

THE PHYSICAL PLANNING BILL, 2014

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NYERI COUNTY PHYSICAL PLANNING BILL, 2014

A BILL FOR

A Bill To provide a framework for spatial planning; to specify the relationship between the spatial planning and the land use management system and other kinds of planning; to provide for the inclusive, developmental, equitable and efficient spatial planning at the different spheres of government; to provide for the monitoring, coordination and review of the spatial planning system; to provide a framework for policies, principles, and standards for spatial development planning; to promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for spatial planning and development applications; to provide for the establishment, functions and operations of spatial planning agencies; to provide for the facilitation and enforcement of land use and development measures; and for connected purposes.

ENACTED by County Assembly of Nyeri as follows —

PART 1—PRELIMINARY

Short title **1.** This Bill may be cited as the Nyeri County Physical Planning Bill, 2014.

Interpretation. **2.** (1) In this bill, unless the context otherwise requires—

“**Board**” refers to the County Public Service Board

“**Council**” means the County Physical Planning Council established in accordance with Clause 11 of this Bill;

“**County Executive Committee**”

“**County Executive Committee member**” unless specified will refer to the County Executive Member in Charge of Physical Planning

“**County Land Management Board**” refers to the Nyeri County Land Management Board

“**County Planning Authority**” refers????????????????

“**Development**” will be interpreted according to the meaning ascribed under Section 44 of this Bill

“**Development Control**” means the process of managing or regulating

development on, in, above or over land;

“Development Approval Committee”

“Director” means County Director of Physical Planning

“Unauthorised Development” means: development that contravenes development plan, development without development permission or contrary to development permission, development where planning permission has been disapproved, development that is inconsistent with the approved alterations or amendments, development whose development permission period has lapsed

“Secretary” means the Secretary to the County Development Approval Committee

Objects of the Bill

3. The objects of this Bill are to—

- (a) provide a uniform, effective and comprehensive system of spatial planning and land use management;
- (b) ensure that the system of spatial planning and land use management promotes social and economic inclusion;
- (c) provide for development principles and standards;
- (d) provide for the sustainable and efficient use of land;
- (e) provide for a systematic development application and approval process
- (f) provide for cooperative government and intergovernmental relations amongst the national, county and other spheres of government; and
- (g) ensure that there is equity in the application of spatial development planning and land use management systems.

Spatial planning system

4. The spatial planning system consists of:

- (a) Spatial development plans and policies to be prepared and adopted by the county government;
- (b) development principles and standards that shall guide spatial planning, land use management and land development;

- (c) the management and facilitation of land use through the use of spatial plans;
- (d) procedures and processes for the preparation, submission and consideration of land development applications and related processes; and
- (e) implementation, monitoring and evaluation of spatial plans.

PART II—DEVELOPMENT PRINCIPLES AND STANDARDS

Application of development principles

- 5.** The general principles set out in this part shall apply to the actions of all organs of state, and other authorities responsible for the implementation of legislation regulating land use and development, and shall guide the:
- (a) preparation, adoption and implementation of any Spatial Development Framework, policy or by-law concerning spatial planning and the development or use of land;
 - (b) compilation, implementation and administration of any Land Use Scheme or other regulatory mechanism for to the management or control of the use of land;
 - (c) use and development of land;
 - (d) consideration by a competent authority of any application that impacts or may impact upon the use and development of land; and
 - (e) performance of any function in terms of this Bill or any other law regulating spatial planning and Land Use Management.

Development principles

- 6.** The following principles apply to spatial planning, land use management and land development:
- (a) Spatial sustainability, in order to:
 - (i) promote land development that is within the county’s fiscal, institutional and administrative means;
 - (ii) ensure protection of agricultural land, the environment and other

- protected lands and the safe utilization of land;
 - (iii) promote and stimulate the effective and equitable functioning of land markets; and
 - (iv) promote land development in locations that are sustainable and limit urban sprawl.
- (b) Public participation that ensures transparent decision-making in which citizens:
- (i) are educated and made aware of the reasoning behind decisions.
 - (ii) have access to information about development proposals, plans and policies, as well as to the officers and committees which make such decisions.
 - (iii) are involved in decision making;
 - (iv) provide information to facilitate Spatial Planning
- (c) Efficiency whereby:
- (i) land development optimizes the use of existing resources and infrastructure;
 - (ii) decision-making procedures are designed with a view to minimizing negative financial, social, economic or environmental impacts; and
 - (iii) development application procedures are efficient and streamlined and time frames are adhered to by all parties;
- (d) Spatial resilience whereby flexibility in spatial plans, policies and land use management systems is accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks;
- (e) Good administration whereby:
- (i) all spheres of government ensure an integrated approach to land use and land development that is guided by the constitution, this Bill and any other written law;

- (ii) the preparation and amendment of spatial plans, policies, land use schemes as well as procedures for development applications, include transparent processes of citizen participation; and
 - (iii) policies, legislation and procedures are clearly set out and citizens informed.
- (f) Integration whereby spatial planning facilitates policy coherence and integration through spatial plans fostering integration between levels of government and help to create complementary and mutually reinforcing policies and actions; and
- (g) Recognition of the needs of people with disabilities and other marginalized groups
- (h) Subsidiarity.

