges relating to physical development planning in Kenya;
- (d) maps and plans showing current and anticipated physical and land use patterns;
- (e) an implementation framework;
- (f) a monitoring and evaluation strategy; and
- (g) such other information as may be necessary.

(2) The National Director of Physical Planning shall, in addition to what is provided for in sub-section (1), take into account matters specified in the Second Schedule to this Act.

(3) The preparation of the National Physical Development Plan shall be completed within twenty four months after the publication of the intention to prepare the plan.

(4) The Cabinet Secretary may, by notice in the *Gazette*, extend the period within which a National Physical Development Plan is to be prepared by one year.

21. (1) Within thirty days of the preparation of the National Physical Development Plan, the Cabinet Secretary shall publish a notice in the *Gazette* and in at least two newspapers of national circulation informing the public that the draft National Physical Development Plan is available at the places and times designated in the notice for inspection and that any interested person may comment on the content of the draft National Physical Development Plan.

Notice of preparation of National Physical Development Plan.

(2) The Cabinet shall consider the comments made about the National Physical Development Plan and may or may not incorporate the comments in the plan.

(3) Any person dissatisfied with the decision of the Cabinet Secretary may apply to the Cabinet Secretary for review of his or her decision and the Cabinet Secretary shall consider the same and communicate his or her decision within sixty days of receipt of application for review.”

22. (1) If there have been no applications for review of the decision of the Cabinet Secretary or if the applications for review have been heard and determined, the Cabinet Secretary shall submit the draft National Physical Development Plan to the National Physical Planning Consultative Forum for comments.

Approval of
National Physical
Development
Plan.

(2) The National Physical Planning Consultative Forum shall consider the plan and may propose changes which shall be incorporated in the plan.

(3) Upon incorporation of the proposed changes by the National Physical Planning Consultative Forum the plan shall be submitted to the Cabinet for approval.

(3) The Cabinet, through the Cabinet Secretary, shall publish the approved plan in the *Gazette* and in at least two newspapers of national circulation within fourteen days of the approval of the National Physical Development Plan.

23. (1) The national government and county governments shall base the preparation of regional physical development plans, integrated county physical development plans, city physical development plans, urban area physical development plans and sectoral plans on the National Physical Development Plan.

Implementation
of a National
Physical
Development
Plan.

(2) Notwithstanding the lack of a National Physical Development Plan, planning authorities at the county level shall prepare County and Local Physical Development Plans.

24. (1) At least three months before the end of the financial year, each public institution of the national government that is responsible for the application or the implementation of a National Physical Development Plan shall prepare a status report on the implementation of that plan and submit it to the Cabinet Secretary and the National Land Commission for their purposes.

Status Reports.

(2) At least three months before the end of the financial year, each public institution of a government that is responsible for the application or the implementation of a National Physical Development Plan shall prepare and submit a status report on the implementation of the National Physical Development Plan to the Cabinet Secretary or the County Executive Committee member responsible for physical planning and the National Land Commission for their purposes.

25. (1) Two or more Counties may, by mutual agreement or out of compelling necessity, formulate a regional physical development plan.

Establishment of Regional Joint Physical Planning Development Committees.

(2) In the preparation of the regional physical development plan, the counties shall form a Regional Physical Planning Committee.

(3) The Regional Physical Planning Development Committee shall consist of—

- (a) the National Director of Physical Planning who shall, for the purpose of co-ordinating the preparation of the regional physical development plan, chair the Committee;
- (b) the County Executive Committee member responsible for physical planning for each county involved and any other relevant County Executive Committee member.

(4) The regional joint physical planning committee may co-opt such other persons as may be necessary to assist it in performance of its duties.

(5) The National Director of Physical Planning shall provide the secretariat services for the purposes of this section.

26. A Regional Physical Development Plan shall—

- (a) define the scope of the plan; and
- (b) define the geographical area to which the plan relates.

Scope of the Regional Physical Development Plan

27. (1) The Regional Physical Planning Joint Committee preparing a Regional Physical Development Plan shall publish a notice of intention to prepare a plan in the gazette and in at least two newspapers with a national circulation.

Commencement of Regional Physical Planning Process.

(2) The notice published under sub-section (1) shall state the constitution of the Regional Physical Planning Joint Committee, the broad reasons for the constitution of the joint committee and the joint committee's address where views on the plan may be submitted.

(3) The joint committee shall prepare and complete the Regional Physical Development Plan within two years from the time notice of intention to plan is published.

(4) The joint committee shall consult, publish, and hold stakeholders' meetings during the preparation of the Regional Physical Development Plan.

28. (1) Within thirty days of the completion of a Regional Physical Development Plan, the Regional Physical Planning Joint Committee shall publish a notice in the Gazette and in at least two newspapers of national circulation informing the public that the plan is available at the places and times designated in the notice for inspection and that any interested person may comment on the content of the plan.

Notice of and objections to a Regional Physical Development Plan.

(2) The Regional Physical Planning Joint Committee shall consider the comments made about the plan and may or may not incorporate the comments in the plan.

(3) Any person dissatisfied with the decision of the Regional Physical Planning Joint Committee may appeal to the National Physical Planning Liaison Committee and the committee shall consider the application and make its determination within (60) days of the receipt of the application.

(4) Any person dissatisfied with the decision of the National Physical Planning Liaison Committee may appeal to Environment and Land Court.

29. (1) The County Executive Committee members of all counties participating in the regional physical development plan shall separately approve the plans and submit the same to the National Director of Physical Planning for final approval.

Approval of Regional Physical Development Plan.

(2) Within thirty days of the completion of a Regional Physical Development Plan or if objections have been heard and determined the Cabinet Secretary shall approve and publish the Regional Physical Development Plan in the Gazette and in at least two newspapers of national circulation.

(3) Before the Regional Physical Development Plan can be implemented, the governors of the relevant counties shall adopt the plan at a joint meeting of the relevant governors that shall be organized by the Regional Physical Planning Joint Committee.

(4) The approved Regional Physical Development Plan shall be deposited with the relevant County Director of Physical Planning.

30. (1) In addition to the national physical development plan, the Regional Physical Development Plan shall inform the preparation of a county physical development plan, a local physical development plan or an urban area physical development plan for the county governments within the planning area covered by the Regional Physical Development Plan.

Implementation of the Regional Physical Development Plan.

(2) Where a National Physical Development Plan and a Regional Physical Development Plan have not been prepared or approved, county governments may prepare other physical development plans which will be incorporated into the National Physical Development Plan or the relevant Regional Physical Development Plan after they have been prepared and approved.

31. At least three months before the end of a financial year, every county executive committee member responsible for physical planning in a county covered by a Regional Physical Development Plan shall submit a report on the implementation of the Regional Physical Development Plan to the National Land Commission and the Cabinet Secretary for their purposes.

Status Reports on Regional Physical Development Plan.

32. (1) Once in every ten years, a county government shall prepare a county physical development plan for that county.

County Physical Development Plan.

