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MACHAKOS COUNTY BILLS, 2023

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CONTENT

Bill for Introduction into the County Assembly of Machakos—

PAGE

The Machakos County Spatial Planning Bill, 2023 1

THE MACHAKOS COUNTY SPATIAL PLANNING BILL, 2023

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Object and Purpose.

PART II—ADMINISTRATION

- 4—Directorate of Spatial Planning.
- 5—Functions of the Directorate.
- 6—Director of Spatial Planning.
- 7—Powers of the Director.
- 8—Officers of the directorate.
- 9—Indemnity.
- 10—County Spatial Planning and Coordinating Committee.
- 11—Procedure of the Committee.
- 12—Record of proceedings of the Committee.
- 13—Appeals to the Committee.
- 14—Judicial review.

PART III—SPATIAL PLANNING

- 15—Preparation of spatial plan.
- 16—Contents of the spatial plan.
- 17—Objections to spatial plan.
- 18—Approval of spatial plan.
- 19—Publication of the spatial plan.
- 20—Amendment of spatial plan.
- 21—Special planning area.
- 22—Implementation and Compliance.
- 23—Reporting.

PART IV—DEVELOPMENT CONTROL

- 24—Compliance with the plan.
- 25—Powers and duties of the Directorate.
- 26—Subdivision of land.
- 27—Disposal or land, extension of lease.
- 28—Application for subdivision.
- 29—Subdivision with impact on contiguous land.
- 30—Permission for subdivision.
- 31—Preparation Subdivision plan.
- 32—Format of subdivision plan.
- 33—Subdivision schemes.
- 34—Subdivision to be carried out by surveyor.
- 35—Registration of subdivision.
- 36—Registration of subdivision documents.
- 37—Density.
- 38—Plot Coverage.
- 39—Reduction in plot area
- 40—Development permission.
- 41—Application for Development permission.
- 42—Environment Impact Assessment.
- 43—Consideration of application.
- 44—Grant of development permission.
- 45—Referral to Committee.
- 46—Registration of development documents.
- 47—Approval of Class “A” and “B” developments.
- 48—Exemption from development control.
- 49—Grant of permission.
- 50—Application for building license.
- 51—Details of application documents.
- 52—Supplementary plans.

- 53—Retention of plans.
- 54—Restriction on developments.
- 55—Payment of fees.
- 56—Compliance with requirements.
- 57—Approval of building plans.
- 58—Disapproval of building plans.
- 59—Minor alterations and additions.
- 60—Nullification of approval.
- 61—Enforcement notice.
- 62—Offence of carrying out development without permission.
- 63—Access to building plans.
- 64—Survey beacons.
- 65—Inspection of foundation bed of buildings.
- 66—Qualification of approval.
- 67—Certificate of completion.
- 68—User other than that specified.
- 69—Public buildings.
- 70—Safety and performance certificate.
- 71—Performance compliance certificate.
- 72—Conservation and heritage.
- 73—Strategic development plan.
- 74—Offences.

PART IV—DEVELOPMENT CONTROL

- 75—Erection of buildings.
- 76—Building code.
- 77— Approval of building plan.
- 78—Refusal of approval.
- 79—Deposit of plans.
- 80—Compliance with approved plans.
- 81—Exemptions and partial exemptions.

- 82—Terminal features.
- 83—Sites of public building.
- 84—Building frontage.
- 85—Sanitation.
- 86—Cartilage.
- 87—Change of class of a building.
- 88—Building lines.
- 89—Back-to-back dwelling.
- 90—Access to rear of building from street.
- 91—Access to dwelling and other buildings.
- 92—Canopies and projections.
- 93—Offensive sites.
- 94—Space in front of buildings.
- 95—Minimum measurement of courtyard.
- 96—Secondary means of access.
- 97—External passage.
- 98—Service area.
- 99—Permitted advertisements.
- 100—Hanging sign.
- 101—Advertisements requiring permission.
- 102—Removal of unauthorized advertisements.
- 103—Register of development plans.
- 104—Index to register.
- 105—Entry in register.
- 106—Inspection of register.
- 107—Access to records.
- 108—Right of entry.
- 109—Preservation of special value buildings.
- 110—False information.
- 111—Development audit.
- 112—Authentication and validity of notices and orders.

