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THE NAKURU COUNTY LAND MANAGEMENT BILL 2016

An Act of the County Assembly to provide for the preparation of physical development plans, development control, survey and mapping and land administration and management and for connected purposes

ENACTED by the County Assembly of Nakuru, as follows—

PART I: PRELIMINARY

1. Short title

This Act may be cited as the Nakuru County Land Management Bill, 2017.

2. Application

The provisions of this bill shall apply to all parts of the county except such areas as the CECM or the Cabinet Secretary in the National Government made by notice in the gazette specified

3. Interpretation


1) To provide a framework for the administration and management of land within Nakuru County;

2) To provide for the principles, procedures and standards for the preparation, approval, implementation, review, monitoring and oversight of land county level;

3) To provide for the procedures and standards for development control, dispute resolution and the regulation of land use;

4) To provide for the co-ordination of land use planning and land development at the county level;

5) To provide for a framework for monitoring and oversight over land use planning throughout the county;

6) To provide a framework for protecting and maintaining priority natural capital assets that support livelihoods within the county for key economic activities.

7) Identification of exact position of the land spatially using thematic maps and plans.

8) Clear measurement and definition of property boundaries

9) Identification of any easement and encroachment on properties
10) Survey helps in mapping and spatial representation of the properties for land management and administration

PART II: ADMINISTRATION

5. Director of Land and Physical Planning

1) There shall be appointed by the Nakuru County Public Service Board a Director of Land and Physical Planning and such other officers, who shall be public officers, as may be deemed for the purpose of the this Act.

2) The Director shall be the chief County advisor on all matters relating to physical planning, survey and mapping and land administration and management and shall in addition perform such functions as are conferred upon him/her by or under this Act.

3) The principal office of the Director shall be at Nakuru but there may be established such other offices at such places as the Director may from time to time determine.

6. Functions of the Directorate of Land and Physical Planning

(i) Implementation of the National Land Policy, County Land Management Act, Physical Planning Act, Urban Areas and Cities Act and any other related legislation;

(ii) Formulating policies, strategies, regulations and procedures pertaining to land use in Nakuru County;

(iii) Being responsible for the preparation of all physical development plans in the County;

(iv) Directing studies and research into matters pertaining to County physical development plans, development control, survey and mapping and Land Management and Administration;

(v) Coordinating all devolved survey and mapping functions in the county;

(vi) Liaising with all the national and other departments in reviewing land use conflicts.

(vii) Oversee the creation, maintenance and updating of County’s Geospatial information systems;

(viii) Oversee the carrying out of valuation for purposes of rating;

(ix) Coordinating the Technical Committee on Development applications;
7. **Organization of the Directorate**

a) Physical planning

b) Land survey

c) Land Administration and Management

a) **Physical Planning Unit**

It will be responsible for execution of the following functions.

(i) Overseeing development of physical planning framework for the Nakuru County;

(ii) Preparation and implementation of Physical Development Plans;

(iii) Liaising and networking with National, Regional and Local Agencies in matters relating to Nakuru County Development;

(iv) Implementation and coordinating of the Nakuru County Physical Development Strategies;

(v) Promoting sustainable rural development strategies;

(vi) Ensuring compliance with development control regulations in the Nakuru County;

(vii) Providing technical support to other departments or agencies regarding physical planning.

(viii) Formulating Development Control Regulations/Guidelines and policies;

(ix) Providing technical support to ensure effective enforcement of Development Control and Building Regulations;

(x) Developing appropriate urban design and architecture landscaping guidelines;

(xi) Initiating and undertaking Research in matters concerning physical planning;

(xii) Review of development applications (sub-divisions, change of user, extension of user, etc)

(xiii) Integrating appropriate urban design, architecture and landscaping into the spatial framework;

(xiv) Liaising with relevant agencies in conservation and preservation of buildings and monuments of historical importance;
(xv) Enforcement and prosecution to increase compliance;
(xvi) Ensuring the integration of relevant National Government policies in the Nakuru County growth strategy.

b. Land Survey

The functions of the division entail:

(i) Establishment of 4th order geodetic control network in the County.

(ii) Boundary re-establishment and area confirmation,

(iii) Survey and re-survey of planned market centres,

(iv) Verification of development applications,

(v) Topographic surveys,

(vi) Management and custody of County survey records and equipment.

(vii) Provision of services for the Regularization of informal settlements.

(viii) Submission of reports on the status of boundary survey to the National Government.

