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Physical and Land Use Planning Act

The Physical and Land Use Planning (Institutions) Regulations Legal Notice 238 of 2021

Legislation as at 31 December 2022

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The Physical and Land Use Planning (Institutions) Regulations (Legal Notice 238 of 2021)

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PHYSICAL AND LAND USE PLANNING ACT
THE PHYSICAL AND LAND USE PLANNING
(INSTITUTIONS) REGULATIONS
LEGAL NOTICE 238 OF 2021

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Part I – PRELIMINARY

1. Citation

These Regulations may be cited as the Physical and Land Use Planning (Institutions) Regulations.

2. Object of the Regulations

The object of these Regulations is to provide guidelines and procedures for the matters specified in Part II of the Act.

Part II – NATIONAL PHYSICAL AND LAND USE PLANNING CONSULTATIVE FORUM

3. Qualifications of nominated members

A member of the National Physical and Land Use Planning Consultative Forum nominated under section 6 (2) (k), (l), (m), (n), (o) and (p) of the Act shall—

- (a) be a registered member of good standing of the Architectural Association of Kenya, Institute of Surveyors of Kenya or Kenya Institute of Planners, as the case may be;
- (b) not be employed by the national or county government, ministries, departments and agencies;
- (c) not be a member of Parliament or a county assembly;
- (d) not be a member of a governing body of a political party;
- (e) not be an undischarged bankrupt; and
- (f) satisfy the requirements of Chapter Six of the Constitution.

4. Nomination process

- (1) The institutions or organisations nominating the members of the National Physical and Land Use Planning Consultative Forum under section 6 (2) (k), (l), (m), (n), (o) and (p) shall nominate two persons of the opposite gender and submit their names to the Cabinet Secretary for appointment.
- (2) The institutions or organisations nominating the members of the National Physical and Land Use Planning Consultative Forum under section 6 (2) (k), (l), (m), (n), (o) and (p) shall submit to the Cabinet Secretary the record of the proceedings at which the nominees were selected.

5. Notice

Wherever a vacancy arises in the office of a member of the National Physical and Land Use Planning Consultative Forum nominated under section 6 (2) (k), (l), (m), (n), (o) and (p), the Cabinet Secretary shall notify the respective institution or organization of the vacancy within fourteen days of the vacancy and invite the institution or organization to nominate two qualified persons of opposite gender to fill in the vacancy.

6. Submission of names of nominees

The institutions or organizations nominating the members of the National Physical and Land Use Planning Consultative Forum under section 6 (2) (k), (l), (m), (n), (o) and (p) shall submit to the Cabinet Secretary the names of the nominees within fourteen days of the notice under regulation 5.

7. Appointment of nominees

Within thirty days after receipt of the names of nominees under subregulation (6), the Cabinet Secretary shall appoint the nominees by name and by notice in the *Gazette*.

8. Tenure

The members appointed in accordance with subregulation (8) shall serve for a term of three years and shall be eligible for reappointment for one further term of three years.

9. Quorum

The quorum for the conduct of business at a meeting of the National Physical and Land Use Planning Consultative Forum shall be half of the total membership.

10. Decisions of the Forum

- (1) All decisions made by the National Physical and Land Use Planning Consultative Forum shall be in writing under the hand of the Chairperson and Secretary.
- (2) The decisions of the National Physical and Land Use Planning Consultative Forum shall be taken by vote of the majority of the members, except co-opted members, present and voting, and in the case of a tie, the chairperson or the member acting as chairperson shall have a casting vote in addition to his deliberative vote.

11. Communication channel

The resolutions of the National Physical and Land Use Planning Consultative Forum shall be communicated to relevant ministries, departments, agencies, county governments and other parties for information and necessary action by the chairperson.

12. Implementation of the resolutions of the National Physical and Land Use Planning Consultative Forum

Where relevant agencies have not acted on the resolutions of the National Physical and Land Use Planning Consultative Forum, the chairperson shall refer the matter to the Cabinet, relevant ministries, departments, the National Physical and Land Use Planning Liaison Committee and the Council of Government for information and action.

13. Vacancies

Within fourteen days of a position falling vacant under section 6 (2) (k), (l), (m), (n), (o) or (p), the Cabinet Secretary shall initiate the appointment of a new member as provided under regulations 3, 4, 5, 6 and 7 and the member so appointed shall serve for a full term.

