



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**THE PHYSICAL AND LAND USE PLANNING (DEVELOPMENT  
CONTROL AROUND STRATEGIC INSTALLATIONS) REGULATIONS**

NO. 247 OF 2021

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Kenya

Physical and Land Use Planning Act

## Physical and Land Use Planning (Development Control Around Strategic Installations) Regulations

Legal Notice 247 of 2021

Legislation as at 31 December 2022

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Physical and Land Use Planning (Development Control Around Strategic Installations) Regulations  
(Legal Notice 247 of 2021)

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**PHYSICAL AND LAND USE PLANNING ACT**  
**PHYSICAL AND LAND USE PLANNING**  
**(DEVELOPMENT CONTROL AROUND**  
**STRATEGIC INSTALLATIONS) REGULATIONS**  
**LEGAL NOTICE 247 OF 2021**

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**1. Citation**

These Regulations may be cited as the Physical and Land Use Planning (Development Control Around Strategic Installations) Regulations.

**2. Interpretation**

In these Regulations, unless the content otherwise requires—

"advisory" means an opinion as to whether a concept note or preliminary plan is compatible with permitted development around a strategic installation;

"area around strategic installations" means an area of land or land use that abuts a strategic installation;

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

"electronic" has the meaning assigned to it under section 2 of the Kenya Information and Communications Act (Cap. 411A);

"Forum" means the National Physical and Land Use Planning Consultative Forum established under section 6 of the Act;

"geo-reference" has the meaning assigned to it in section 2 of the Land Act (Cap. 280));

"Strategic installation" means an installation that is—

- (a) classified as such under the Physical and Land Use Planning (Classification of Strategic National or Inter-County Projects) Regulations (Sub. leg);
- (b) declared to be a strategic installation by the Cabinet Secretary after a risk assessment report prepared under these Regulations; or
- (c) developed within or around a strategic national or inter-county project.

**3. Object of the Regulations**

The object of these Regulations is to give effect to Part IV of the Act and to provide for the procedures of processing development applications around strategic installations.

**4. Declaration of strategic installations**

- (1) The Cabinet Secretary may, on his or her own motion or on application by a State organ, and after consideration of a risk assessment report, declare an installation that has not been classified as a strategic installation under the Act to be a strategic installation.

- (2) The Forum shall, in accordance with sections 7 (d) and 8 (3) of the Act consider an application for a declaration under subregulation (1) after undertaking a risk assessment.
- (3) The Forum shall, when undertaking the risk assessment under subregulation (2) consider the following matters—
  - (a) the safety and security of the installation;
  - (b) the effect that the loss, damage, disruption or immobilisation of the installation may have on general administration or provision of essential services;
  - (c) whether the proposed project may disadvantage Kenya;
  - (d) how the proposed project impacts the delivery of essential service;
  - (e) impacts on biodiversity;
  - (f) impacts on international conventions and treaties;
  - (g) impact on inter-boundary resource use and management;
  - (h) land tenure;
  - (i) funding;
  - (j) socio-cultural; and
  - (k) legal and institutional framework.
- (4) The Cabinet Secretary shall, on the recommendation of the Forum, declare an installation to be a strategic installation by notice in the *Gazette* within fourteen days of receipt of the risk assessment report.
- (5) Within fourteen days after the publication of the notice under subregulation (4), the Cabinet Secretary shall request the relevant county government to declare the area adjoining the strategic installation to be a special planning area in accordance with section 52.

## **5. Preliminary applications**

- (1) A person shall submit an application for development in the area adjoining a strategic installation in paper or electronic formats to the County Executive Committee Member for policy guidance and advice and the application shall include a concept paper.
- (2) The County Executive Committee Member shall, within fourteen days after receiving the application under paragraph (1), issue a written advisory or refer it to the Director-General for verification of compatibility with the development plan of the strategic installation.
- (3) The County Executive Committee Member shall transmit a copy of the application to the head of the relevant ministry, department or agency responsible for the strategic installation.
- (4) Where an applicant has not received an advisory under paragraph (2) within fourteen days after submitting the application to the County Executive Member, the applicant shall submit the application for development permission in accordance with Part IV of the Act.