(ix) Provision and maintenance of up to date geospatial data including:

- Determination and calculation of property boundaries of land registered under the County.
- Land registered under the county
- Submission of property boundaries surveys to the surveyors general for quality control and authentication.
- Inspection and verification of fencing.
- Setting out of buildings

(x) Provision of base maps for utility mapping

(xi) Survey of dams and rivers and riparian reserves

(xii) Topographical mapping including:

- Large scale mapping of scale 1:1000 or larger
- Mapping of infrastructure including telephone fiber networks, and telecommunication masts
c. The Land Administration and Management Unit

It will be responsible for execution of the following functions.

(i) Annual preparations of supplementary valuation rolls;

(ii) Up-dating of the relevant land use data and records for rating purposes;

(iii) Advisory services on Acquisition of land for Public purposes e.g. for construction of schools, Health Centre, cemetery etc.;

(iv) Providing a framework that allows public-private partnership to enhance investment in urban development infrastructure;

(v) Liaise with other state agencies in ensuring equitable access to land, security of land rights;

(vi) Ensuring sustainable and productive management of land resources;

(vii) Alternative dispute resolution mechanisms in land dispute handling and management;

(viii) Conservation and protection of ecologically sensitive areas.

PART III: ESTABLISHMENT AND COMPOSITION OF COUNTY LAND DISPUTE RESOLUTION COMMITTEE

8. Establishment of County Land Dispute Resolution Committee

There shall be established the county land dispute committees in accordance with the provision of section 9.

9. Composition of County Land Dispute Resolution Committee

The County Land Dispute Resolution Committee shall consist of the following:

a) The Director who shall be the Chair
b) Director of Housing
c) Director Public Health
d) Director of Environment
e) County Planner as the Secretary
10. Composition of Sub County Land Dispute Resolution Committee

The Sub County Land Dispute Resolution Committee shall consist of the following:

a) County Planner as the Chair
b) Sub County Planner as the Secretary
c) Sub County Administrator
d) Sub county surveyor
e) Sub County Environment Officer
f) Sub County Public Health Officer
g) County Housing Officer
h) County Land Administrative Officer
i) Registered planner in private practice duly appointed by CECM
j) Registered surveyor in private practice duly appointed by CECM

11. Co-opted members of the Land Dispute Resolution Committee

Notwithstanding the provision of section 8 and 9, a Land Dispute Resolution Committee may co-opt such other persons as it deems fit to assist the committee in the deliberations

12. Functions of the Land Dispute Resolution Committee

The functions of the County Land Management Committee shall be

(a) To hear and review decisions made by the Sub-County Land Management Committees;

(b) To determine and resolve land issues in conjunction with other agencies;
(c) To advise the CECM on the broad issues on physical planning, survey and mapping, and land administration and management;

(d) To advise the CECM on the specific land management issues, planning standards and economic viability of any proposed sub-division of urban or agricultural land;

(e) To study and give guidance and recommendations on issues relating to physical planning, survey and mapping, and land administration;

(f) To inquire into and determine complaints made against the Director in the exercise of his functions under this Act or any other officers in the exercise of their duties under this Act;

(g) To enquire into and determine conflicting claims made in respect of applications for development applications;

(h) To determine development applications for change of user or Sub-division of land which may have significant impact on contagious land or be in breach of any condition registered against a title deed in respect of such land;

(i) To determine development applications relating to industrial locations, dumping sites, sewerage treatment works, green houses, cemeteries/crematoriums, dams or water reservoirs, inter alia which may have injurious impact on the environment as well as applications in respect of land adjoining or within a reasonable vicinity of safeguarding areas;

(j) To hear appeals lodged by persons aggrieved by decisions made by the Director under this Act.

13. Functions of the Sub-County Land Management Committee

The functions of the Sub-County Land Management Committee shall be;

(a) To inquire into and determine complaints made against the Director in the exercise of his functions under this Act or any other officers in the exercise of their duties under this Act;

(b) To enquire into and determine conflicting claims made in respect of applications for development applications;

(c) To determine development applications for minor sub-division of land;

(d) To determine development applications relating to industrial locations, dumping sites or sewerage treatment which may have
injurious impact on the environment as well as applications in respect of land adjoining or within a reasonable vicinity of safeguarding areas;

(e) To hear appeals lodged by persons aggrieved by decisions made by the Director under this Act.