Prescribed standards

7. (1) The County Executive Member shall in consultation with relevant stakeholders, prescribe standards for land use management and land development

(2) The standards must:

- (a) reflect the county and national government development policy, policy priorities and programmes relating to land use management and land development;
- (b) promote social inclusion, spatial equity, desirable settlement patterns, rural revitalization, urban regeneration, and sustainable development;
- (c) Include:
 - (i) a report on and an analysis of existing land use patterns;
 - (ii) a framework for desired land use patterns;
 - (iii) existing and future land use plans, programmes and projects relative to key sectors of the economy; or
 - (iv) mechanisms for identifying strategically located vacant or underutilized land and for providing access to and the use of such

land;

- (d) Standardize the compilation of all maps and diagrams at an appropriate scale;
- (e) Differentiate between geographic areas, types of land use and development needs;
- (f) Provide for the effective monitoring and evaluation of compliance with this Bill.

(3) The County Executive Member may in consultation with or at the request of the Governor or another County Executive responsible for a related land use or land development function prescribe standards to guide the related sectoral land use or land development.

PART III – TECHNICAL SUPPORT

County
support and
monitoring

8. (1) County legislation may provide for matters of county interest not specifically

provided for in this Bill.

(2) The Governor may, subject to the Constitution and any other law regulating county supervision of cities and municipalities in the county:

- (a) assist a city or municipality with the preparation, adoption or revision of its spatial plans;
- (b) facilitate the co-ordination and alignment of the land use management;
 - (i) Systems of different cities and municipalities;
 - (ii) System of a city, town and municipality with the structure plans, development strategies and programmes of national and county organs of the state; or

(3) The Governor may, by notice in the ***County Gazette***, identify matters of county interest in respect of which County policies, frameworks, and standards must apply.

(4) The County government shall develop mechanisms to support and strengthen the capacity of cities, towns and municipalities to adopt and implement an effective system of land use management in accordance with this Bill.

PART IV — ADMINISTRATION AND COORDINATION OF PLANNING

Government
responsibility

9. (1) Spatial Planning is a shared responsibility between National and County Governments and the functions shall be exercised in accordance with the Constitution.

(2) The National Government is responsible for broad principles of land-use planning and coordination of planning by Counties.

Obligation to plan

10. The County Government shall have an obligation to plan for all its citizens for purposes of;

- (a) spatial order
- (b) public safety and security
- (c) providing a clean and healthy environment
- (d) provision of basic infrastructure including; roads of access, water, sewer, electricity, gas and solid waste disposal
- (e) provision of social amenities including recreation parks and open space
- (f) disaster preparedness and management
- (e) county special development projects

Establishment of the Directorate of Physical Planning

11. (1) There shall be a Directorate of Physical Planning to be headed by a Director.

(2) The Directorate shall consist of such other officers who shall be public officers, appointed by the County Public Service Board , as may be deemed necessary for purposes of this Bill

Qualifications for the Director

12. (1) A person is qualified for appointment as a County Director of Physical Planning if the person:

- (a) has a post graduate degree in Urban and /or Regional Planning;
- (b) has served for a least of five years working or research experience in the field of spatial planning;
- (c) is a registered Physical Planner by the Physical Planning Registration Board; and

(d) meets the requirements of chapter six of the constitution

Functions of
the Director

13. (1) The Director shall be the Chief Government adviser on all matters relating to physical planning and shall be the Secretary to the County Development Approval Committee

a. The principal office of the Director shall be at Nyeri but there may be established such other offices at sub county and town level as the Director may from time to time determine

(3) (1) The Director shall –

- (a) Prepare a 10 year County Spatial development plan
- (b) Formulate county physical development strategies, policies, guidelines and land use regulations
- (c) Be responsible for the preparation of;
 - (i) physical development plans for local and urban centers
 - (ii) county special area plans
 - (iii) urban integrated plans
 - (iv) plans for slum and informal settlement upgrading
 - (v) rural land use plans and village settlement plans
- (d) formulate land use standards, zoning schemes and ordinances for all urban settlements in the county
- (e) Advise the National Land Commission through the County Land Management Board on land reservation, alienation & acquisition for county specific projects
- (f) Undertake control of development and ensure compliance to development to approved development plans
- (g) in partnership with other County development agencies ensure implementation of all approved physical development plans
- (h) from time to time initiate, undertake, undertake or direct studies and research on matters concerning physical planning
- (i) prepare annual reports to the Governor and the County Assembly on the state of County Physical Planning
- (j) be responsible for authorizing the approval of all development applications (k) responsible for implementation of physical planning standards

(4) The Director may delegate in writing any of his functions under this Bill, either generally or specially to any officer appointed under section 11(1) and may at any time revoke or vary such delegation:

Provided that no such delegation shall be deemed to have divested the Director of all or any of his/her functions, and he/she may, if he/she thinks fit, perform such functions notwithstanding that he/she had delegated those functions

Removal of the Director

14. (1) The Director may be removed from office by the Board, in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty;
- (d) Bankruptcy; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the Director is removed under subsection (1), he or she must be given an opportunity to defend himself or herself against any allegations.