(2) Each county physical development plan shall be in conformity with the National Physical Development Plan and any relevant Regional Physical Development Plan

(3) The county executive committee member in charge of physical planning shall ensure the county physical development plan is prepared and published within a period of eighteen months from the time notice of intention to plan is published.

No. 17 of 2012.

(4) The county physical development plan shall suffice for purposes of the provisions of section 110 of the County Governments Act.

33. The objects of a county physical development plan shall be—

Purpose and objects of a county physical development plan.

(a) to provide an overall physical development framework for the county;

- (b) to guide rural development and settlement;
- (c) to provide a basis for infrastructure and services delivery;
- (d) to guide the use and management of natural resources;
- (e) to enhance environmental protection and conservation;
- (f) to identify the proper zones for industrial, commercial, residential and social developments;
- (g) to improve transport and communication networks and linkages; and
- (h) any other purposes that may be determined by the planning authority.

34. (1) At least fourteen days before commencing the preparation of a county physical development plan, the member of the executive committee shall publish a notice in the *Gazette* and the notice shall include the intention to prepare a county physical development plan, the objects of the plan and the matters to be considered in the plan and the address to which any views on the plan may be sent.

Notice of intention to prepare a county physical development plan.

(2) The notice shall be displayed for a period of fourteen days at the offices of the county government and such other places as may be necessary in all the wards within the county.

(3) The county planning authority shall hold adequate stakeholder meetings in each ward before the completion of the preparation of the county physical development plan.

35. (1) A county physical development plan shall consist of—

Contents of a county physical development plan.

- (a) policies, strategies and general proposals for the development and use of land;
- (b) a summary of the situational analysis;
- (c) proposals for proper county development, resource utilization and linkage with neighboring counties;
- (d) diagrams, illustrations and description of current and anticipated developments in the county;

- (e) an implementation strategy;
- (f) a reporting, monitoring and evaluation strategy; and
- (g) any other matters as may be prescribed.

(2) In addition to the provisions of sub-section (1) the county government shall take into account those matters specified in the Second Schedule.

36. (1) Within thirty days of the preparation of a county physical development plan, the county planning authority shall publish a notice in the Gazette and in at least two newspapers of national circulation informing the public that the draft county physical development plan is available at the places and times specified in the notice.

Public Participation in the preparation of a county physical development plan.

(2) The county executive committee member in charge of physical planning shall facilitate public participation.

(3) The county executive committee member in charge of physical planning shall consider the comments made about the draft county physical development plan and may or may not incorporate the comments in the plan.

(4) Any person aggrieved by a decision of the county planning authority concerning the county physical development plan or matters connected therewith, may within sixty days of receipt by him of notice of such decision, appeal to the county physical planning liaison committee in writing against the decision in such manner as may be prescribed.

(5) Subject to sub-section (4), the county physical planning liaison committee may reverse, confirm or vary the decision appealed against and make such order as it deems necessary or expedient to give effect to its decision.

(6) When a decision is reversed by the county physical planning liaison committee it shall, before making any order under subsection (5), afford the county planning authority an opportunity of making representations as to any conditions or requirements which in his opinion ought to be included in the order, and shall also afford the appellant an opportunity to replying to such representations.

(7) Any person aggrieved by a decision of the County Physical Planning Liaison Committee under this section may appeal to the Environment and Land Court against such decision in accordance with the rules of procedure for the time being applicable to the High Court.

37. (1) If there are no applications for the review of a county physical development plan or if all applications for review have been heard and determined, the county executive committee member in charge of physical planning shall publish the county physical development plan in the *Gazette* and in at least two newspapers with a national circulation within thirty days of the county physical development plan's completion.

Completion and approval of a county physical development plan.

(2) The county executive committee member in charge of physical planning shall submit the completed county physical development plan to the governor who shall cause it to be placed before the county assembly.

(3) A county physical development plan shall be the basis for the preparation of sectoral programmes and projects in the county and sub-county levels.

(4) On the approval of the county physical development plan no development shall take place on any land unless it is in conformity with the approved plan.

38. (1) A county executive committee member in charge of spatial planning, on his own motion or on recommendation of the county government may initiate the modification of a county physical development plan if—

Modification of a County Physical Development Plan.

- (a) there are practical difficulties in the execution or enforcement of that county physical development plan; or
- (b) there has been a change of circumstances since the county physical development plan was approved.

(2) On the approval of the county government, the County Executive Committee member in charge of physical planning shall publish a notice in the *Gazette* and in at least two newspapers of national circulation notifying any interested parties of the proposed amendments to the county physical development plan and the period within which interested parties may make representations to the County Executive Committee member.

No. 17 of 2012.

(3) A proposal for amending a county physical development plan shall—

- (a) state the reasons for the proposed amendment;
- (b) comply with the relevant provisions of the County Governments Act, 2012; and
- (c) be in conformity with the National Physical Development Plan, Inter-County Physical Development Plan and any existing regional development plan.

(4) Where a county executive committee member in charge of physical planning discovers that a proposed amendment to the county physical development plan shall affect other counties, the county executive committee member shall consult the county executive committee members in charge of physical planning in the other counties and shall take into account their comments before proceeding with the amendment of the county physical development plan.

(5) During the process of amending a county physical development plan, the county executive committee member shall ensure public participation.

(6) The amended County physical development plan shall be published by the county planning authority in accordance with section 37 of this Act

(7) This section shall not prevent the national government or a person ordinarily resident in a county from proposing an amendment to the county physical development plan.

39. (1) A county executive committee member in charge of physical planning may only initiate the process of revising a county physical development plan after eight years have elapsed since the county plan was published in the *Gazette*.

Revision of a county physical development plan.

(2) The provisions of section 38 of this Act shall apply with the necessary modifications to the revision of a county physical development plan.

40. (1) A county government shall prepare a local physical development plan in respect of a city, municipality, town or unclassified urban area as the case may be.

Local Physical Development Plan.

(2) A local physical development plan may be for long-term physical development, short-term physical development, urban renewal or redevelopment and for the purposes set out in the Third Schedule in relation to each type of plan.

No.13 of 2011.

(3) A local physical development plan shall be consistent with an Integrated City or Urban Development Plan as contemplated under Part V of the Urban Areas and Cities Act, 2011.

41. A county government shall prepare a local physical development plan for—

Purpose of a Local Physical Development Plan.

- (a) zoning, urban renewal, or redevelopment;
- (b) (ii)guiding and co-ordinating the development of infrastructure;
- (c) regulating the land use and land development;
- (d) providing a framework for coordinating various sectoral agencies;
- (e) giving effect to any Integrated City or Urban Development Plan; and
- (f) providing a framework and guidelines on building and works development in the city, municipality, urban area, or other smaller urban centres including local centres, and market centres.

42. The preparation of a local physical development plan may be initiated by the county executive committee member in charge of physical planning.

Initiation and preparation of local physical development plan.

43. (1) A local physical development plan shall consist of—

Contents of a Local Physical Development Plan.

- (a) a survey report in respect of the area to which the plan relates carried out as the manner specified in the Third schedule; and
- (b) any Geographical Information System-based maps and descriptions as may be necessary to indicate the manner in which the land in the area may be used in accordance with the requirements of the Third Schedule.