14. Review of national policy

The Cabinet Secretary shall cause the review of the national policy on physical and land use planning—

- (a) upon receipt of a recommendation from a planning authority;
- (b) when, in the opinion of the Cabinet Secretary, it is necessary to undertake the review of the policy;
or
- (c) at the expiry of the implementation period of the policy.

15. Annual reports

The Cabinet Secretary shall cause the Director-General to prepare an annual report on the implementation of the national physical and land use development plans for eventual submission to the National Assembly and National Land Commission.

Part III – COUNTY PHYSICAL AND LAND USE PLANNING CONSULTATIVE FORUM**16. Qualifications for appointment of the members of the County Physical and Land Use Planning Consultative Forum**

A member nominated to the County Physical and Land Use Planning Consultative Forum established under section 14 (2) (h), (i), (j), (k), (l), (m), (n) and (o) of the Act shall—

- (a) be a registered member in good standing with either the Architectural Association of Kenya, Institute of Surveyors of Kenya and Kenya Institute of Planners;
- (b) not be an employee of the national or county government or any government agency;
- (c) not be a member of the county assembly;
- (d) not be a member of a governing body of a political party; and
- (e) satisfy the requirements of Chapter Six of the Constitution.

17. Nominating bodies to present two names

For nominations under section 14 (2) (h), (i), (j), (k), (l), (m), (n) and (o) of the Act, the County Executive Committee Member shall require the nominating bodies to present two names of either gender for appointment.

18. Deadline for nominations

The relevant institutions shall submit the names and particulars of the nominees within fourteen days of request by the County Executive Committee Member.

19. Appointment of members

The County Executive Committee Member shall, within thirty days of receipt, cause the names and particulars of the nominees to be published in the *Gazette*.

20. Tenure

The members of the County Physical and Land Use Planning Forum shall serve for a term of three years and shall be eligible for reappointment for one further term of three years.

21. Quorum

The quorum for the conduct of business at a meeting of the County Physical and Land Use Planning Forum shall be half of the total membership.

22. Decisions of the County Physical and Land Use Planning Consultative Forum

- (1) All decisions made by, the County Physical and Land Use Planning Forum shall be in writing under the hand of the chairperson and Secretary.
- (2) The decisions of the County Physical and Land Use Planning Forum shall be taken by way of a majority vote of the members present and voting, excluding the co-opted members.
- (3) Where there is a tie in a vote by the County Physical and Land Use Planning Forum the chairperson or the member acting as chairperson shall have a casting vote in addition to his deliberative vote.

23. Communication Channel

The resolutions of the County Physical and Land Use Planning Forum shall be communicated by the chairperson to the county executive, county assembly, relevant departments and other parties for information and necessary action.

24. Implementation of the resolutions of the Forum

Where relevant agencies have not acted on the resolutions of the forum, the chair person shall refer the matter to the county executive, county assembly, Cabinet Secretary, the National Land Commission and the County Physical Liaison Committee for their information and action.

25. Vacancies

Within fourteen days of a vacancy occurring in a County Physical and Land Use Planning Forum under section 14(2)(h), (i), (j), (k), (l), (m), (n) and (o) of the Act, the County Executive Committee Member shall initiate the process for the appointment of a new member in accordance with regulations 15, 16, 17 and 18 and the member so appointed shall serve for a full term.

26. Sectoral projects to be submitted to Forum

- (1) For the purpose of effective co-ordination and integration, all sectoral projects identified by various sectors shall be submitted to the County Physical and Land Use Planning Forum to ensure compliance with the county Physical and Land Use Development Plan.
- (2) In matters cutting across more than two counties, the respective counties shall deliberate and in consultation with the Director-General cause the establishment of an inter county joint physical and land use planning joint committee for the purposes of making an inter county physical and land use development plan.
- (3) The Inter-County Physical and Land Use Development Plan shall be circulated to the the National Physical and Land Use Planning Consultative Forum for comments.
- (4) In the event the emerging issues leading to the formation of the inter-county Joint physical and land use planning committee affects other counties which are not part of the committee, the Director-General shall communicate the decision for the purposes of incorporating them to the plan.