Indemnity of the Director and officers

15. The Director or any other officer appointed under section 13(2) shall not be personally liable to any action or other proceeding for or in respect of any act done or omitted to be done without negligence and in good faith in the exercise or purported exercise of any of the functions conferred by or under this Bill

Establishment and composition of the County Physical Planning Council

16. (1) There shall be established a County Physical Planning Council consisting of:

- (a) the Governor who shall be the chairperson
- (b) the Deputy Governor who shall be the Deputy chairperson
- (c) the County Executive Member in Charge of Physical Planning who shall be the

Secretary,

- (d) the Secretary to the County Land Management Board
- (e) the County Director of Land Survey and Mapping,
- (f) County Director of Housing,
- (g) County Director of Environment,
- (h) County Director of Economic Planning and Finance,
- (i) County Director of Roads, Infrastructure or Public Works
- (j) County Director of Health,
- (k) County Director of Agriculture,
- (l) County Director of Trade and Industrialization
- (m) County Director of Tourism,
- (n) a registered physical planner in private practice appointed by the Governor,
- (o) four other members to be appointed by the Governor;

Functions of
the County
Physical
Planning
Council

17. (1) The functions of the County Physical Planning Council shall be to:

- (a) hear and determine appeals lodged by a person, institution or body aggrieved by the decision a development approval committee
- (b) determine and resolve physical planning matters referred to it by a development approval committee
- (c) promote Spatial planning as an effective and efficient instrument for the improvement of the physical environment towards the achievement of sustainable development in the County;
- (d) advise the National Government on matters of concern to spatial planning

- in Nyeri County that would require national attention;
- (e) Promote integration of spatial, economic, environmental and other sectoral planning;
 - (f) Promote inter county planning initiatives through initiation of trans-boundary spatial planning;
 - (g) Advance the County's national and global competitiveness through spatial planning;
 - (h) require the Director to prepare reports on matters concerning the use of spatial planning in the conservation, use and development of lands in the county territory and any amendments desirable to any law affecting spatial planning for appropriate action and direction;
 - (i) require the National Land Commission through the County Land Management Board to undertake actions including alienation of public land for purposes of county special development projects
 - (j) Establish and maintain liaison, co-operation and capacity building with National government, Cities, Municipal Boards and Town Committees with respect to spatial planning; and
 - (k) Undertake Monitoring and evaluation of implementation of physical development plans;
- (2) The quorum for the transaction of the business of the Council shall be a two thirds of the total number of members; and all acts, matters or things authorized or required to be done by the Council, shall be effected by a resolution passed by a majority of the members present and voting.
- (3) The Council shall meet at least once Quarterly
- (4) The Chairperson shall preside at every meeting of the Council, at which he is present, but in his absence the Deputy Chairperson shall preside, and in his absence, the members present shall elect one of their members who shall,

with respect to that meeting and the business transacted thereat have all the powers of the Chairman.

(5) Unless a unanimous decision is reached, a decision on any matter before the Council shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairman or person presiding shall have a casting vote.

Establishment
and
composition
of
development
approval
committees

18. (1) There is established a Development Approval Committee which shall be responsible for receiving, processing and subsequent approval or refusal of all development applications.

(2) The Committee shall be made up of members who shall be public officers appointed by the County Public Service Board consisting of—

- (a) the Director or an authorized officer under him appointed under section 13(1) of this Bill
- (b) Director of Land Survey and Mapping
- (c) County Engineer;
- (d) County Director of Environment
- (e) County Public health officer
- (f) representation from NEMA
- (g) County Architect
- (h) two co-opted members appointed by the County Executive Committee member

Decisions of the Committee

19. (1) Decisions of the Committee shall be based on professional analysis, county development policies, approved development plans and sustainable use of county resources

(2) Unless a unanimous decision is reached during a Committee meeting, a decision on any matter before the Committee shall be by a majority of votes of the members present and in the case of an equality of votes, the Secretary shall have a casting vote

(3) A decision made by the Committee shall be binding and may only be overturned by a unanimous vote of the Council

Meetings of the Committees

20. (1) The Committee shall sit twice every month

(2) During such meetings members shall be legible for a sitting allowance as set by the County Public Service Board

(3) A member co-opted by the Committee to assist in determining a development application shall be legible for the same amount as paid to the committee members

Sub-County Development Approval Sub-Committees

21.(1) The County Executive may require the Director to establish sub-committees to process the approval of development applications at the sub county level