(2) The survey report in a local physical development plan should include technical annexes and a sieve analysis

of gradient, environment and infrastructure so as to provide for maximum locations for new developments.

44. (1) Within thirty days of the preparation of a local physical development plan, a county planning authority shall publish a notice in the Gazette and in at least two newspapers of national circulation informing the public that the plan is available at the places and times designated in the notice for inspection and that an interested person may comment on the content of the plan.

Notice of and objections to a Local Physical Development Plan.

(2) The provisions of section 36 relating to the making of representations or objections to the county physical planning liaison committee concerning county physical development plans and to the consideration by the committee of such representations or objections and to appeals shall apply *mutatis mutandis* to this section.

(3) The provisions of section 37 relating to the approval or disapproval of a county physical development plan shall apply *mutatis mutandis* to the approval or disapproval of a local physical development plan.

45. The County Executive Committee member in charge of physical planning shall within fourteen days after the approval of a local physical development plan publish a notice in the Gazette and in at least two newspapers of national circulation that the plan has been approved with or without modification and that the plan may be inspected at the place or places and times specified in the notice during normal working hours.

Approval of Local Physical Development Plans.

46. (1) A county executive committee member in charge of physical planning may amend or revise a local physical development plan where—

Amendment or Revision of Local Physical Development Plan.

- (a) there are practical difficulties in the implementation of the plan; or
- (b) there has been change of circumstances since the plan was approved.

(2) Where the county executive committee member in charge of physical planning intends to amend or revise a local physical development plan, the provisions of section 38 shall apply with the necessary modifications.

(3) A County Executive Committee member in charge of physical planning may initiate the revision of a local physical development plan after a period of three years

after the plan has been approved in accordance with section 45 of this Act or as the need may arise.

47. (1) A county government may, on its own motion or as may be requested by the national government or the National Physical Planning Consultative Forum, declare an area as a special planning area if—

Declaration of a
Special Planning
Area.

- (a) that area has unique development and environmental potential or challenges;
- (b) that area has been identified as suitable for intensive and specialized development activity;
- (c) the development of that area might have significant effect beyond that area's immediate locality;
- (d) the development of that area raises significant urban design and environmental challenges; or
- (e) the declaration is meant to guide the implementation of strategic national projects; or guide the management of internationally shared resources.

(2) Where a county government has declared an area as a special planning area, the county executive committee member may, by notice in the *Gazette*, suspend for a period of not more than two years any development in the special planning area until a physical development plan in respect of that area has been approved.

(3) Despite sub-section (2), where planning permission has been granted in an area declared to be a special planning area before the declaration is made, the permitted development shall be permitted to continue but only if planning permission was granted more than six months before the declaration of the special planning area.

(4) The county government shall declare an area as a special planning area by notice in the *Gazette* and in at least two newspapers of national circulation and the notice shall specify the area declared as a special planning area and the nature of the proposed development for which the declaration has been made.

(5) A county planning authority may publish such Regulations as may be necessary to promote public

participation during the process of declaring an area a special planning area.

(6) A physical development plan prepared for a special planning area shall undergo the process of approval in accordance with section 45 of this Act.

48. A special area plan shall contain—

- (a) a written statement highlighting the grounds for the declaration of a special plan area;
- (b) the challenges the special plan intends to address;
- (c) the geographical area covered by the special plan;
- (d) the infrastructure needs of the special plan area;
- (e) a detailed assessment of the social, environmental and economic conditions of the special plan area;
- (f) proposed zones in the special plan area;
- (g) proposed conditions for development in the special plan area;
- (h) how public participation and innovative approaches will be used in planning and implementation process; and
- (i) a framework for the implementation, monitoring and evaluation of the special plan.

Contents of a Special Area Plan.

PART IV – DEVELOPMENT CONTROL

49. The objectives of development control are—

- (a) to ensure orderly physical development;
- (b) to ensure optimal land use;
- (c) to ensure the proper execution and implementation of approved physical development plans;
- (d) to protect and conserve the environment;
- (e) to promote public participation in physical development decision-making; and
- (f) to ensure orderly and planned building development, planning, design, construction, operation and maintenance.

Objectives of development control.

50. Subject to the provisions of this Act, the Urban Areas and Cities Act, 2011, and the County Governments

Power to undertake development

Act, 2012, the planning authorities shall have the power within their areas of jurisdiction to—

control

No.13 of 2011

No.17 of 2012

- (a) prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;
- (b) control or prohibit the subdivision of land;
- (c) consider and approve all development applications and grant all development permissions;
- (d) ensure the proper execution and implementation of approved physical development plans;
- (e) formulate by-laws to regulate zoning in respect of use and density of development; and
- (f) reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plans.

51. (1) A person shall not carry out development within the area of a planning authority without a development permission granted by the planning authority.

Development permission.

(2) A person who commences any development without obtaining development permission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

(3) The planning authority may require a person who has commenced a development without obtaining development permission to restore the land on which the development is taking place to its original condition or as near to its original condition as is possible and that such restoration shall take place within ninety days.

(4) Where a person who is required to do so fails to comply with the provisions of sub-section (3), the planning authority may undertake to restore the land as required and may recover the cost of the restoration from the person required to undertake the restoration.

(5) The planning authority may revoke development permission if the applicant has contravened any provision of this Act or conditions imposed on the development permission for any justifiable cause.

(6) The planning authority may modify the conditions imposed on development permission where circumstances require it or for any justifiable cause.

52. (1) A person shall obtain development permission from a planning authority by applying for development permission from that planning authority in the prescribed form and after paying the prescribed fees.

Application for development permission.

(2) An applicant for development permission shall provide documents, plans and particulars as may be required by the planning authority to indicate the purposes of the proposed development.

(3) An applicant for development permission shall indicate the proposed uses to which the land shall be put, the population density to which that land shall be subjected and the portion of the land the applicant shall provide for easements as a consequence of the applicant's proposed development.

(4) Where an applicant is not the registered owner of the land for which development permission is being sought, that applicant shall obtain the written consent of the registered owner of that land and the applicant shall provide that written consent to the planning authority at the time of applying for development permission.

(5) The development permission granted by planning authorities shall be subject to compliance with the provisions of any other written law.

(6) Where an applicant does not receive written response for development permission within sixty days, such permission shall be assumed to have been given in terms of this Act.

53. (1) A person applying for development permission shall ensure that any documents, plans and particulars that are provided to the planning authority while applying for development permission have been prepared by the relevant qualified, registered and validly registered professionals

Plans and documents to be prepared by qualified person.

(2) A person who purports to prepare a document, plan or particulars required under this Act shall prove that person's credentials when asked to do so by the planning authority and shall be required to authenticate the copies of the documents, plans or particulars provided to the planning authority in that person's name.