## **6. Application for development permission**

- (1) Where the County Executive Committee Member issues an advisory under regulation 5 (2), the applicant may submit the detailed application to the County Executive Committee Member for consideration and pay the prescribed fees.
- (2) The application under subregulation (1) shall be submitted in the following format—
  - (a) each document contained in the application shall be paginated;

- (b) each document sent in electronic form shall—
    - (i) be in PDF format;
    - (ii) not be password protected
    - (iii) not have hyperlinks
    - (iv) be capable of being reproduced in A4 size paper without losing accuracy;
    - (v) be limited to 25 Mb per file except for a geo-database or shapefile document; and
    - (vi) have images of with a resolution of at least 1,200 printer dots per square inch; and
  - (c) each plan contained in the application shall be geo-referenced.
- (3) Each digital plan contained in the application shall embed an electronic signature or a manual signature on a document that is scanned for electronic submission by the author.
  - (4) Where due to a reasonable cause that may include a system prolonged down time, resulting in the applicant's inability to submit an application electronically, the applicant may submit a paper copy of the application to the County Executive Committee Member and give reasons for the inability within fourteen days from the date of application.
  - (5) Upon receipt of the application, the County Executive Committee Member shall invite comments from relevant authorities and agencies including the Director-General.
  - (6) The comments sought under subregulation (5) shall be submitted to the County Executive Committee Member within fourteen days after the request by the County Executive Committee Member.
  - (7) After receiving a copy of the application under regulation 4 (3), the Director-General shall request comments from the head of the ministry, department or agency responsible for the strategic installation and the committee constituted under [section 8](#) (3) to consider and give comments on the application.
  - (8) The Director-General shall submit comments on the request under subregulation (5), which shall take into consideration the comments of the relevant ministry, department or agency responsible for the strategic installation and the forum within the period specified in paragraph (6) to the County Executive Committee Member.
  - (9) When considering an application for development permission, a County Executive Committee Member shall also take into consideration the comments sought under subregulation (6) before granting development permission.
  - (10) A person shall not undertake any development in the area around a strategic installation without development permission from the relevant County Executive Committee Member.
  - (11) Where a service provider receives a request for connection to a development around a strategic installation, the service provider shall confirm that development permission has been granted before making the connection.

## **7. Determination of application for development permission**

- (1) After receiving the comments requested under regulation 6(5), the County Executive Committee Member shall with reason consider the application for development permission under regulation 6 (1) and—
  - (a) approve the application with or without conditions;
  - (b) reject the application; or
  - (c) defer an application.

- (2) The County Executive Committee Member shall, within fourteen days of receiving comments under regulation 6 (6), notify the applicant of the decision made on the development application in writing specifying the reasons for the decision.
- (3) The County Executive Committee Member shall transmit a copy of the decision under subregulation (2) to the Director-General and the head of the ministry, department or agency responsible for the strategic installation.

## **8. Appeals**

Any person aggrieved by a decision of the County Executive Committee Member with respect to an application for development permission under these Regulations may appeal in writing to the County Physical and Land Use Planning Liaison Committee within fourteen days after the decision.

## **9. Monitoring**

- (1) The County Executive Committee Member shall monitor the implementation of approved developments in areas adjacent to strategic installations to ensure that they comply with the conditions of development permissions and prepare status reports thereon.
- (2) The County Executive Committee Member shall transmit copies of the status reports prepared under subregulation (1) to the Director-General.
- (3) The Director-General may, on his or her own motion, or on request from the head of the ministry, department or agency responsible for the strategic installation, or on the basis of the status report transmitted under subregulation (2), convene a meeting with the respective County Executive Committee Member, a representative from the ministry, department or agency and the developer if —
  - (a) a developer commences development without development permission; or
  - (b) the development does not comply with the conditions of the development permission.
- (4) Where a developer commences development in an area adjacent to a strategic installation without development permission or does not comply with the conditions of the development permission, the County Executive Committee Member may, by notice in writing—
  - (a) direct that the developer shall cease all operations until the developer has complied with the provisions of these Regulations;
  - (b) specify the measures the developer shall be required to take in order to comply with the conditions of the development permission with a period to be specified by the County Executive Committee Member;
  - (c) specify the measures the developer shall take to regularise the development and the period within which the regularisation shall take place; or
  - (d) require the demolition or alteration of the development or works or the discontinuance of any use of the subject land or the carrying out of any other activities within a period to be specified by the County Executive Committee Member.
- (5) The determination of the County Executive Committee Member made under subregulation (4) shall be transmitted to the Director-General and the head of the ministry, department or agency responsible for the strategic installation.

## **10. Register**

The County Executive Committee Member shall maintain a register of all development applications received and development permissions granted under these Regulations.