Membership of Sub-County Development Approval Sub-Committees

22. The sub committees established under Section (1) above shall comprise of;

- (i) Sub county administrator who shall be the chair
- (ii) County physical planner who shall be secretary
- (iii) City/town manager
- (iv) Town administrator
- (v) Director of town planning
- (vi) Land administrative officer from the ministry responsible for lands
- (vii) County engineer
- (viii) County public health officer
- (ix) County environmental officer
- (x) County surveyor
- (xi) Representative from NEMA
- (xii) One member appointed by the county land management board
- (xiii) Two co-opted members appointed by the secretary

Referral of applications to the County Development Application Committee

23. A sub – committee may refer a development application to be processed by the County Development Approval Committee

Appeals to County Development Application Committee

24. A person aggrieved by a decision made by a sub-committee may appeal such a decision to the County Development Application Committee

Co ordination with County Land Management Board

25. County Planning authorities shall work in consultation and coordination with County Land Management Board in determining and approval of all development applications

Establishment of a County Planning Compliance and Enforcement division

26. (1) The Director shall establish a Compliance and Enforcement division under the Directorate of Physical Planning

Qualification of Head of Compliance and Enforcement

27. The Board may appoint other officers as may be deemed necessary by the Director to undertake functions of the division

Functions of the County Planning Compliance and Enforcement division

28.The functions of the County Planning Compliance and Enforcement division shall be –

- i. to enforce physical planning standards within the county
- ii. to ensure that all developments are undertaken in accordance to set regulations and guidelines
- (c) to ensure that all persons, bodies or authorities develop according to the conditions attached with development approvals

Powers of the
County
Planning
Compliance
and
Enforcement
division

(d) to ensure that no development shall commence without a development permission issued by the county planning authorities

29. The division shall exercise the following powers in discharge of its functions –

(a) sue any person, body or authority in the Environment and Land Court for breach of development conditions, standards, guidelines or regulations

(b) advise the Registrar to refuse to register a document relating to a development on land whose

(c) serve an enforcement notice to an owner, occupier or developer who has;

- developed without development permission
- failed to comply with the conditions of approval of a development application

(d) require an owner, occupier or developer who has;

- developed without development permission
- failed to comply with the conditions of approval of a development application
- failed to comply with development standards, guidelines and regulations

at their own cost;

- to restore land to its original conditions
- to demolish or alter any building or works or discontinue to use any land or construction of any building or carry out any other activities on land

PART IV— SPATIAL PLANS

A- COUNTY SPATIAL PLAN

County spatial
development
plan

30. (1) The Director shall prepare a ten (10) year county spatial development plan for the County.

(2) The County Spatial plan must be aligned with the national spatial planning

2

1

policy

(3) The County spatial development plans shall be prepared for the whole or part of the area covered by the county.

Purpose and
Objects of the
county spatial
development
plan

31. (1) The County Spatial Plan shall formulate strategic policies for the purpose of determining the general directions and trends of the physical development of the County.

(2) The County Spatial Plan shall;

- (a) be accompanied by such indicative plans as may be required to clarify the strategic policies;
- (b) be the basis for investment and utilization of natural resources taking local land use practices into account;
- (c) be the basis of coordinating and integrating county spatial development plan;
- (d) provide for implementation of cluster settlement for easier provision of infrastructure;
- (e) identify and map areas which are prone to natural calamities such as floods landslides and droughts for natural disaster preparedness;
- (f) take into account the principle of Effective usage of land, Equity, Efficiency, Sustainability; and
- (g) Contain such other matters as may be prescribed or as the Council may in any particular case specify.

(3) The object of the County spatial plan shall be:

- (a) to improve the land and providing for the proper growth, physical development and use of such land;
- (b) to provide measures for the improvement of the physical living environment;
- (c) to improve communications and transportation;

- (d) for public purposes, utilities and services;
- (e) to improve the socio-economic well-being and the promotion of economic growth, and
- (f) to facilitate sustainable development.

Preparation and approval of the County spatial development plan

32. (1) The County Director shall prepare and submit to the County Executive Committee a draft County spatial development plan for approval by the County Assembly.

(2) Prior to submitting to the County Executive Committee a draft spatial development plan for its approval, the County Director shall submit a report of survey pertaining to the area being planned to the County Executive Committee for adoption.

Contents of the survey report

33. The survey report referred to under section 26 shall provide for;

- (a) matters that may be expected to affect development or the planning of the development of the County;
- (b) the principal physical, economic, environmental, and social characteristics;
- (c) the principal land uses of the County;
- (d) expected effects of the principal land uses on County development;
- (e) principal economic, social, physical and environmental management and conservation policies of the County;
- (f) the size, composition, and distribution of the population of the County whether resident or not;
- (g) the communications, transport system, and traffic of the County
- (h) the expected effect to the County, neighbouring areas communications, transport system, and traffic of the County
- (i) any other matter as may be prescribed;
- (j) any projected changes; and
- (k) effect that projected changes are likely to have on the development, or the

planning of the development of the county

Undertaking
new survey

34. The County Director, if he deems fit or if directed to do so by the County Executive, shall institute a fresh survey of the whole or part of the county or on a specific matter of the county that may affect development and planning of the county.