54. (1) Within seven days of receiving an application for development permission, a county government shall give a copy of the application to the relevant authorities or agencies to review and comment and the relevant authorities or agencies shall comment on all relevant matters including—

Development application referred to relevant authorities

- (a) land survey;
- (b) roads and transport;
- (c) agriculture and livestock;
- (d) health;
- (e) public works and utilities;
- (f) environment and natural resources; and
- (g) any other relevant authority.

(2) Within fourteen days of receiving the copy of the development permission from the planning authority, the relevant authorities or agencies shall submit their comments to the development authority.

55. (1) When considering an application for development permission, a planning authority—

Decision making and communication.

- (a) shall be bound by the relevant approved physical development plan;
- (b) shall take into consideration the provision of community facilities, environmental, and other social amenities in the area where development permission is being sought;
- (c) shall take into consideration the comments made on the application for development permission by other relevant authorities in the area where development permission is being sought; and
- (d) in the case of a leasehold property, shall take into consideration any special conditions stipulated in the lease.

(2) With regards to an application for development permission that complies with the provisions of this Act and within thirty days of receiving an application for development permission, the planning authority may—

- (a) grant the applicant the development permission in the prescribed form and may stipulate any

conditions it considers necessary when granting the development permission; or

- (b) refuse to grant the applicant the development permission in the prescribed form and state the grounds for the refusal in writing.

(3) An applicant or an interested party that is aggrieved by the decision of the planning authority regarding an application for development permission may appeal against that decision to the County Physical Planning Liaison Committee within fourteen days of the decision by the authority and that committee shall hear and determine the appeal within fourteen days of the appeal being filed.

(4) An applicant or an interested party who files an appeal under sub-section (3) and who is aggrieved by the decision of the committee may appeal against that decision to the Environment and Land Court.

56. (1) A planning authority shall maintain a register of documents submitted by applicants for development permission and shall issue a submission certificate to every applicant who submits such documents.

Registers.

(2) A planning authority shall maintain a register of development permission and shall enter the details of each applicant for development permission, whether or not development permission was granted to that applicant and the details of the proposed project for which development permission has been applied for.

(3) A register maintained by the planning authority under this Act shall be open to the public for scrutiny and the planning authority shall publish guidelines for public access to that register.

57. (1) A planning authority may levy a development fee against an applicant for development permission.

Development fees.

(2) Each county government may, by notice in the *Gazette*, publish Regulations determining the circumstances under which a development fee shall be levied, the rates that shall be payable and the circumstances under which a development fee may be waived.

(3) Where a development fee has been waived in relation to an application for development permission, the

planning authority may require that applicant to develop infrastructure in relation to the property in question for general use by the residents of the area where the property in question is located.

58. (1) Where an applicant for development permission has been granted development permission but has not commenced the proposed project within two years of receiving the development permission that permission shall lapse.

Lapse of development permission.

(2) Despite sub-section (1), the planning authority, where an applicant makes an application, may extend development permission by a period of one year if the planning authority determines it is necessary or just to grant that extension.

(3) Where the planning authority extends development permission, it may impose further conditions on the applicant that it considers fit.

59. The planning authority may impose conditions or impose a fine to be prescribed in regulations on an applicant for development permission for building works where that applicant fails to complete the building works within five years.

Commencement and completion of building.

60. A licensing authority shall not grant a license for the commercial or industrial use or occupation of any building, or in respect of any premises or land, for which development permission has not been granted by the relevant planning authority.

Prohibition of grant of license for development of a commercial or industrial nature

61. (1) A person commits an offence if that person—

- (a) uses or permits to be used any land or building in contravention of any conditions imposed by a planning authority when granting development permission; or
- (b) commences, undertakes or carries out—
 - (i) a development where development permission has been revoked;
 - (ii) a development where development permission has been modified and the development does not comply with the modifications in the development permission; or

Offences relating to development permission.

(iii) a development where the building works are inconsistent with the plans approved by the planning authority.

(c) Despite the provisions of subsections (1) (a) and (1) (b) (iii) of this section, in case of any material variations in a development permission, the applicant may apply to the planning authority for development permission.

(2) A person who commits an offence under this section is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

62. (1) A planning authority may demand the production of, and make extracts from, all registers or other records or any deeds or instruments belonging to, or in the custody or possession of, any public officer or any person and in which are contained particulars of any land or property affected by the relevant physical development plan.

Access to information.

(2) The information obtained by a planning authority in accordance with sub-section (1) shall be treated confidentially and shall not be disclosed to any other person except by an order of a court in connection with any legal proceedings.

(3) Any request for information shall protect the rights enshrined in Article 31 of the Constitution.

63. (1) The Cabinet Secretary shall consider and offer policy guidance to any public institution proposing a project of strategic national importance.

Strategic national or inter-county projects

(2) Any regional physical development projects shall be approved in accordance with section 29.

(3) The Cabinet Secretary shall within sixty days of the enactment of this Act make regulations prescribing for the projects that may be classified as strategic national or inter-county projects.

64. (1) Subject to the provisions of National Museums and Heritage Act, 2006, the county government may, after consultation with the Cabinet Secretary responsible for national heritage, serve on the owner or occupier of a building which in the opinion of the county government is of special architectural value or historic interest, an order

Preservation of heritage sites.
No.6 of 2006.

No. 6 of 2006.

prohibiting the demolition, alteration or extension of such building.

(2) All physical development plans shall take into account and record all heritage sites declared or deemed to have been declared under the National Museums and Heritage Act, 2006.

(3) The owner of any building which shall be declared a national monument building shall be compensated for loss of use and income.

PART V – ENFORCEMENT

65. (1) A planning authority shall serve the owner, occupier, agent or developer of property or land with an enforcement notice if it comes to the notice of that planning authority that—

Enforcement
notice.

(a) a developer commences development on any land without development permission after the commencement of this Act without the required development permission having been obtained; or

(b) any condition of a development permission granted under this Act has not been complied with.

(2) An enforcement notice shall—

(a) specify the development alleged to have been carried out without development permission or the conditions of the development permission alleged to have been contravened;

(b) specify measures the developer shall take, the date on which the notice shall take effect, the period within which the measures shall be complied; and

(c) require within a specified period the demolition or alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities .

(3) Where a person on whom an enforcement notice has been served is aggrieved by that notice, that person may appeal to the relevant County Physical Planning Liaison Committee within fourteen days of being served with the notice and the committee shall hear and determine the appeal within thirty days of the appeal being filed.

(4) Any party aggrieved with the determination of the county physical planning liaison committee may appeal to the court only on a matter of law and the court shall hear and determine the appeal within thirty days.

(5) A person who has been served with an enforcement notice and who refuses to comply with the provisions of that notice commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

66. (1) A planning authority in charge of an urban area or a city shall require an owner, agent or developer of property or land to present a development application for consideration of the planning authority if, after the commencement of this Act—

Requirement to present development application.

- (a) it comes to the notice of the planning authority that a development has commenced or has been completed where that development commenced or was completed before the commencement of this Act; and
- (b) in the assessment of the planning authority that development would meet the requirements of this Act.

(2) A notice under this section shall state the period within which the owner, agent or developer shall comply with the notice.

