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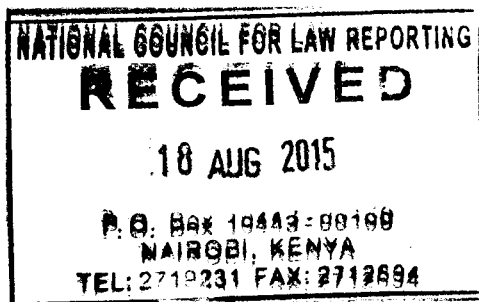
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THE PHYSICAL PLANNING BILL, 2015
ARRANGEMENT OF CLAUSES

Clause

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THE PHYSICAL PLANNING BILL, 2015**A Bill for****AN ACT of Parliament to make provision for the
planning, use, regulation and development of land
and for connected purposes****ENACTED** by the Parliament of Kenya as follows—**PART I—PRELIMINARY**

1. This Act may be cited as the Physical Planning Act, 2015.

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;

“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;

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

“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;

“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 15 of this Act;

“planning authority” includes—

- (a) the Cabinet Secretary; and
- (b) a county government.

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

No. 6 of 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

No. 6 of 2012

“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 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) a representative of the Council of Governors;
- (c) the Chairperson of the National Land Commission;
- (d) one County Executive Committee Member from each County being a member responsible for

physical planning, environment, or infrastructure;

- (e) the Cabinet Secretary for the time being responsible for matters related to economic planning;
- (f) the Cabinet Secretary for the time being responsible for matters related to the environment;
- (g) the Cabinet Secretary for the time being responsible for matters related to roads and infrastructure;
- (h) the Cabinet secretary for the time being responsible for matters related to social and community development;
- (i) the Cabinet Secretary for the time being responsible for matters related to culture;
- (j) a person nominated by the Kenya Institute of Planners;
- (k) a person nominated by the Institute of Surveyors of Kenya;
- (l) a person nominated by the Architectural Association of Kenya;
- (m) a person nominated by an association representing the private sector in Kenya as shall be determined by the Cabinet Secretary; and
- (n) 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)(j), (k), (l), and (m) 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;

Functions of the
National Physical
Planning
Consultative Forum.

- (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.

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 process of nominating and appointment of members under section 5(2)(j), (k), (l), and (m) shall be as prescribed in the First Schedule to this Act.

Appointment of the National Physical Planning Consultative Forum members.

9. (1) There is established the County Physical Planning Consultative Forum.

County Physical Planning Consultative Forum.

(2) The County Physical Planning Consultative Forum shall comprise of—

- (a) the County Executive Committee member for the time being responsible for matters related to physical development planning, who shall be the chairperson;
- (b) the Chairperson of the County Land Management Board who shall provide the secretariat;
- (c) a person nominated by the Cabinet Secretary;
- (d) The County Executive Committee Members responsible for physical development planning, environment and infrastructure;
- (e) the County Executive Committee member for the time being responsible for matters related to economic planning;
- (f) the County Executive Committee member responsible for matters related to the environment;
- (g) the County Executive Committee member for the time being responsible for matters related to roads;

- (h) the County Executive Committee member for the time being responsible for matters related to culture;
- (i) a representative from a Kenya Institute of Planners;
- (j) a representative of Institute of Surveyors of Kenya;
- (k) a member representing the private sector in the County appointed by the Governor; and
- (l) a person representing the religious sector in the County appointed by the Governor.

(3) The institutions or organizations nominating members under subsection (2) (i), (j), (k), and (l) shall nominate two persons, one each of either gender, from which the county government shall appoint the members of the Forum.

10. The functions of the County Physical Planning Consultative Forum shall be to—

- (a) promote effective co-ordination and integration of physical development planning and sector planning in the framework of County Physical Development and Inter-County Physical Development Policies;
- (b) advise on the mobilization of adequate resources for the preparation and implementation of county physical development plans and strategies;
- (c) advise on strategic county physical development projects of county and inter-county importance; and
- (d) promote national development policies by taking into account the National Physical Development Plan, national policies, strategies and standards.

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

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

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

Functions of the
County Physical
Planning
Consultative Forum.

County Physical
Planning
Consultative Forum
Meetings.

12. The process of appointing members of the Forum shall be provided for in the First Schedule hereto.

Appointment of members of the County Physical Planning Consultative Forum.

13. 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; and
- (b) (b) prepare status reports on the preparation and implementation of physical development plans in Kenya;

14. The Cabinet Secretary shall be responsible for—

Functions of the Cabinet Secretary.

- (a) formulating national physical development policies, guidelines, standards and standards and publishing and publicizing the physical development policies, guidelines, standards and standards;
- (b) the preparation of National Physical Development plans in the manner set out in this Act; and
- (c) co-ordinating physical planning by county physical planning authorities.

15. (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.

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

Qualifications of the National Director of Physical Planning.

- (a) is a citizen of Kenya;
- (b) possesses a postgraduate degree 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
- (e) is not otherwise disqualified under the provisions of Chapter 6 of the Constitution or any other written law.

No. 6 of 1996.

17. The National Director of Planning is responsible for—

Responsibilities of the National Director of Physical Planning.

- (a) advising the Cabinet Secretary on—
 - (i) formulating national physical development planning policies, guidelines and standards; and
 - (ii) the preparation of national physical development plan;
- (b) undertaking studies and research on matters related to physical development planning; and
- (c) assisting upon request by county governments in building capacity for the preparation of physical development plans and in development control.

18. 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 county and urban physical development policies, standards and guidelines which respect and accord with national policies and standards on physical planning;
- (b) supervision of the implementation of county and urban physical development policies, standards and guidelines;
- (c) enforcement of physical planning standards; and
- (d) development control.

PART III—TYPES OF PHYSICAL DEVELOPMENT PLANS

19. (1) The Cabinet Secretary shall initiate and 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.

20. (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) the promotion of social and economic growth;
- (b) the optimal exploitation, allocation and conservation of national resources;
- (c) the co-ordination of national, county, city and urban areas in physical development planning and development;
- (d) promoting balanced county development for national integration and cohesion; and
- (e) providing a framework for location of national investments and infrastructural developments.

21. (1) In preparing a National Physical Development Plan, the Cabinet Secretary shall—

- (a) consider relevant national policies;
- (b) ensure effective participation by the public and relevant stakeholders;
- (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; and
- (d) report periodically to the Cabinet on the progress being made to the National Physical Planning Consultative Forum.

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.

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

Content of National Physical Development Plan

- (a) the objectives of the plan;
- (b) situation analysis including—
 - (i) an analysis of the state of physical development in Kenya; and
 - (ii) the relevant studies and reports concerning physical development in Kenya;
- (c) strategies and measures necessary to resolve any issues or challenges relating to physical development planning or development 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 Cabinet 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 may, by notice in the *Gazette*, extend the period within which a National Physical Development Plan is to be prepared by one year.

23. (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 one newspaper 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 may apply to the Cabinet for review of its decision and the Cabinet shall consider the same and communicate

its decision within sixty days of receipt of application for review.

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

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.

25. (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, counties shall prepare and submit copies of their physical development plans to the National Land Commission and the Cabinet Secretary for their information and records.

26. (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 records.

Status Reports.

(2) At least three months before the end of the financial year, each public institution of a county 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