THE MACHAKOS COUNTY SPATIAL PLANNING BILL, 2023**A Bill for**

AN ACT of the County Assembly of Machakos to provide for county spatial planning and management and for connected purposes

ENACTED by the County Assembly of Machakos, as follows—

PART I – PRELIMINARY**Short title**

1. This Act may be cited as the Machakos County Spatial Planning Act, 2023.

Interpretation

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

“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 purposes of the advertisement of proprietary articles and includes any hoarding or similar structure used or adapted for use for the display of an advertisement,

“building” means any structure or erection whether permanent or temporary, whether fixed or movable, and whether completed or uncompleted;

“building operations” include rebuilding operations, structural alterations or additions to buildings 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;

“chief officer” means the chief officer responsible for matters relating to land;

“Committee” means the Machakos County Spatial Planning and Planning Committee created under section 10;

“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;

“Director” means the Director responsible for Spatial Planning appointed under section 6;

“Directorate” means the Directorate established under section 4;

“Executive Committee Member” means the County Executive Committee Member responsible for matters relating to land;

No. 17 of 2012

“spatial plan” means the spatial plan as prescribed under the County Governments Act, 2012 or the physical development plan for the purpose of improving the land and providing for the proper physical development of such land, and securing suitable provision for transportation, public purposes, utilities and services, commercial, industrial, residential and recreational areas, including parks, open spaces and reserves and also the making of suitable provision for the use of land for building or other purposes.

Object and Purpose

3. The object and purpose of this Act is to provide for a legal framework for the preparation and implementation of county spatial plans and related development plans as provided for under section 8 of Part 2 of the Fourth Schedule to the Constitution of Kenya, Part XI of County Governments Act, 2012 and Urban Areas and Cities Act, 2012 for the—

- (a) coordination of spatial planning and development;
- (b) promotion of organized planning and development of physical infrastructure;
- (c) enhancement of the regulation of physical development and land use;
- (d) promotion of the effective and transparent physical planning process;
- (e) promotion of sustainable social economic development.

PART II—ADMINISTRATION

Directorate of Spatial Planning.

4. There is established the Directorate of Spatial Planning which shall be an office in the county public service.

Functions of the Directorate.

5. The functions of the Directorate include—
- (a) coordinating the implementation of this Act;
 - (b) preparing spatial plans for the county, sub-counties, towns or urban areas;
 - (c) ensuring compliance with physical development plans developed under this Act;
 - (d) receiving, reviewing and considering any development plan or proposal, building plan, building operation or application for

change of user, extension of user, extension of leases, subdivision of land and amalgamation of land;

- (e) advising the Executive Committee Member on the most appropriate use of land including land management such as change of user, extension of user, extension of leases, subdivision of land and amalgamation of land;
- (f) carrying out continuous research, study and assessment related to growth and development in the County and advise Executive Committee Member on the necessary measures and policy to be undertaken in facilitating planned development of physical infrastructure and economic development;
- (g) maintaining safe custody of all records, physical development plans and documents prepared or submitted under this Act;
- (h) liaising with the national government on any matter related to this Act;
- (i) advising the Executive Committee Member generally on any policy to be adopted or matter necessary to the effective achievement of the objectives of this Act;
- (j) carrying out any other function for effective realization of objectives of this Act.

Director of Spatial Planning.

6. (1) There shall be a Director responsible for spatial planning who shall head the Directorate.

(2) The Director shall be competitively recruited by the County Public Service Board.

Powers of the Director.

7. The powers of the Director include to—

- (a) cause to be prepared the County Spatial Plan and Physical Development Plan;
- (b) approve any building plan or building operations or work;
- (c) issue orders related to the implementation of this Act;
- (d) make, supervise or direct physical planning;
- (e) inspect, examine any document issues related to physical planning;
- (f) perform any other act in furtherance of the objectives of this Act.

(2) The Director may delegate in writing any of the powers under this Act generally or specially to any officer appointed under section 8.

Officers of the Directorate

8. The County Public Service Board shall appoint such number of personnel to serve in the Directorate as may be necessary for the effective carrying out the functions under this Act.