(3) The planning authority shall serve on the owner, agent or developer who is required to apply for development permission with an enforcement notice as contemplated in section 65 if the planning authority refuses to grant that owner, agent or developer a development permission or—

- (a) fails to make an application despite being afforded a chance to make such an application; or
- (b) fails to make the application within the prescribed time.

PART VI—PHYSICAL PLANNING LIAISON COMMITTEES

67. There is established the National Physical Planning Liaison Committee.

Establishment of the National Physical Planning Liaison Committee.

68. (1) The National Physical Planning Liaison Committee shall consist of—

Composition of
National Physical
Planning Liaison
Committee

- (a) a representative of the National Land Commission;
- (b) the Director-General of the National Environment Management Authority or a designated representative;
- (c) the Director-General of the Water Resources Management Authority or a designated representative;
- (d) the Director-General of the Kenya National Highways Authority or a designated representative;
- (e) the Chairperson of the National Construction Authority or a designated representative;
- (f) the Chief of Defence Forces or a designated representative;
- (g) a representative of the Council of Governors;
- (h) a person nominated by an alliance representing associations in the private sector in Kenya and appointed by the Cabinet Secretary;
- (i) a registered architect nominated by an association of architects in Kenya and appointed by the Cabinet Secretary;
- (j) a registered physical planner nominated by the Kenya Institute of Planners and appointed by the Cabinet Secretary;
- (k) a registered surveyor nominated by the Institution of Surveyors of Kenya and appointed by the Cabinet Secretary; and
- (l) an advocate of the High Court nominated by the Law Society of Kenya and appointed by the Cabinet Secretary.

(2) The Cabinet Secretary shall provide the secretariat services to the committee.

(3) The members of the National Physical Planning Liaison Committee appointed under sub-section (1)(f), (h),

(i), (j) and (l) shall serve for a term not exceeding five years and shall not be eligible for re-appointment.

(4) The Chairperson of the committee shall be a person appointed under paragraphs (h), (i), (j), (k) or (l).

(5) The National Physical Planning Liaison Committee may co-opt any other persons with special skills, interest and knowledge to assist in its deliberations but not more than three persons at any one time.

(6) The co-opted members of the National Physical Planning Liaison Committee may not vote on any matter for which a vote of the committee is required and the numbers of the co-opted members shall not count in determining the quorum of the National Physical Planning Liaison Committee.

69. (1) The National Physical Planning Liaison Committee shall—

- (a) advise the Cabinet Secretary on broad physical planning policies, strategies and standards; and
- (b) hear and determine appeals under this Act or as may be provided for under any other written law.

(2) The National Physical Planning Liaison Committee may hear appeals against decisions made by the national planning authority including decisions on—

- (a) the development of major infrastructure facilities;
- (b) the reserving of public land for public projects;
- (c) the implementation of national or regional physical development plans; or
- (d) the environmental impacts on ecologically sensitive areas by the implementation of strategic projects.

70. There is established a County Physical Planning Liaison Committee for each county.

71. (1) The County Physical Planning Liaison Committee shall consist of—

- (a) an advocate of the High Court nominated by the Law Society of Kenya and appointed by the County Executive Committee member in charge

Functions of the National Physical Planning Liaison Committee.

Establishment of County Physical Planning Liaison Committees. Composition of the County Physical Planning Liaison Committee.

of physical planning, who shall be the chairperson;

- (b) a representative of the National Land Commission;
- (c) a registered physical planner nominated by the Kenya Institute of Planners and appointed by the County Executive Committee member in charge of physical planning;
- (d) a registered architect nominated by an association of architects in Kenya and appointed by the County Executive Committee member in charge of physical planning;
- (e) a registered surveyor nominated by the Institution of Surveyors of Kenya and appointed by the County Executive Committee member in charge of physical planning; and
- (f) two members, being one male and one female, nominated by the county chamber of commerce and appointed by the County Executive Committee member in charge of physical planning.

(2) The county physical planning liaison committee may co-opt experts to assist in its deliberations.

(3) The County Executive Committee member in charge of physical planning shall provide secretariat services to the committee.

72. The functions of the County Physical Planning Liaison Committee shall be to—

- (a) hear and determine complaints and claims made in respect to applications submitted to the planning authority in the county;
- (b) hear appeals against decisions made by the planning authority with respect to physical development plans in the county; and
- (c) hear appeals with respect to enforcement notices.

73. (1) The County Physical Planning Liaison Committee shall, subject to this Act or any other written law, determine its own procedure.

Functions of the
County Physical
Planning Liaison
Committee.

Procedure of the
County Physical
Planning Liaison
Committees.

(2) Despite sub-section (1), the quorum of the County Physical Planning Liaison Committee shall be half the members of the Liaison Committee.

(3) Every decision of a County Physical Planning Liaison Committee shall be by a majority vote of the members present and voting and where there is a tied vote, the chairperson of that committee or the person acting as the chairperson of that committee shall cast the deciding vote.

(4) Where the chairperson of a County Physical Planning Liaison Committee is unable to exercise his functions owing to illness, genuine absence or any other reason, the members present shall elect one of their own to be the chairperson of the respective Liaison Committee

(5) A County Physical Planning Liaison Committee shall meet at least four times in a year.

74. (1) A person who appeals to County Physical Planning Liaison Committee shall do so in writing in the prescribed form.

Appeal to a
County Physical
Planning Liaison
Committee

(2) A County Physical Planning Liaison Committee shall hear and determine an appeal within thirty days of the appeal being filed and shall inform the appellant of the decision within fourteen days of making the determination.

(3) The chairperson of a County Physical Planning Liaison Committee shall cause the determination of the committee to be filed in the Environment and Land Court and the court shall record the determination of the committee as a judgment of the court.

75. (1) A person who has been summoned to appear before a County Physical Planning Liaison Committee or may do so through a representative or through any form of communication that the committee may permit for the purpose and if required to produce or deliver any document that person shall produce or deliver that document in accordance with the direction of the committee.

Duty to appear
before a County
Physical Planning
Liaison
Committee.

(2) A person who contravenes the provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding twenty-five thousand shillings.

76. All summons issued or notices issued, or awards or orders made, under this Act by a County Physical

Communication.

Planning Liaison Committee may be issued or made in electronic form or written form.

77. (1) A person who has made an appeal before a County Physical Planning Liaison Committee may withdraw the appeal in writing at any time before the appeal is determined by the committee.

Withdrawal of appeal and abandonment of appeal.

(2) The County Physical Planning Liaison Committee shall notify each relevant party that an appeal has been withdrawn within seven days of receiving the written notice of the withdrawal.

(3) Where a County Physical Planning Liaison Committee determines that an appeal has been abandoned by the person who filed the appeal, that committee may require the applicant to submit to the committee, within fourteen days of the committee notifying the applicant in writing, reasons why the appeal should not be regarded as having been withdrawn.

(4) The County Physical Planning Liaison Committee shall consider the submissions made under sub-section (3) and shall either allow the appeal to be finally heard and determined or shall stop all proceedings and determine that the appeal has been withdrawn.