Consultations
in relation to
survey study

35. The County Director of Physical Planning shall consult with any other County Director of any other County on matters relating to the area of that other county that may affect the development or the planning of the development of the county in respect of which the survey is instituted.

Adoption and
approval by
the County
Assembly

36. (1) The County Director shall submit the draft spatial development plan to the Executive committee for adoption.

(2) The Director shall, within a period specified by the County Executive Committee, submit to the County Assembly a report of the adopted survey and draft county spatial development plan for approval by the County Assembly.

Contents of
the county
development
plan and
survey report

37. (1) The Director shall submit a report of survey which must include an estimate of any changes likely to occur during the planning period.

(2) The report of the survey shall be accompanied by the draft county spatial development plan.

(3) The draft county plan shall be a written statement:

(a) Formulating the policy and general proposals of the county in respect of development and use of land in that county;

(b) Stating the relationship of proposals made to proposals for the development and use of land in the neighbouring counties that may affect that county.

(c) Containing such other matters as may be prescribed or as the executive Committee may in any particular case specify.

(4) The draft county spatial development plan shall be accompanied by diagrams,

illustrations, and descriptive matter as the County Director thinks appropriate for the purpose of explaining or illustrating the proposals in the plan, or anything else that may be prescribed the executive Committee.

Factors to consider

38. The draft County spatial development plan shall have regard to;

- (a) social and economic policies;
- (b) environmental protection;
- (c) resources likely to be available for the carrying out of the proposals; and
- (d) Such other matters as the executive Committee may prescribe.

Publication of draft county spatial development plan

39. In order to achieve the above and soon as is practicable and after the draft county spatial development plan has been submitted, resubmitted, and adopted by the County Executive Committee, the County Director shall;

- (a) Publish in at least three local daily newspapers, a notice stating that copies of the draft plan are available for inspection at the office of the county Director and such other places as may be determined and the time within which objections to the plan ,may be made to the executive committee
- (b) Make copies of the plan available for inspection at places stated in the notice and each copy shall be accompanied by time as stated in the notice within which objections to the plan may be made to the executive committee
- (c) The time within which objections to the draft county spatial development plan may be made shall be not less than one month from the date of the first appearance to the notice in the news paper
- (d) The county director may extend the period for making objections once the time for raising objections has elapsed but not more than one month in favour of any particular objections.

Period for objections

40. (1) Objections to the draft county development plan must be raised not less than one month and not more than sixty (60) days from the date of the first appearance of the notice in any of the local daily newspapers.

(2) The County Director may by notice in the County Gazette, extend the period for objections.

Coming into effect of the County spatial development plan

41. The County spatial development plan shall come into effect after approval by the County Assembly.

Review of the County Spatial Development Plan

42. A county spatial development plan shall be subjected to review every five years to align the plan with the preparation of the county five year integrated county development plan.

B - LOCAL PHYSICAL DEVELOPMENT PLANS

Preparation of local physical development plans

43. (1) The Director may prepare with reference to any public land, community land or private land within the area of authority of a city, municipal, town or urban settlement or with reference to any trading or marketing centre, a local physical development plan.

(2) A local physical development plan may be a long-term or short-term physical development or for a renewal or redevelopment.

(3) The Director may prepare a local physical development plan for the general purpose of guiding and coordinating development of infrastructural facilities and services for an area referred to in subsection (1), and for the specific control of the use and development of land or for the provision of any land in such area for public purposes.

(4) The Director may include in a local physical development plan any or all of the matters specified in the Second Schedule.

Initiation of a local physical development plan

44. The process of preparation of a local physical development plan may be initiated by one or all of the following;

- (i) County Physical Planning Council
- (ii) Director of Physical Planning
- (iii) A Residents Association
- (iv) National Land Commission through the County Land Management

Content of local physical development plan

45. Content of local physical development plan

A local physical development plan shall consist of—

- (a) a survey in respect of the area to which the plan relates carried out in such manner as may be prescribed; and
- (b) such maps and description as may be necessary to indicate the manner in which the land in the area may be used having regard to the requirements set out in the Third Schedule in relation to each type of local physical development plan.

Objections to local physical development plans

46. Objections

- (1) The Director shall later than thirty days after the preparation of a local physical development plan, publish a notice in the **Gazette** and in such other manner as he deems expedient to the effect that the plan is open for inspection at the place or places and at the times specified in the notice.

The provisions of Section 37 relating to the making of representations or objections to the Director concerning County Spatial development plans and to the consideration by the Director of such representations or objections and to appeals shall apply **mutatis mutandis** to this section.

Approval of local physical development plan

47. Approval of local physical development plan

- (1) The provisions of Section 35 relating to the approval and coming into effect of the County Spatial development plan shall apply **mutatis mutandis** to the approval or disapproval of a local physical development plan by the County Assembly.