Indemnity

9. The Director, any officer appointed under section 8 or a member of the County Spatial Planning and Coordinating Committee shall not be personally liable for any action, claim, demand or other proceeding in respect of any act done or omitted to be done without negligence and in good faith in executing the functions, powers or duties given under this Act.

Spatial Planning and Coordinating Committee.

10. (1) There is established the County Spatial Planning and Coordinating Committee.

(2) The County Spatial Planning and Coordinating Committee shall consist of—

- (a) the Chief Officer responsible for matters relating to land who shall be the chairperson;
- (b) the Director responsible for matters relating to spatial planning who shall be the secretary;
- (c) officers not below the level of Directors nominated by the respective Executive Committee Members from the Department responsible for the following matters—
 - (i) Survey;
 - (ii) Architecture;
 - (iii) Environment;
 - (iv) Planning;
 - (v) Water;
 - (vi) Public Health;
 - (vii) Agriculture;
 - (viii) Finance.

- (d) two registered physical planners in private practice and in good professional standing nominated by their respective professional body.
- (3) The functions of the County Spatial Planning and Coordinating Committee include to—
- (a) determine development applications for change of user or subdivision of land which may have significant impact on contiguous land or be in breach of any condition registered against a title deed in respect of such land;
 - (b) determine development applications relating to industrial location, dumping sites or sewerage treatment which may have injurious impact on the environment and applications in respect of land adjoining or within a reasonable vicinity of safe guarding areas;
 - (c) inquire into and determine complaints made against the Directorate or Director in the exercise of functions under this Act;
 - (d) enquire into and determine conflicting claims made in respect of applications for development permits;
 - (e) review and determine matters referred to it by the Department.

Procedure of the Committee

11. (1) The quorum of the Committee shall be half of the members.
- (2) Decisions of the Committee shall be taken by a vote of the majority of the members present and voting
- (3) In the case of an equality of votes the chairperson shall have a casting vote in addition to the deliberative vote.
- (4) The Committee shall meet at least once every month.
- (5) A member of the Committee shall not take part in the deliberation of any matter of which in which the member is directly interested or concerned with.

Record of proceedings of the Committee

12. (1) The Secretary to the Committee shall keep the record of proceedings of the Committee at the Secretariat.
- (2) Any person may inspect or make copies of the Committee records upon payment of the prescribed fees.

Appeals to the Committee

13. (1) Any person who is aggrieved by a decision of the Director concerning any physical development plan, may, within sixty days of receipt of notice of such decision, appeal to the Committee in writing against the decision in such manner as may be prescribed.

(2) Subject to subsection (3), the Committee may reverse, confirm or vary the decision appealed against and make such order as it may deem necessary to give effect to its decision.

(3) Upon reversing a decision of the Director under sub-section (2), the County Spatial Planning and Coordinating Committee shall, before making any such order, afford the Director an opportunity of making representations on any conditions or to be included in the order, and shall also afford the appellant an opportunity to reply to such representations.

Judicial Review

14. Any person who is aggrieved by a decision of the County Spatial Planning and Coordinating Committee may, within sixty days of receipt of the notice of such a decision appeal against such decision to the Environment and Land Court.

PART III— SPATIAL PLANNING

Preparation of Spatial Plan

15. (1) The Directorate shall, in collaboration with other county and national government departments, prepare a ten-year county spatial plan in relation to any public land, community land or private land within town, urban area and trading or marketing center.

(2) The spatial plan prepared in subsection (1) shall be used—

- (a) to guide the County Government in coordinating the development of infrastructural facilities and services for a specified area;
- (b) for the specific control of the use and development of land; or
- (c) to specify the provision of land for public purposes.

(3) The spatial plan may—

- (a) provide for long term or short-term physical development for purposes;
- (b) provide for planning, re-planning, renewal, reconstructing or redeveloping the whole or part of the area comprised in the plan;

- (c) provide for controlling the order, nature and direction of development in such area.

Contents of a spatial plan.

16. A spatial plan shall consist of—

- (a) the matters prescribed under the County Governments Act in regard to the content of county spatial plan;
- (b) matters specified in the First Schedule;
- (c) a technical report on the conditions and facilities in the area;
- (d) a statement of policies and proposals with regard to the allocation of resources and the allocations for development within the area;
- (e) such description and analysis of the conditions of development in the area as may be necessary to explain and justify the statement of policies and proposals;
- (f) relevant studies and reports concerning physical development of the area;
- (g) maps and plans showing present and future land uses and development in the area;
- (h) such other information as the Executive Committee Member may prescribe.