27. Meetings

The National Physical and Land Use Planning Consultative Forum and the County Physical and Land Use Planning Consultative Forum shall meet at least four times in a year and not more than three months shall elapse between the meetings of the Forum.

28. County policy on physical and land use planning

- (1) After enactment of the National Policy on Physical and land use planning, the County Executive Committee member shall formulate a county policy on physical and land use planning within a period of one year.
- (2) The County Executive Committee Member shall establish a coordination framework comprising of sectoral heads or their representatives to ensure integration of the physical and land use planning with sectoral planning.
- (3) The County Executive Committee Member may, in writing, give general or special approval to the County Director, the authority to consider development applications and issue development permissions and other development control instruments under the Act.

Provided that the authority shall not be deemed to have divested the County Executive Committee Member of any of his or her functions, and he or she may perform such functions notwithstanding the authority given to the County Director.

29. Reports by County Directors

- (1) The County Director shall prepare quarterly briefs on county physical and land use planning matters to the County Executive Committee Member.
- (2) In performing the functions as outlined in section 20 (b), (c), (d) and (e) of the Act, the County Director shall certify the same and forward them to the County Executive Committee member for processing.
- (3) The County Director shall ensure that preparation of the Physical and Land Use Plans is informed by research.
- (4) In undertaking his function under section 20 (f) the County Director shall establish a resource center that will inform physical and land use planning.
- (5) In undertaking the duties under section 20 (g) or (i) of the Act, the County Director shall recommend formation of a technical committee in line with section 60 (1) of the Act to the County Executive Committee Member for submission to the Governor for appointment.

Part IV – INTER-COUNTY PHYSICAL AND LAND USE PLANNING CONSULTATIVE FORUM

30. Establishment of Inter-County Joint Physical and Land Use Planning Committees

The agreement to establish an Inter-county Joint Physical and Land Use Planning Committee in accordance with section 29(1) of the Act shall be in writing and binding to the parties.

31. Director-General to convene the first meeting

In convening the first meeting, the Director-General shall consult the participating counties on the agenda and venue.

32. Quorum

The quorum for the meetings of the Inter-County Joint Physical and Land Use Planning Committee shall be the County Executive Committee Members in charge of physical and land use planning of respective counties and the Director-General.

33. Decisions

The decisions made at the meetings of the Inter-County Joint Physical and Land Use Planning Committee shall be made by consensus.

34. Record-keeping

The Director-General shall keep and maintain up-to-date records of the resolutions of the meetings.

35. Venue

The venue of the meetings of the Inter-County Physical and Land Use Planning Liaison Committee shall be agreed by consensus.

Part V – MISCELLANEOUS PROVISIONS**36. Circulars by Cabinet Secretary**

- (1) In this regulation, "circular" means a communication issued by the Cabinet Secretary or the Director-General to ministries, departments, agencies, county executive committee members, physical planners and the public on new legislative requirements, policy guidelines, strategies, standards and norms for necessary application and compliance.
- (2) The Cabinet Secretary may issue a circular to ministries, departments, agencies, county executive committee members, physical planners and the public notifying them of new policies, norms and standards on physical and land use planning.
- (3) The circular shall contain a brief statement of the purpose of the policies, norms and standards.
- (4) In addition to the issuance of the circular under subregulation (2), the Cabinet Secretary may publish such communication in two newspapers with a national circulation in the English and Kiswahili languages.
- (5) All circulars may be posted on the Ministry's website in a format that allows the printing of the content free of cost and remain accessible for as long as practically possible.

37. Policy statements by Cabinet Secretary

- (1) In this regulation, "policy statement" means a statement issued by the Cabinet Secretary or the Director-General on any aspect of physical and land use planning meant for application across the country in the context of the applicable laws and policies.
- (2) On his own initiative, or as ordered by a court of law, or on the request of the National Land Commission, the National Physical and Land Use Planning Consultative Forum, the County Physical and Land Use Consultative Forum and the National Physical and Land Use Planning Liaison Committee, the Cabinet Secretary may, in the public interest, issue policy guidelines on physical and land use planning to provide concise and practical guidance to county executive committee members, physical planners and the public in a clear and accessible form.
- (3) Planning authorities at the national and county levels shall take into account policy guidelines issued by the Cabinet Secretary in exercising their planning functions and powers.