14. Procedure of Land Management Committee

(1) At every meeting a Land Management Committee at least six members (excluding the co-opted members) shall constitute a quorum and all decisions of the committee shall be taken by a vote of the majority members (excluding co-opted members) present and voting, and in case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote.

(2) A Land Management Committee shall meet quarterly or any other time as it may be necessary.

(3) The secretary of the Committee shall prepare the agenda for, and circulate minutes of, every meeting.

(4) No member of the Committee shall, take part in the deliberation on any matter of which he/she is directly interested or concerned with.

15. Record of proceedings of Land Management Committee

The record of proceedings of the Committee shall be kept and filed in the office of the secretary to the committee and be inspected and copies thereof obtained upon payment of such payments as the CECM from time to time prescribe.

16. Appeals of Sub-County Land Management Committee

(1) Any person aggrieved by a decision of the Director concerning any development plan, land administration, survey and mapping, may within thirty days of receipt by him/her of notice of such decision, appeal to the respective Land Management Committee in writing against the decision in such matter as may be prescribed.

(2) Subject to subsection (3), the Committee may reverse, confirm or vary the decision appealed against and make such orders as is seems necessary or expedient to give effect to its decision.

(3) When a decision is reversed by the Land Management Committee it shall before making any order under sub-section(2), accord the Director an opportunity of making representations as to any conditions or requirements which in his opinion ought to be included in the order, and shall also afford the appellant an opportunity to replying to such representations.
15. Protection of members of Land Management Committees

No member of the Committee shall be liable to any actions suit or proceedings for or in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of the functions conferred under this Act.

16. Appeals to the County Land Management Committee

(1) Any person aggrieved by a decision of a Committee may within 30 days of receipt by him/her with a notice of such a decision, appeal to the Land Management Committee in writing against the decision in the manner prescribed.

(2) The Land Management Committee may reverse, confirm or vary the decision appeal against.

(3) The provisions of this Act relating to the determination by the Director of objections to physical development plans or development applications, as the case may be, or the determination of an appeal under this section, shall apply mutatis mutandis to the determination of appeals by the County Land Management Committee under this section.

(4) Any person aggrieved by the decision of the County Land Management Committee under this section may appeal to any other legally established committee or High Court.

17. Appeal to the High Court

Any person aggrieved by the decision of the County Land Management Committee under section (16) may appeal to the High Court against such decision in accordance with the rules of procedure for the time being applicable to the High Court.

18. Establishment of County Technical Committee

There shall be established the County Technical Committee in accordance with the provision of section 19.

19. Composition of County Technical Committee

The County Technical Committee shall comprise of;

a) The County Director in-charge of Land and Physical Planning – chair

b) The County Physical Planner – secretary

c) The County Director Housing

d) The County Surveyor
e) The County Public health officer
f) The County Land administration officer
g) The County Director of environment
h) The County Engineer
i) The Development Control Officer
j) A representative from Nakuru Water and Sewerage Company (NAWASCO)

20. Composition of the Sub-County Technical Committee

a) Sub-County Planner
b) Sub-County Development Control Officer
c) Sub-county Surveyor
d) Building inspector
e) Sub-county health officer
f) Sub-county environmental officer
g) Sub-county administrator

21. Co-opted Members of Technical Committee

Notwithstanding the provisions of section 19 and 20, the Committees may co-opt such other persons as it deem fit to assist the committee in its deliberations.

22. Functions of the Technical Committee

The functions of the Technical Committee shall include but not limited to;

a) Vet and recommend development applications;
b) Ensure compliance in development on accordance to the approved plans zoning regulations;
c) To advise the Sub-county technical Committees on development applications;
d) To formulate policies and guidelines to guide development applications;
e) Coordinate the implementation of physical development plans.
23. Establishment of Development Control Unit

There shall be established a County Development Control Unit in accordance with the provision of section 24.

24. Functions of Development Control Unit

a) To ensure developments observe statutory and non-statutory provisions and requirements are undertaken as approved and observe the stipulated standards.

b) Ensure continuous surveillance and monitoring of development compliance in the county.

c) Carry out routine statutory inspections on progressing developments in the county.

d) Undertake enforcement action to ensure compliance on all developments within the county’s jurisdiction.

e) Preparation of feedback reports on development compliance/enforcement.

f) To ensure compliance with all the laws, regulations and by-laws regarding developments as defined in the physical planning Act Cap 286, the building code and By-Laws within the jurisdiction of municipal of Nakuru.

g) To store and maintain records of development control units for reference.

h) To ensure and coordinate removal of illegal developments for which statutory notices have not been contested or at the Court of Law has ruled in favor of developments removal.

i) Control of advertisements;

j) Issuing invoices and payments;

k) Prosecution of defaulters;

l) Ensurance of compliance;

25. Establishment of Building Inspection Unit

There shall be established a County Building Inspection Unit in accordance with the provision of section 26.