Objections to spatial plan

17. (1) The Director shall, not later than thirty days after the preparation of the spatial plan, publish a notice in the *Gazette* and in at least two local newspapers with the widest circulation in Kenya notifying the public that the plan is open for inspection at a place and the times specified in the notice.

(2) The notice in subsection (1) shall request any interested person who desires to make representations against, or object to the plan, to write to the Director not later than thirty days after the date of the first publication of the notice or such date as is specified in the notice.

(3) The Director may accommodate or decline to accommodate such representations or objections to the plan, and in either case, shall within thirty days of the decision, notify the petitioner in writing accordingly, and shall give reasons where the representations are declined.

(4) A petitioner who is aggrieved by the decision of the Director may appeal against such decision to the County Spatial Planning and Coordinating Committee.

(5) A person who is aggrieved by a decision of the Coordinating Committee may appeal against such decision to the Environment and Land Court.

Approval of spatial plan.

18. (1) If after the expiration of the thirty days' notice no representations against or objections to, the spatial plan have been made to the Director, the Director shall certify the plan in triplicate and submit the certified plans to the Executive Committee Member for transmission to the county executive committee for consideration and adoption.

(2) The County Executive Committee may—

- (a) adopt the spatial plan either without, or subject to, such conditions or modifications as it may consider necessary; or
- (b) refuse to adopt the spatial plan and require the Director to prepare a new plan for its approval taking into account the proposed modifications or the grounds for its refusal.

(3) The Executive Committee Member shall, within thirty days of the adoption of the spatial plan by the County Executive Committee, transmit the same to the County Assembly for consideration and approval.

Publication of spatial plan.

19. The Executive Committee Member shall, upon the approval of the spatial plan by the County Assembly, publish a notice in the Gazette and in at least two local newspapers with the widest circulation in the county to the effect that the plan has been approved and may be inspected in such a place and at such times as may be stipulated in the notice.

Amendments of spatial plan.

20. (1) The Director may from time to time and in such manner as may be prescribed, submit to the Executive Committee Member proposals for the revocation or modification of the spatial plan on the following grounds that there—

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

(2) The Executive Committee Member shall publish in the *Gazette*, a notice of the proposed revocation or modification of the physical development plan stating the period within which representations or objections to the proposed modification or revocation may be made to the Director.

(3) If after the expiration of the period specified in the notice no representations or objections have been made under subsection (2), the Director shall submit the proposed modification or revocation of the plan to the Executive Committee Member for transmission to the County Executive Committee for consideration and adoption.

(4) The County Executive Committee may adopt or reject the proposed revocation or modification of the plan.

(5) Where the County Executive Committee adopts the revocation or modification to the plan, it shall submit it to the County Assembly for approval.

(6) Where the County Executive Committee approves the proposed revocation or modification under subsection (5), the Executive Committee Member shall, not later than sixty days after the approval, publish in the *Gazette* a notice of such revocation or modification of the plan.

Special planning area

21. (1) The Executive Committee Member may, by notice in the *Gazette*, declare an area with unique development potential or special economic interests or problems as a special planning area for purposes of the preparation of a spatial plan.

(2) Subject to subsection (3), the Executive Committee Member may, by notice in the *Gazette*, suspend for a period of not more than two years, any development as may be necessary in a special planning area until the spatial 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 for development in an 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.

Implementation and compliance

22. The Directorate shall—

- (a) ensure and facilitate the implementation of spatial plans;
- (b) ensure compliance with the spatial plan and all the requirements with this Act.

Reporting

23. (1) The Directorate shall prepare an annual physical planning report which shall be submitted to the County Executive Committee for consideration.

(2) The report shall contain among others the following information—

- (a) the level and extent of compliance with this Act;
- (b) measures taken by the directorate to facilitate the implementation and compliance with this Act;
- (c) challenges faced in the implementation and compliance with this Act;
- (d) any other information as may be Executive Committee Member may require.