(5) Every County Physical Planning Liaison Committee shall maintain written records of all its proceedings.

78. The provisions of sections 74, 75, 76 and 77 shall apply with the necessary modifications in the case of appeals to the National Physical Planning Liaison Committee.

Appeals to National Physical Planning Liaison Committee.

79. (1) A member of the National Physical Planning Liaison Committee or a County Physical Planning Liaison Committee who has an interest in a matter being considered by that committee shall disclose that interest at the meeting in which that matter is being considered.

Declaration of personal interest.

(2) A member of a Physical Planning Liaison Committee who makes a disclosure under sub-section (1) shall not take part in any proceedings related to that matter.

(3) A member of a physical planning liaison committee who does not disclose an interest as required under this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand

shillings or to imprisonment for a term not exceeding two months or to both.

80. (1) A person shall not disclose, without the consent of the National Physical Planning Liaison Committee or a County Physical Planning Liaison Committee, as the case may be—

Disclosure of information.

(a) any information obtained while serving on that committee; or

(b) any information obtained from the committees in the performance of its functions.

(2) A person who contravenes the provisions of sub-section (1) commits an offence and on conviction is liable to a fine not exceeding one hundred thousand shillings.

(3) Despite sub-section (1), a person may disclose information that person obtained while serving on the National Physical Planning Liaison Committee or a County Physical Planning Liaison Committee in the performance of its duties to a person authorized by any written law to be given that information or as may be required by a court of law.

81. (1) Each Physical Planning Liaison Committee shall maintain a register of each appeal filed, minutes of the meeting of the committee and the decisions of the committee.

Physical Planning Liaison Committees to keep registers.

(2) Each register maintained by Physical Planning Liaison Committees shall be made available to the public for scrutiny.

(3) An interested party may, in the prescribed form, apply to a Physical Planning Liaison Committee to examine a register maintained by that committee and that party may, after paying a prescribed fee where prescribed, make copies or take extracts from that register.

(4) The Cabinet Secretary may, by notice in the *Gazette*, make Regulations for the better implementation of the provisions of this section.

82. The remuneration of the members of the Physical Planning Liaison Committees shall be recommended by the Salaries and Remuneration Commission.

Remuneration.

83. A public officer acting under the Act shall not be liable in an action or a proceeding for or in respect of an act

Indemnity for public officers acting under this

done or omitted to be done without negligence and in good faith in the exercise of any of the functions conferred by or under this Act. Act.

PART VII—MISCELLANEOUS PROVISIONS

84. The Physical Planning Act, 1996, is hereby repealed. Repeal of No. 6 of 1996

85. (1) Any approval for development granted in accordance with the provisions of any written law in force immediately prior to the commencement of this Act shall be deemed to be a development permission granted under this Act. Transitional provisions.

(2) Despite the provisions of sub-section (1), if a development for which approval was granted under the provisions of any written law in force immediately before the commencement of this Act shall not have been commenced within twenty-four months of the commencement of this Act that development approval shall lapse.

(3) Where an application for development had been made under the provisions of any written law prior to the commencement of this Act and approval has not been granted, that application shall be deemed to be an application for development permission under this Act and shall be deemed to have been made on the date of the commencement of this Act.

86. All disputes relating to physical planning, before establishment of the national and county physical planning liaison committees shall be heard and determined by the Environment and Land Court. Pending disputes.

87. (1) Section 110(3) of the County Governments Act, 2012, is amended by deleting the words “and approved by the respective county assemblies in accordance with procedures approved by the respective county assembly”. Consequential amendments. No. 17 of 2012

(2) Section 110(4) of the County Governments Act, 2012, is amended by deleting the words “ and the revisions approved by the respective county assemblies”.

FIRST SCHEDULE

PROCEDURE OF APPOINTMENT OF MEMBERS OF THE NATIONAL PHYSICAL DEVELOPMENT CONSULTATIVE FORUM

1. Within twenty one days of the commencement of this Act, or the occurrence of a vacancy in the office of the Chairperson or member, the Cabinet Secretary in charge of physical planning or the Governor, as the case shall be, shall, by notice in the *Gazette* and in at least one newspaper of national circulation, declare vacancies in the Forum, inviting applications from qualified persons and competitively convene a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or members under clause 5(2).
2. The panel shall comprise a chairperson and six members drawn from public and private sector and civil society.
3. An application in respect of a vacancy declared under paragraph 1 shall be forwarded to the panel within fourteen days of the publication of the notice and may be made by –
 - (a) Any qualified person; or
 - (b) Any person, organization or group of persons proposing the nomination of any qualified person.
4. The panel shall, subject to this section, determine its own procedure and the Cabinet Secretary shall provide it with such facilities and other support as it may require for the discharge of its functions.
5. The panel shall consider the applications and shortlist and publish the names and qualifications of all shortlisted applicants in the *Gazette* and at least one daily newspaper of national circulation within seven days from the last day of receipt of the applications under paragraph 3.
6. The panel shall interview the shortlisted applicants within fourteen days from the date of publication of the list of applicants under paragraph 5.
7. After carrying out the interviews, the panel shall select the qualified persons and forward them to the Cabinet Secretary for appointment which shall be done within fourteen days.

SECOND SCHEDULE**CONTENTS OF NATIONAL, INTER-COUNTY AND COUNTY
PHYSICAL DEVELOPMENT PLANS****PART I****1. Introduction**

- (1) Background of the Plan
- (2) Vision statement
- (3) Objectives
- (4) Scope of the Plan
- (5) principles of the Plan
- (6) Methodology
- (7) Outline of the Plan

2. Planning Context

- (1) Location-national, regional, local context
- (2) Legal and policy context
- (3) Stakeholder concerns

PART II**3. Situational Analysis**

- (1) population and demographic
- (2) physiographic dynamic
- (3) land analysis
- (4) economy- industry, agriculture, commerce, mining and quarrying, fisheries
- (5) transportation and communication
- (6) infrastructure services
- (7) urbanization
- (8) rural developments
- (9) Housing
- (10) Environments
- (11) Governance

4. Synthesis

PART III

- (1) Development challenges, opportunities and alternative interventions

5. Plan Proposals

- (1) County Structure Plan
- (2) Strategies, measures, Actions

6. Action Plans

PART IV

7. Implementation

8. Maps and graphics.

- 1. Spatially present the existing situation and Plan proposals for purposes of clarity in—

9. Communication.

- (1) Contextual Aspects.

National, Regional and Local context maps: These maps indicate relative location and position of the county. These are to the scale of 1: 250,000 for national context, regional context ranges between, 1:50,000 and 1: 100,000 and local context is 1: 25,000.

- (2) Situation Analysis Context maps to illustrate features and aspects of various thematic areas. The scale depends on level of detail required to be illustrated or presented. The recommended scales range from 1: 10,000, and 1: 25,000.

- (3) Plan Proposals

These maps indicate location of various Plan proposals. The scale depends on level of detail required to be illustrated or presented. The recommended scales range from 1: 10,000 and 1: 25,000.