- (2) A local physical development plan approved under subsection (1) shall not be altered in any manner without the prior written authorization of the Director.

Publication of approved local physical development plan

48. The County Executive Committee member shall within fourteen days after approval of a local physical development plan by the County Assembly cause to be published in the **County Gazette**, by the Director, a notice to the effect that the plan has been approved with or without modification and may be inspected at the place or places and times specified in the notice during normal working hours.

C- SPECIAL AREA PLANS

Special area plans

49.(1)The Director may, by notice in the **County Gazette**, declare an area with unique development potential or problems as a special planning area for the purpose of preparation of a physical development plan.

- (2) Subject to subsection (1), the Director may by notice in the **County Gazette**, suspend for a period of not more than two years, any development he deems necessary in a special planning area until the physical development plan in respect of such area has been approved by the County Assembly .

(3) Where, before the declaration of a special planning area under subsection (1), a development permission has been granted by a development approval committee in the area such permission shall not be affected by the suspension if the development in respect of which the permission is granted has been commenced not less than six months before the suspension of development of the kind in the special planning area.

D- DETAILED PLANS AND AREA ACTION PLANS

50. The Director may prepare a detailed area action plan shall address the following—

Area Action plans

- (a) treatment of a particular planning aspect like residential, transportation, water supply, sewerage, in part or as part of a long-term plan;
- (b) advisory or subdivision plans, indicating permitted subdivision, use and density of development;
- (c) an assessment of immediate land requirement to accommodate specific population needs as they arise;
- (d) detailed allocation of the land requirements to various land uses taking into account compatibility of adjoining land uses and conforming to the existing physical development plan proposals for the area.

PART VI—CONTROL OF DEVELOPMENT

Meaning of development

51. Meaning of “development” and “new development”.

(1)(A) Subject to the following provisions of this section, in this Bill, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(B) For the purposes of this Bill “building operations” includes—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.

(2) The following operations or uses of land shall not be taken for the purposes of this Bill to involve development of the land—

- (a) the carrying out for the maintenance, improvement or other alteration of any building or works which—
 - (i) affect only the interior of the building, or
 - (ii) do not materially affect the external appearance of the building, and are not works for the alteration of a building by providing additional space in it underground;

(b) the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment

(c) the carrying out by an authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;

(e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;

(e) the demolition of any description of building specified in a direction given by the County Executive Committee member to County planning authorities generally or to a particular County planning authority.

County
planning
authorities to
undertake
development
control

52. Development control shall be undertaken by the county planning authorities in accordance with plans approved in accordance with this Bill.

Power to
undertake
development
control

53. County planning authorities shall have power to:

- a. Prohibit or control the use and development of land and buildings in the interest of proper and orderly development of its area.
- (b) To control or prohibit the sub-division of land or existing plots into smaller areas.
- (c) Consider and approve all development applications and grant all development permissions.
- (d) Ensure the proper execution and implementation of approved spatial development plans.
- (e) Formulate by-laws to regulate zoning in respect of use and density of

development.

- (f) Reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with approved spatial plans.
- (g) County planning authorities shall have the obligation to inform the citizens under their jurisdiction on development permission either granted or denied.

Approval for
development

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

Prohibition of
development
without
development
permission

55. (1) No person shall commence, undertake, or carry out any development without a planning permission.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term of five years or to both.

(3) Any dealing in connection with any development in respect of which an offence is committed under this section is void and such development shall be discontinued.

(4) Notwithstanding the provisions of subsection (2), the county planning authority concerned shall require the developer to restore the land on which such development has taken place to its original condition within a period of not more than ninety days;

(5) If on the expiry of the ninety days notice given to the developer such restoration has not been effected, the county planning authorities shall restore the site to its original condition and recover the cost incurred thereto from the developer.

Prohibition of
grant of
licence for
development

56. (1) No licensing authority shall grant a license for commercial or industrial use or occupation of any building, or in respect of any premises or land, for which no

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of a
commercial or
industrial
nature

development permission has been granted by the respective County planning authority.

(2) For the purposes of subsection (1)—

- (a) commercial use includes shops, offices, hotels, restaurants, bars, kiosks, markets and similar business enterprises and trade but does not include petroleum filling stations;
- (b) industrial use includes manufacturing, processing distilling and brewing, warehousing and storage, workshops and garages, mining and quarrying and other similar industrial activities including petroleum filling stations.

(3) No county planning authority shall grant development permission for any of the purposes mentioned in subsection (1) without comments from relevant stakeholders.

(4) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine not exceeding shillings one million or to a term of imprisonment not exceeding five years or to both.