PART IV—DEVELOPMENT CONTROL

Compliance with the plan

24. Development of any land shall only be undertaken if it is in conformity with the spatial plan.

Powers and duties of the Directorate

25. The Directorate has the power to—

- (a) prohibit or control the use and development of land and buildings in the interests of proper and orderly development in an area;
- (b) control or prohibit the subdivision of land or existing plots into smaller areas;
- (c) consider and approve development applications and development permissions;
- (d) ensure the proper execution and implementation of approved physical development plans;
- (e) propose for the adoption of Regulations to regulate zoning in respect of the use and density of development; and
- (f) reserve and maintain the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plan.

Sub-division of land

26. No private land within the county shall be subdivided except in accordance with the requirements of a physical development plan approved in relation to that area.

Disposal or land, extension of lease

Cap 282. No. 2 of 2012

27. Subject to the provisions of Trust Land Act and Land Registration Act, and any other written law relating to the administration of land, no

subdivision, consolidation, lease or renewal of lease of an unalienated public Land or Trust Land or of a private land shall be affected without due regard being had to the requirements of the physical development plan of the area.

Application for subdivision

28. (1) A person intending to subdivide a parcel of land shall apply to the Director for approval in the prescribed form and upon payment of the prescribed fees.

(2) An application under subsection (1) shall be accompanied by a subdivision plan prepared in accordance with this Act.

(3) Upon receipt of the application under subsection (1), the Director shall, within thirty days, consider and review the application.

Subdivision with impact on contiguous land

29. (1) Where in the opinion of the Director, an application in respect of development, change of user or subdivision has significant impact on contiguous land or does not conform to any conditions registered against the title deed of property, the Director shall, at the expense of the applicant, publish the notice of the application in the *Gazette*.

(2) The Director shall give notice of the application on every owner or occupier of the property adjacent to the land to which the application relates and to such other persons as the Director may deem fit.

(3) If the Director receives any objection to, or representation in connection with, an application made under subsection (1) the Director shall notify the applicant of such objections or representations and shall, before the application is determined afford the applicant an opportunity to make representations in response to such objections or representations.

Permission for subdivision

30. (1) The Director shall, where an application meets the requirements set out in this Act, grant the permission for subdivision in the prescribed form and subject to such conditions as the Director may stipulate.

(2) Where in the opinion of the Director, an application does not meet the requirements, the Director shall—

- (a) reject the application giving reasons and notify the applicant accordingly within thirty days of the decision to reject; or
- (b) make comments and recommendations thereon and return it to the applicant within fourteen days.

(3) The applicant to whom the application is returned under subsection (2) (b) may re-submit a revised application within thirty days of the date of notification.

(4) On receipt of any revised application under subsection (3), Director shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a permission for subdivision.

Preparation of subdivision plans.

31. (1) Any registered physical planner may prepare subdivision and land use plans in relation to any private land

(2) A plan prepared under subsection (1) shall be subject to the approval by the Director upon payment of the prescribed fees.

(3) A subdivision plan shall not be prepared unless the subdivision scheme has been prepared and approved by the Director.

Format of subdivision plan

32. (1) An application for subdivision shall be submitted to the Director in the prescribed form and upon the payment of the prescribed fee.

(2) A subdivision plan shall be prepared in accordance with the conditions set in this Act and shall show the following—

- (a) that it is correctly plotted to scale;
- (b) the existing plot boundaries and their dimensions;
- (c) the location of the plot;
- (d) the land reference number or registration number of the plot and of contiguous plots;
- (e) the contiguous boundaries of all adjacent plots and road system;
- (f) lanes whether pedestrian and sanitary, and their widths;
- (g) the true north indicated by a pointer and the names of existing streets indicated including their widths;
- (h) the proposed scheme of subdivision;
- (i) the boundaries in the red colour;
- (j) the approximate dimensions of sub-plots;
- (k) the proposed means of access, road or lane system if any with the widths of such streets, roads or lanes clearly indicated appropriately in the blue colour on each plan;

- (l) other colours to be used in the subdivision plan in the blue colour for surrender and the yellow colour for demolition;
 - (m) existing buildings of any nature whatsoever, correctly plotted and the relationship with the proposed boundaries of the plots or sub-plots clearly indicated;
 - (n) building lines shown on the plan whenever necessary;
 - (o) the proposed use of each sub-plot;
 - (p) separate numbering for every sub-plot;
 - (q) the line of every or any right-of way road or access or way leaves over the plot or sub- plot;
 - (r) the signature of the owner or a duly authorised agent and the physical planning officer preparing the plans;
 - (s) the date of preparing the plans.
- (3) An application for subdivision under subsection (1) shall be accompanied by—
- (a) twelve copies of all the plans prepared in the scale of the series of 500's;
 - (b) a letter of consent to subdivide from the County Land Management Board; and
 - (c) a certificate of official search or any other evidence from the respective Land Registrar.