26. Functions of Building Inspection Unit

a) Carrying out site inspections to already approved development applications
b) Counter signing inspection cards to outdated development applications

c) Monitoring stages of building constructions

d) Interpretation of contract drawings and specification for use comparing their details with work on site.

e) Site supervision of Government and institutional buildings under construction.

f) Supervision of maintenance of existing public buildings.

g) Enforcement of site supervision standards.

h) Monitoring site progress and preparing week/monthly progress reports.

i) Preparation of schedules of materials for building maintenance activities.

27. Establishment of Survey and Mapping Unit

There shall be established Survey and Mapping Unit in accordance with the provision of section 28.

28. Functions of Survey and Mapping Unit

a) Surveying and maintenance of County boundaries and boundary monuments,

b) Creation and maintenance of County GIS database,

c) Implementation of court orders,

d) Boundary re-establishment and area confirmation,

e) Survey and re-survey of planned market centres,

f) Verification of building plans for approvals,

g) Topographic surveys,

h) Land surveying for new grants,

i) Cartography,

j) Overseeing the establishment and management of Land Information Management System (LIMS),

k) Management and custody of County survey records and equipment,

l) Resolution of land and boundary disputes,
m) Provision of services for the Regularization of informal settlements,

29. Establishment of County Departmental Enforcement Unit.

There shall be established County Departmental Enforcement Unit in accordance with the provision of section 30.

30. Functions of County Departmental Enforcement Unit

a) Liaising with Development Control Officers in ensuring continuous surveillance and monitoring of development compliance in the county

b) Undertake enforcement action including arrest to ensure compliance on all developments within the county’s jurisdiction

c) Working with the building inspectorate unit on enforcement of site supervision standards

d) Liaising with development control unit in preparation of charge sheets for non-compliance and defaulters.

e) Ensuring security of development control and planning officers during surveillance and building/site inspection.

f) Liaising with development control unit to ensure and coordinate removal of illegal developments for which statutory notices have not been contested or at the Court of Law has ruled in favor of developments removal.

31. Development Control Standards and Regulations

(1) Minimum permissible plot sizes in town for residential and commercial shall be of fifty by hundred (15m by 30m), and no development applications shall be approved on such plots of smaller sizes.

Addendum

31. Penalties on non-compliance

1). Any person who obstructs, or otherwise interferes with, the Committee’s execution of its functions under this Act shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand shillings or to an imprisonment not exceeding two years or both;

2). The CECM may, in writing, direct the Committee to take such action as he/she considers appropriate in order to ensure that the provisions of this Part are complied without undue delay on the part of any person.
MEMORANDUM OF OBJECTS AND REASONS

The Constitution mandates and empowers County Governments with the role of land use planning. County Governments are expected to provide frameworks for land use through planning.

The purpose of this bill is to provide a framework for dispute resolution for administration of land within the County.

The objects of this bill are as follows:-

1. To ensure that national government policy on alternative land dispute resolution mechanism are put in place and embraced by the County.

2. To facilitate effective management of land within the county

3. To facilitate participation of the public in dispute resolution

The county inherited assets and liabilities from the defunct local authorities. These assets include trading centres that were directly managed by the local authorities. These centres were planned and zones created to accommodate various activities that support the catchment of the hinterland. The zones were allocated to residents for development as business, residential and industrial. In addition, a number of public utilities were set aside to support common activities in the small towns. These public utilities are bus parks, recreational areas, schools, churches, water points, refuse sites and markets among many other utilities.

There have been numerous conflicts that is associated with use and ownership of land parcels in these trading centres. The conflicts include ownership, encroachment into public utilities and multiple allocation. The bill provides for mechanisms that will help the county government address all the conflicts relating to land use and ownership.

The county has no guidelines on management of land thus making the relevant department handicapped. This bill provides for a mechanism to manage repossession, reallocation and transfer of these properties.

STEVE KIHARA,
Chairperson, Land, Housing and Physical Planning.