- (4) Action Plans

These maps indicate areas for detail treatment. The scale of the maps depends on area to be covered and particular aspects to be captured. The recommended scales range from 1: 5,000 and 1: 10,000.

10. Content of the Maps

- (1) Key features to be captured in a Base map include:
 - (a) physiographic and natural features such as rivers, wetland, lakes, forests and hills among others

(b) contours

(c) Main man-made features such as trunk roads, railway lines, water reticulation facilities, terminus, way leaves, and human settlements, urban nodes among others.

(2) Contents of Plan Proposal Maps

(a) Selected existing features and elaborated presentation of the proposals. The maps should be geo-referenced and in layers.

11. Purpose of the survey report

The survey report shall provide for;

(1) matters that may be expected to affect development of the County;

(2) an inventory of the principal physical, economic, environmental, and social characteristics;

(3) a statement on national policies on economic, social, physical and environmental management and conservation;

(4) the principal and expected land use effects on the County;

(5) population size, composition, structure, quality, distribution and trends;

(6) communications, transport system, and traffic flow

(7) Inter and intra county linkages and relations

(8) Projected changes on all sectoral aspects and effects that the projected changes are likely to have on development, or the Planning of the county.

(9) any other matter that may be prescribed

12. Adoption of the survey report

(1) The County Executive Committee Member shall submit the survey report to the Executive Committee for adoption.

(2) If the County Assembly disapprove the survey report it shall state the reasons for its refusal and refer it to the county Director for review.

(3) Submission of a reviewed survey report shall be undertaken as provided in the manner provided in sub-paragraph (1).

THIRD SCHEDULE

CONTENTS OF LOCAL PHYSICAL DEVELOPMENT PLANS

**PART A – MATTERS WHICH MAY BE DEALT WITH IN A
LOCAL PHYSICAL DEVELOPMENT PLAN**

1. Vision
2. Objectives
3. Statements of the problem
 - (a) Aspects of housing, unemployment, traffic congestion, pollution, land tenure, lack of services, terrain, soils
 - (b) Opportunities in tourism, fishing, manufacturing, etc.
4. Objectives Statement
 - (a) Ways of alleviating the problems
 - (b) Ways of maximization of utility and opportunities.
5. Analysis
 - (a) Spatial analysis accompanied by physical and suitability maps and charts focusing on;
 - (i) the terrain, soils and climate
 - (ii) Existing land uses and development
 - (iii) Potential pattern of development,
 - (iv) Land tenure system and
 - (v) Cadastral outlay of all development.
 - (b) Population analysis;
 - (i) Population growth
 - (ii) Migration,
 - (iii) Density,
 - (iv) Distribution, age and sex structure,
 - (v) Household sizes
 - (vi) Rates of household formation;
 - (c) Economic analysis focusing on;
 - (i) Employment and incomes and places of work
 - (ii) Development trends and

- (iii) Problems of service delivery;
- (iv) Agricultural potential of the urban region
- (v) Problems of transforming the agricultural land into urban use;
- (d) Contextual analysis
 - (i) Peri-urban slum settlements and problems they pose
 - (ii) Potential, distribution and size of service centres within and outside the urban boundary
 - (iii) Evaluation of urban boundary extension;
 - (iv) Evaluation of the importance of such factors as commerce and tourism within extended areas
 - (v) Historical patterns and conditions
- (e) Housing and infrastructure analysis
 - (i) Housing occupancy rates, accommodation density, housing requirements, type of residential areas and industrial locations;
 - (ii) Education
 - (iii) Recreation areas and other public purpose land uses.
 - (iv) Power lines and way leaves
 - (v) Water and sewerage networks
 - (vi) Housing and infrastructure programmes.
- (f) Transportation and communication analysis
 - (i) Roads networks, footpaths, cycle ways, railway lines, depots, water ways, docks, etc.
 - (ii) Telephone lines
- 6. Projections
 - (a) Land Use Projection Tables
- 7. Maps and Modeling
 - (a) Existing land use map
 - (b) Sieve maps of the physical constraints or thresholds to development
 - (c) Development model map indicating land use designation and distribution as well as a clear transport and communication network

PART B – CONTENTS OF SURVEY REPORT

8. Before commencing preparation of a local spatial development plan a survey report shall be prepared providing details on—

- (a) Spatial analysis: Existing and projected land use patterns, land tenure, land suitability analysis, spread and trends
- (b) Demographic dynamics; population growth, migration, density, and distribution, age and sex structure, household sizes and rates of household formation; employment and incomes including where people go to work and what trend and problems there are in relation to services;
- (c) Economic base analysis
- (d) Reports on State of the environment; environmental assets, and condition
- (e) Transport ;mode, level of service, traffic flow and congestion
- (f) communications net-works such as roads, footpaths, cycle ways, railway lines, depots, water ways, docks, etc
- (g) Housing situation; housing occupancy rates, accommodation density, hous-ing requirements, type of residential areas and industrial locations;
- (h) peri-urban slum settlements and problems they pose;
- (i) problems of transforming the agricultural land into urban use
- (j) other social aspects including education, recreation areas and other public purpose land uses.
- (k) Infrastructure and services; existing, projected and gap analysis
- (l) Opportunities ;commerce, trade, transport, tourism, fishing, manufacturing, etc
- (m) And any other matter as may be prescribed

PART C—CONTENT FOR RENEWAL AND RE-DEVELOPMENT PLAN

9. Maps of the project area

10. Justification statement for eligibility of the areas as a substandard, decadent or blighted open area

11. Land use pattern analysis and proposals

12. Project objectives including specifications of all proposed redevelopment and detailed job creation and retention estimates

13. A financial Plan including cost estimates and a project budget

14. Local approvals

15. Site preparations including land protections and measures to address environmental or flood problems, conservation of areas of historic, architectural significance

16. Traffic systems including safe pedestrian movement, access to buildings convenient and ample public car parks as well as efficient road links

17. Public improvements including how the improvements will help achieve the objectives of the Plan

18. A relocation Plan

19. Redeveloper's obligations (restrictions that are or will be placed on owners of individual parcels)

20. Disposition for each parcel including any known redeveloper

21. A report on citizen participation describing meaningful citizen participation in the Planning process and expected citizen participation during project execution

FOURTH SCHEDULE

MATTERS WHICH MAY BE DEALT WITH UNDER DEVELOPMENT CONTROL

1. The development control process and procedures may relate to any of the following—

Aspects of
development
control.

(a) Change of user

(b) Extension of users

(c) Extension of lease

(d) Subdivision scheme and amalgamation proposals

(e) Building Plans

(f) Processing of easements and way-leaves

(g) Siting of education institutions, base transmission station, petrol stations, eco lodges, camp sites, power generation Plants, factories

(h) Advertisement

- (i) Any other as the Planning authority may prescribe from time to time

2. The Planning Authority shall, when considering a development application submitted—

Consideration of development application.