Sub-division schemes

33. (1) In any scheme of subdivision of land the following conditions shall be complied with—

- (a) streets shall be laid out in a manner to facilitate natural storm water flow;
- (b) adequate drainage facilities by streets, drainage reserves way leaves or otherwise as may be expedient and suitable shall be provided and such reserves and way leaves shall not in any case be less than three metres in width;
- (c) way leaves or reserves along any river, stream or water course shall be provided of not less than ten metres in width on each bank, except in areas where there is an established flooding;
- (d) where required by the Directorate, land suitable and adequate shall be reserved at no cost to the County for open spaces,

amenities, recreational facilities, road reserves, public purpose relative to the area to be subdivided and for road widening;

- (e) streets connected at each end to other streets or which may be so connected shall be at a width required by the Directorate;
- (f) provision, adequate in the opinion of the Directorate shall be made for the truncation of street corners and the widening of existing streets or lanes;
- (g) plots shall be of appropriate shape and size and shall have proper and sufficient access to a street, such street not being a sanitary lane or passage;
- (h) the proposal shall conform with the provisions of any structure plan, local physical development plan, advisory plan, zoning, or development plan approved under this Act.

(2) Where any proposed street or road is included in the scheme of subdivision, the layout and construction of such street or road shall conform to the prescribed requirements.

Subdivision to be carried out by surveyor

34. Each subdivision or subdivision scheme shall be carried out by a registered surveyor in accordance with the law governing land survey.

Registration of subdivision

No. 3 of 2012

35. Each subdivision or subdivision scheme shall be registered in accordance with the Land Registration Act, 2012 and certificate of title issued in respect to each parcel subdivided.

Registration of subdivision documents

36. (1) The Registrar shall not register any document relating to the subdivision of land Act unless the subdivision has been approved under this Act.

(2) Any registration of a document in contravention to subsection (1) shall be null and void.

(3) Notwithstanding subsection (2), a Registrar who registers a subdivision in contravention of subsection (1) commits an offence and shall be liable to a fine of two hundred thousand shillings or imprisonment for a term not exceeding one year or to both fine and term of imprisonment.

Density

37. (1) The size of a plot within an area shown on any structure plan, development plan, advisory plan, zoning plan or subdivision plan shall not be subdivided into smaller sub-plots than the minimum specified for the area within which the plot is situated without the consent of the Directorate.

(2) The Executive Committee Member, with the advice of the Director may increase the minimum size of the plot or sub-plot prescribed for any area if—

- (a) such minimum size is inconsistent with the amenity of the environs of any plot or portion of the area;
- (b) such increase is necessary for the proper development of the plot or sub-plot; or
- (c) the nature of the ground necessitates large plots or sub-plots to obtain good hygienic conditions.

(3) Where a scheme relates to subdivision of land within agricultural land, the Executive Committee Member, on the recommendation of the Director shall prescribe—

- (a) the minimum size of plots;
- (b) the use of such land or building; and
- (c) the maximum number and coverage of buildings to be erected per acre.

Plot coverage

38. The Director shall determine the plot coverage and plot ratios depending on the zoning of the urban area and the level of urban services available.

Reduction in plot area

39. No plot on which a building is erected shall be reduced in area so that in relation to the reduced site the area covered by the building exceeds the percentage permitted for that class of building, except where the reduction in area is caused by acquisition of land by a proper authority.

Development permission.

40. (1) A person shall not carry out any development without a development permission granted under this Act.