Duty to
consult

57.A county planning authority to which a development application has been made shall, within seven days after the receipt of the application consult in writing with any or all of the following:

- (a) National Land Commission;
- (b) Urban management board (as in the urban and cities act);
- (c) County department of survey;
- (d) County departments of Roads and Transport;
- (e) County department of Agriculture;
- (f) County department of Health;
- (g) County department of Public works & utilities;
- (h) County department of Environment and Natural resources;
- (i) Registered neighbourhood association;
- (j) Community, neighbours and general public; and

(k) Any other relevant persons and authorities.

Application for
development
permission

58. (1) A person requiring development permission shall make an application to the Secretary of the County physical planning committee.

(2) The application shall be in a prescribed form.

(3) If the applicant is not the registered owner of the land on which the development is to be carried out, a written sworn consent shall be obtained from the registered owner.

(4) Where the development involves the erection of a building, the Secretary may give written directions to the applicant in respect of any of the following matters:

- (a) The level of the site of the building;
- (b) The line of frontage with neighbouring buildings;
- (c) The elevations of the building;
- (d) The class, design, and appearance of the building;
- (e) the set back and the building line;
- (f) Access to the land on which the building is to be erected;
- (g) Environmental, health considerations and cultural practises
- (h) Any other matter that the county planning authority considers necessary for purposes of planning.

(5) The applicant to whom any written directions are given shall amend the buildings plans or drawings accordingly and resubmit within such a period the county planning may specify.

(6) The building plans or drawings to be submitted include:

- (i). Development Plan and drawings;
- (ii). Architectural drawings and specifications;
- (iii). Civil and Structural engineer's drawings and specifications;

- (iv). Electrical engineer's drawings and specifications;
- (v). Mechanical and Plumbing drawings & specifications;
- and (vi). Cost Estimates.

(6) If the building plan is not resubmitted within the specified period or extended period, the application for planning permission shall be deemed to have lapsed and the applicant shall submit a fresh application.

Plan to be prepared by qualified person

59. All plans, particulars, layout plans and other documents required to be submitted under this Act shall be prepared by qualified, registered and practising persons under any other written law.

Development applications to be made to the Secretary

60. All development applications shall be addressed to the Secretary to the development approval committee

Determination of development applications within 30 days

61. A planning authority to which an application for planning permission has been made shall not later than 30 days after receipt of application shall decide on the application for planning permission.

Consideration of planning applications

62. (1) The County Development Committee shall, when considering a development application submitted;

- (a) be bound by any relevant national or County planning physical development plans duly approved;
- (b) have regard to the health, amenities and conveniences of the community generally and to the proper planning and density of development and land use in the area;
- (c) have regard to any comments received from the officers or authorities and or relevant stakeholders as referred to in subsections (1) ;
- (d) in the case of a leasehold, have regard to any special conditions stipulated in the lease.

(2) If any development application requires subdivision or the change of user of any agricultural land, the County planning Authority shall require the application to be referred to the relevant Land Control Board.

(3) The relevant Land Control Board shall recommend to the County planning Authority to accept or reject the application for subdivision or change of user and shall give reasons for its recommendations to the County planning Authority within thirty days.

Lapse of
development
permission

63. (1) A planning permission granted under this Act shall lapse twenty four months after the planning permission was issued, if the development has not commenced as specified in the planning permission.

(2) The lapse of development permission applies only to building operations.

(3) The planning authority may grant an extension of planning permission if the developer re-applies.

Offences
relating to
unauthorized
development

64. (1) A person who undertakes unauthorized development commits an offence and is liable to a fine and or imprisonment as prescribed in the schedule.

(2) A person who:

(a) Uses or permits to be used any land or building in contravention of an approved development plan;

(b) Commences, undertakes, or carries out, or permits to be commenced, undertaken, or carried out, any development without planning permission or contrary to planning permission granted;

(c) Commences, undertakes, or carries out, or permits to be commenced, undertaken, or carried out, any development where the planning permission has been revoked;

(d) Commences, undertakes, or carries out, or permits to be commenced, undertaken, or carried out, any development after the planning

permission or the approval of the building plan, as the case may be, in respect of the development has been modified or is inconsistent with the approved modification.

Commits an offence and is liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both and, in the case of a continuing offence, to a further fine which may extend to five thousand shillings for each day during which the offence continues after the first conviction for the offence.

(3) Unless the contrary is proved, the owner of the land in respect of which any act that constitutes an offence under subsection is done shall be deemed to have permitted the doing of that act

PART VII —GENERAL PROVISIONS

Application of
Legal Notice
No. 135

65. The Physical Planning Building and Development Rules (1998) established under Legal Notice No. 135 will form part of this Bill.

Notice to
review of
development
permission

66. (1) If the county planning authority is satisfied that any use of land should be discontinued, conditions should be imposed on the continued use or any building or works on any land should be altered or removed, the county planning authority may, with the approval of the County planning assembly, by a requisition notice served on the owner of the land;

(a) require the discontinuance of that use;

(b) impose such conditions for the continued use of the land as may be specified in the requisition notice;

(c) require such steps as may be specified in the notice to be taken for the alteration removal of the building or works; and the owner shall, within such period as may be specified in the notice.