- (a) be bound by approved physical Plans
- (b) have regard to relevant national and county policies
- (c) have regard to the health, safety, amenity, efficiency, aesthetics and conveniences of the community generally and to the proper Planning and density of development and land use in the area;
- (d) have regard to any comments received from the officers or authorities and or relevant stakeholders as referred to in Clause (71) ;
- (e) in the case of a leasehold, have regard to any special conditions stipulated in the lease.

3. If any development application requires subdivision or change of user of any agricultural land, the Planning Authority shall require the applicant to obtain consent from the relevant Board.

4. Planning authorities shall require applications for major

5. The following factors shall be considered in the determination of change and extension of user—

Consideration of change/extension of user

- (a) Provisions of an approved physical development Plan
- (b) Probable effects on the character of the neighborhood
- (c) Effects on vehicular and pedestrian safety
- (d) Visual impact
- (e) Effect on the right to a view
- (f) Defined location and size of the land
- (g) Current user
- (h) Area zoning regulations
- (i) Infrastructure availability and adequacy

6. Extension of Lease—

Consideration of extension of

- (a) Whether the land is required for public purpose lease.
- (b) Whether special conditions in the lease were adhered to
- (c) Whether the land is developed
- (d) Whether the buildings on the land have been well maintained (e) Provisions of relevant approved physical development Plans (f) Defined location and size of the land

(g) Current user of the land

(h) Infrastructure availability and adequacy

7. Sub division and Amalgamation Proposals—

Considerations
for subdivision
and amalgamation

(a) The design of the Plan

(b) Provisions of relevant approved physical development Plans

(c) Land reference number, Size and shape of land

(d) The location Plan/inset

(e) Resultant subplots, their access and adequate truncations.

(f) The owner of the property, name, signature, identification and telephone number

(g) Linkage and indication of classified roads, and other Infrastructure availability and adequacy

(h) Surrender of land for public utilities

(i) Change of user considering the minimum size of sub-plots

(j) Consent from the relevant agency in case of agricultural land

8. Where the development involves the erection of a building, the Planning authority will consider the following—

(a) The use of the building

(b) The sitting of the building within the plot

(c) The elevations of the building, plinth area, canopies and height of buildings

- (d) The design, shape, civic design and facade and appearance of the building;
- (e) the set back and the building line;
- (f) Access to and parking on land which the building is to be erected;
- (g) Loading bay
- (h) Density
- (i) Plot coverage
- (j) Provision for rainwater harvesting facilities and water storage tanks in every building
- (k) Landscaping
- (l) Character
- (m) Ventilation and lighting
- (n) Infrastructure adequacy
- (o) Environmental, health and cultural considerations
- (p) Any other matter that the planning authority considers necessary for purposes of planning.

9. Where the building plans submitted do not meet the required standard, the Planning authority shall communicate the areas of improvement to the applicant

10. The applicant to whom any written directions are given shall amend the buildings Plans or drawings accordingly and resubmit within such a period as the Planning authority may specify.

11. The building Plans or drawings to be submitted include—

- (a) Development Plan and drawings;
- (b) Architectural drawings and specifications;
- (c) Civil and Structural engineer's drawings and specifications;
- (d) Electrical engineer's drawings and specifications;
- (e) Mechanical and Plumbing drawings & specifications; and

13. The following services require easements and ways leaves—

Considerations for
Easements and
Way-leaves

- (a) Telecommunications
- (b) Electrical power supply
- (c) water and sewerage networks
- (d) oil Pipeline
- (e) Fibre optic
- (f) Base transmission stations
- (g) And any other service as may require easement and or way leave

14. The National Land Commission shall not grant a way leave as in Clause 144 of the Land Act without approval from the relevant Planning authorities

15. The owner of a building may display the following illustrated advertisements without the prior consent of the Planning authority—

Consideration in
approving
advertisements

(1) In the case of shops: the name and occupation of the occupier:

Provided that the letters are not greater than 0.3 metre. (12 inches) in depth and contains not more than 6 words

(2) in the case of offices: a notice Board displayed at the ground floor entrance to the premises not exceeding 0.3 sq.metre. (1 sq. ft.) total for all occupiers;

(3) Any advertisement displayed within a building or on land or building not visible from a street;

16. The display of advertisements not mentioned in (1) shall require permission from the Planning authority

(1) The grant of permission under paragraph (I) shall depend on:

(2) The location, size and colours of the billboard ;

(3) Traffic and pedestrian safety;

(4) Religious. cultural and moral character of the advertisements;

(5) preservation of the natural environment;

(6) scenic beauty;

(7) The preservation of natural monuments and archeological sites;

(8) General amenity; and

(9) Any other factor that the Planning authority may consider necessary.

17. A Planning authority may by notice in writing, require any person who displays an advertisement without permission to remove such advertisement within the time specified in the notice.

18. Authorities responsible for licensing educational facilities shall not issue licenses without advice from the relevant Planning authorities.

19. In processing the applications the following planning considerations are taken into account –

(1) The adequacy of the physical facilities,

(2) Land use conformity, and

(3) Size of land.

MEMORANDUM OF OBJECTS AND REASONS

Statements of the Objects and Reasons for the Bill

The Physical Planning Bill, 2017 gives effect to Article 66 (1) of the Constitution which provides that the State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.

Towards this end the Bill seeks to repeal and replace the Physical Planning Act, No. 6 of 1996. It intends to provide for the planning, use, regulation and development of land in Kenya. It is divided into seven Parts and four Schedules.

Part I deals with preliminary matters including objects of the Bill which include providing for the preparation and implementation of physical development plans at all levels of government, the administration and management of physical planning in Kenya, the procedures and standards for development control and regulation of land use and physical planning, the co-ordination of physical planning between the two levels of government, dispute resolution, and the functions of and relationships among planning authorities.

Part II deals with the establishment, functions and powers of planning institutions. These are the National Physical Planning Consultative Forum, the Cabinet Secretary, the National Land Commission, the National Director of Physical Planning, and the County Physical Planning Consultative Forums.

Part III deals with the types of physical development plans, their contents, the process of their preparation, revision, modification or withdrawal, resolution of disputes in relation to physical plans and uses of physical plans. These include the National Physical Development Plans, the Regional Physical Development Plans, the County Physical Development Plans, the Local Physical Development Plans and Special Area Plans.

Part IV deals with development control. It sets out the objectives of development control, the authority of planning authorities to undertake development control, the procedures for obtaining planning permission by developers, offences in relation to development control and the preservation of heritage sites during development, among other matters.

Part V deals with the enforcement of development control permits or licences and makes provisions for enforcement notices and requisition notices.

Part VI deals with the liaison committees, their powers and functions at both national and local level. These are the National Physical

Planning Liaison Committee and the County Physical Planning Liaison Committees. It also makes provisions for the procedures of the liaison committees and appeals from their decisions.

Part VII provides for miscellaneous matters, including the repeal of the Physical Planning Act, 1996, and transitional provisions relating to planning permissions granted under the repealed Act. It also makes provisions for dealing with pending disputes under the repealed Act.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers but it does not limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill concerns county governments in terms of Article 109(4) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 11th September, 2017.

ADEN DUALE,
Leader of the Majority Party.