(2) A person who contravenes this section is liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

(3) Notwithstanding subsection (2) —

- (a) a development that does not comply with this section shall be discontinued,
- (b) the Director may issue a notice to the developer to restore the land on which such development had taken place to its original condition within a period of ninety days;
- (c) if on the expiry of the ninety days' notice given to a developer under subsection (1) such restoration has not been effected, the Director shall restore the site to its original condition and recover the cost incurred from the developer.

(4) Any dealing in connection with a development in respect of which an offence is committed under this section shall be null and void.

(5) A Licensing Authority shall not grant a licence for commercial or industrial use or occupation of any building, or in respect of any premises or land, for which no development permission has been granted under this Act.

(6) For purposes of subsection (5)—

- (a) licensing Authority means any government agency responsible for issuing licenses or permits under any written law.
- (b) commercial use includes shops, offices, hotels, restaurants, bars, kiosks, markets and similar business enterprises and trade but does not include petroleum filling stations;
- (c) 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.

(7) Any person who contravenes subsection (5), shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment not exceeding twelve months or to both.

Application for Development permission.

41. (1) A person intending to undertake any development regulated under this Act shall apply to the Director in the prescribed form and shall pay such fees as may be prescribed under this Act.

(2) An application under subsection (1) shall—

- (a) provide sufficient details describing the land where the development is proposed to be done;
- (b) be accompanied by such plans and particulars as are necessary to indicate the purposes of the development;
- (c) show the proposed use and density; and
- (d) where applicable, the land which the applicant intends to surrender for—
 - (i) purposes of principal and secondary means of access to any subdivisions within the area included in the application and to adjoining land;
 - (ii) public purposes consequent upon the proposed development.

No 3 of 2012

(3) An application for development permission shall not be considered unless it is accompanied with the certificate of title issued in respect to the parcel of land where development is intended to take place under the Land Registration Act, 2012.

(4) For the avoidance of doubt, no application or grant for development permission shall be considered or issued where the applicant provides a share certificate as prove of ownership of the parcel of land where development is intended to take place.

Environmental Impact Assessment.

42. Where an application is in connection to a project in which an environmental impact assessment is required to be conducted under the Environment Management and Coordination Act, such an application shall be accompanied by the environment impact assessment report approved by the National Environment Management Authority.

Consideration of application

43. Upon receipt of the application under section 41, the Director shall, within thirty days, consider and review the application.

(2) In considering and reviewing an application under section 41, the Director shall—

- (a) take into consideration legal and statutory provisions;
- (b) ensure that the proposed development is within the physical development plan and complies with the stipulated requirements therein;

(c) in the case of a leasehold, have regard to any special conditions stipulated in the lease.

(3) If the proposed development requires subdivision or change of user of agricultural land, the Director shall require the application to be referred to the County Land Management Board.

(4) The County Land Management Board shall, within thirty days of receipt of an application under subsection (3), make a report to the Director indicating whether the application should be accepted or rejected.

Grant of development permission

44. (1) Where an application satisfies the conditions set under this Act, the Director shall grant the development permission in the prescribed form subject to such further conditions as the Director may state.

(2) Where an application does not satisfy the conditions set under this Act, the Director may—

(a) reject the application giving reasons and notify the applicant accordingly within thirty days of the decision to reject; or

(b) make comments and recommendations thereon and return it to the applicant within fourteen days.

(3) The applicant to whom the application is returned under subsection (2) (b) may re-submit a revised application within thirty days of the date of notification.

(4) On receipt of any revised application under subsection (3), the Director shall, within thirty days, determine the application in accordance with this Act and upon such determination, if satisfied, issue a development permission.

Referral to the Committee

45. (1) The Director shall refer any application for development permission, which involves matters of major public policy, to the County Spatial Planning and Coordinating Committee within fourteen days of receiving such an application, for consideration and approval.

(2) Where an application for development permission has been referred to the County Spatial Planning and Coordinating Committee under subsection (1), the provisions of this part relating to the consideration of applications development permission shall apply.

(3) The County Spatial Planning and Co-ordinating Committee shall accord an opportunity to the applicant whose application has been referred to it to appear in person or through his representative during the hearing and consideration of the application.

(4) The County Spatial Planning and Coordinating Committee shall consider and make a determination on the application within thirty days.

(5) The Director shall serve a notice of the County Spatial Planning and Coordinating Committee's decision to the applicant within seven days of such decision.