(2) A person aggrieved by a notice may, within the period stated therein and in the manner prescribed, appeal to the Land and Environment Court.

- (3) If an appeal is filed by the aggrieved party, the requisition notice shall be suspended until the determination or withdrawal of the appeal.

Public participation in development control and enforcement

67.(1) In case of towns, municipal councils or cities, citizens may form resident associations and any other for the purposes of participating in development control and enforcement.

- (2) County planning authority shall sensitize the citizens on development control issues; and
- (3) Any person may report any development without development permission within the area of a county to the planning authority.

Planning Monitoring and evaluation

68.(1) Evaluation and monitoring of National Spatial Plan shall take into consideration the extent to which the plan:

- (i) Promotes balanced regional development for national unity.
- (ii) Coordinates sectoral agencies by providing spatial expression to sectoral policies;
- (iii) Secures spatial and environmental quality and diversity for high quality of life;
- (iv) Optimize utilization of land and natural resources for sustainable development;
- (v) Rationalizes national spatial planning for economic efficiency and global competitiveness;
- (vi) Facilitates provision of adequate infrastructure; and
- (vii) Articulates the aspiration of the people through their effective participation throughout the plan preparation, approval and implementation

- (2) In Evaluating and monitoring of County Spatial Plan, the Physical Planning Council shall take into consideration the extent to which the plan:

- (ii) Articulates policies and proposals set out in the regional spatial development plan.
- (iii) Promotes equity in the provision of infrastructure and services.
- (iv) Safeguards environmental quality.
- (v) Assigns land uses in a manner that promotes rural- urban balance.
- (vi) Identifies area for strategic infrastructure and investment to stimulate economic growth.
- (vii) It engenders sectoral coordination and integration of programmes and projects for efficient use of public resources
- (viii) Resolves pertinent issues and challenges identified in stakeholder fora.
- (ix) Identifies specific projects for implementation by the County Executive over a five year timeframe.
- (x) Proposals are linked to the resource envelop available to the county executive
- (xi) Articulates the aspiration of the people through their effective participation throughout the plan preparation, approval and implementation.

Development
charge

69. (1) A development charge may be charged on a developer who presents a planning application which effects a change of use, density, or floor area in

respect of any land so as to enhance the value of the land and in so doing increases demand for infrastructure and services, development charge shall be levied in respect of the development commenced, undertaken, or carried out in accordance with the change.

(2) The planning authority may, by regulations exempt any person or class of persons or any development or class, type, or category of development from liability to the development charge, subject to such conditions as the planning authority may specify in the regulations.

Framework for
plan
implementatio

70. All plans prepared under this Bill shall be accompanied by an implementation

n strategy which defines goals, proposals, implementing authority, resources required and time frame. The implementation strategy shall include:

- (a) a completed and approved spatial development plan prepared under this bill;
- (b) an implementation budget;
- (c) identification of key actors;
- (d) a communication plan; and
- (e) a risk assessment and mitigation plan.

Principles of participation through plan implementation
n

71. (1) In implementing the various spatial plans, the National and County Governments shall foster structured public and private partnerships and public participation in the process.

(2) The implementation process shall be based on the following principles;

- (a) Reasonable access to the formulation on plan implementation policies, budgetary estimates and execution of the process
- (b) Timely access to information, data, records, maps, written reports, tools relevant to the implementation process
- (c) Reasonable balance in distribution of roles and responsibilities between the respective governments and the non-state actors.
- (d) Promotion of rights and interests of minority groups, marginalized groups and communities with a view to inclusivity and to redress grievances.
- (e) Promotion of private-public partnerships and the reciprocal roles played by non- state actors in plan implementation
- (f) The right of citizens to petition or seek redress with regard to the administration and management of plan implementation at all levels of government.
- (g) Any other principles as set out in the Urban Areas And Cities Act and the County Governments Act

Inconsistency between building by-laws and development plan

- 72.** Where an inconsistency exists between any building by-laws and a development plan in relation to any policies in that plan:
- a. The development plan shall prevail over the by-laws; and
 - (b) The approving authority shall apply the provisions of the building by-laws in such manner and to such extent as may be necessary to avoid the inconsistency, but so as to ensure that the standards of building soundness for the safety of the occupants and amenity achieved in respect of the development are as good as can reasonably be achieved in the circumstances.

Regulations

- 73.** The County Executive Committee member in consultation with the county planning authority may make regulations for the better carrying into effect the provisions of this Bill.

Amendment of Schedules

- 74.** The County Executive Committee member may by order in the County Gazette and with approval of County Assembly, amend the Schedules to this Bill.

SCHEDULES

Schedule 1

The Physical Planning (Building and Development) (Control) Rules 1998

Schedule 2

Matters relating to subdivision of land

Schedule 3

Matters relating to zoning

Schedule 4

Application for development

Schedule 5

Certificate of Compliance

Schedule 6

Enforcement Notice