(6) Any applicant who is aggrieved by the decision of the County Spatial Planning and Co-ordinating Committee may, not later than thirty days after being notified of the committee's decision, appeal against such to the Environment and Land Court.

Registration of development documents.

46. (1) The Registrar shall not register any document relating to the development of land regulated under this Act unless the development permission has been granted.

(2) Any registration of a document in contravention to subsection (1) shall be null and void.

No. 3 of 2012

(3) For purposes of this section, "Registrar" has the meaning assigned under the Land Registration Act, 2012.

Approval of Class "A" and Class "B" Developments

47. (1) The county government may approve the following classes of buildings or as the County Executive Committee Member may from time to time determine—

(a) Class 'A' development which includes—

- (i) the deposit of refuse, scrap or waste materials on land involving a change of use thereof;
- (ii) the use as two or more dwellings of a building previously used as one dwelling;
- (iii) the erection of more than one dwelling or shops or of both dwelling and shop on one plot;
- (iv) the display of any advertisement;
- (v) the use of any buildings or land within the cartilage of a dwelling for any purpose incidental to the enjoyment of the dwelling;

(b) class "B" development which includes—

- (i) the erection of buildings or substantial alterations;
- (ii) works and the carrying out of building operations.

(2) The approval for Class “B” development under subsection (1) (b) may be granted provided that—

- (a) the carrying out of works for the maintenance of improvements or other alteration of or addition to any building where such alterations or additions are done do not exceed 10% of the floor area of the building;
- (b) the carrying out by a competent authority of any works required for the construction, maintenance or improvement of a road, if the works are carried out on land within the road reserves; and
- (c) the carrying out by the county government of any works for purposes of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including breaking open of any street for that purpose and the installation of services by the county government; shall not constitute development for the purposes of part.

(3) The county government and any other person carrying out works approved by the county government, shall, within seven days after completion of works carried out in this section, restore the site to conditions that would not be injurious to users and the environment.

Exemption from development control

48. A building which is not a public building or a dwelling house and is not constructed to be used for human habitation or as a place of habitual employment of any person in manufacturing, trade or business but which is constructed for use exclusively in connection agricultural estates, shall be exempt from this Part if it—

- (a) is situated not less than ten meters from any public road or road of access and not less than two meters from any building other than a building exempted under this part and from the nearest boundary of any adjoining land and premises; and
- (b) is constructed on land not being within any residential, business, commercial or industrial area or zone as determined by the County Government.

Grant of permission to erect a building

49. (1) The Director may, in writing allow for the erection of building where the materials used or the standard of construction and general appearance of the building are not regarded by the County Government as consistent with good, and satisfactory development, or which are of temporary nature or for occupancy of short duration.

(2) Any permission granted under this Part shall be upon such terms and conditions as the Director may prescribe.

Application for building license

50. (1) A person who proposes to erect a building on any commercial land shall apply for approval to the authorized officer in the prescribed form.

(2) An application under subsection (1) shall be made in the form prescribed in the Fourth Schedule of the Physical Planning Act and shall contain written particulars relating to the following the purposes for which the building or erection will be used—

- (a) the number of dwellings or separate tenancies or occupancies to be provided in the building;
- (b) the material of which the building will be constructed;
- (c) the mode of drainage and means of disposal of waste water, soil water, roof water and other liquid;
- (d) the water supply;
- (e) in the case of public building the number of persons to be accommodated in each part thereof, the means and capacity thereof for ventilations and the provisions made for the safety of the public; and
- (f) in the case of any building other than public building, the maximum number of persons to be employed and otherwise is accommodated in each part thereof.

(3) The application under subsection (1) shall be submitted to the authorised officer in triplicate or in the case of factories in quadruplicates or upon the request of county planner such further copies.

(4) An application under subsection (1) shall be accompanied by permanent blue prints made from a tracing in permanent ink, the following plans, sections, elevations and drawings delineated in a clear and intelligible manner and signed by the applicant or a duly authorized agent—

- (a) a plan of every floor or storey;
- (b) a drawing of each elevation;
- (c) sufficient sections of the buildings from the foundations to the uppermost part of the structure to illustrate the construction thereof;
- (d) such detailed drawings as may be necessary;