Bill for Introduction into the County Assembly of Vihiga—

The Vihiga County Physical Planning Bill 2019

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THE VIHIGA COUNTY PHYSICAL PLANNING BILL, 2019

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THE VIHGGA COUNTY PHYSICAL PLANNING BILL, 2019

A Bill for

AN ACT of County Assembly of Vihiga to provide for preparation county spatial plan and related physical development plans, and for connected purposes

ENACTED by the County Assembly of Vihiga as follows—

PART I— PRELIMINARY

Short title

1 This Act may be cited as the Vihiga County Physical Planning Act, 2019

Interpretation

2 In this Act, unless the context otherwise requires—

"county executive committee member" means the county executive committee member for the time being responsible for county planning

"County Chief Officer" means a County Officer appointed as provided in Section 45 of the County Government Act,

"County Plan" means a roadmap to guide, harmonize, and facilitate development within the County as provided in Section 107 of the County Government Act,

"County Planning unit" means County Officials listed in Section 7(1) of this Act,

"County Planning Unit" means the County Directorates that determines guides and Coordinates the implementation of the County Plans in the County,

"County Public Service Board" means the Board as established in Section 57 of the County Government Act," Sub County Planning unit" means the Sub County Departments representing the various County Directorates in the Sub County,

"Sub County Planning unit" means Sub County Officials listed in Section 7(2) of this Act

PART II— ADMINISTRATION

Directorate of Physical Planning

3 There is established in the county the Directorate of Physical Planning which shall be an office in the county public service
Functions of the Directorate

4 The Directorate shall be responsible for—

(a) coordinating implementation of this Act,

(b) preparing spatial plan for the county, sub counties and for each town or urban area,

(c) ensuring compliance with any physical development plan developed under this Act,

(d) receiving review 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 member on the most appropriate use of land including land management such as change of use, 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 member on 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) providing liaison with national government on any matter related to this Act,

(i) Advising the executive member generally on any policy to be adopted or matter necessary to effective achievement of the objectives, and

(j) Carrying out any other function for effective realization of objectives under this Act or as may be assigned by the Executive Member

Director of Physical Planning

5 (1) there shall be a Director responsible for spatial planning who shall head the Directorate

(2) The Director shall be appointed by the County Public Service Board
Powers of the Director

6 (1) Subject to the direction by the Executive Member, the Director shall have powers to—

(a) cause to be prepared the county spatial plan and physical development plan
(b) approve any building plan or building operations or works
(c) issue orders related to the implementation of this Act,
(d) make, supervise or direct any physical planning,
(e) inspect, examine any document related to physical planning, and
(f) perform any other act in furtherance of the objectives of this Act

(2) The Director may delegate in writing any of his powers under this Act generally or specially to any officer appointed under section 7

Officers

7 The County Public Service Board shall appoint such number of officers to serve in the Directorate for effective carrying out of its functions under this Act

Indemnity

8 The Director or any officer appointed under section 7 or a member of the county Co-ordinating committee shall not be personally liable to any action or other proceeding for or in respect of any act done or omitted to be done without negligence and in good faith in the exercise or purported exercise of any of the functions conferred by or under this Act

Preparation of spatial plan CGA No 17 of 2012

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

(2) The spatial plan shall be prepared for the purpose of guiding and coordinating development of infrastructural facilities and services for an area under subsection (1), and for the specific control of the use and development of land or for provision of any land in such area for public purposes

(3) The spatial plan may—

(a) provide for long term or short term physical development for the purposes set out in the First Schedule in relation to each type of plan,
(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

Content of county physical development plan

10 (1) A County physical development plan, in relation to an area, shall consist of

(a) a technical report on the conditions resources and facilities in the area,

(b) a statement of policies and proposals with regard to the allocation of resources and the locations for development within the area,

(c) 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,

(d) relevant studies and reports concerning physical development of the area,

(e) maps and plans showing present and future land uses and development in the area and

(f) such other information as the director may deem necessary

(2) The County Executive Committee Member shall, in addition to the provisions of subsection (1), take into account those matters specified in the Fourth schedule of the Constitution when preparing a County physical development plan

Special provisions to be inserted in County Physical Development Plan

11 Without prejudice to section 10, special provisions shall be included in a County physical development plan—

(a) defining the scope of the plan and

(b) defining the area to which the plan relates

PART II—COUNTY PLANNING UNIT

County Planning Unit

12 (1) There shall be a County Planning Unit

(2) The secretariat of the planning unit will be comprised of officers from Directorate of Physical Planning and Directorate of Economic Planning
Composition of the County Planning Unit

13 (1) the County Planning Unit shall consist of the following members—

(a) Chief Officer in charge of Physical Planning, who shall be the Chairman,

(b) the Director in Charge of Physical planning who shall be the secretary,

(c) the Director in charge of Administrative matters,

(d) the Director in charge of Economic planning

(e) the Director in charge of Land and Surveys

(f) the Director in charge of Medical matters,

(g) the Municipal Manager of Vihiga Municipal Board,

(h) the Director in charge of Agriculture,

(i) the Director in charge of Industry,

(j) the Director in charge of ECD

(k) the Director in charge of Environment

(l) the Director in charge of Water Development,

(m) the Director in charge of Roads,

(n) a registered physical Planner in private practice duly appointed by the county executive member and who should be a resident of the County

(2) There is established sub county planning unit which shall consist of the following members—

(a) the sub County Administrator who shall be the chairman

(b) the Sub County officer in charge of physical planning who shall be the secretary,

(c) the Sub County officer in charge Economic of planning,,

(d) the Sub County officer who shall be in charge of administration

(e) the Sub County officer in charge of land matters

(f) the Sub County officer in charge of Medical services

(g) a representative of the director of surveys,

(h) the Sub County officer in charge of Agriculture,
(i) the Sub County officer in charge of industry,
(j) the Sub County officer in charge of ECD
(k) the Sub County officer in charge of Environment
(l) the Sub County officer in charge of Water development
(m) the Sub County officer in charge of roads,
(n) a registered Physical Planner in private practice duly appointed by
the county executive member and who should be a resident in the
sub County

Co-opted members of the Planning Units

14 Notwithstanding the provisions of section 13, a unit may co-opt
such other person as it deems fit to assist the committee in its
deliberations

Functions of the Planning Units

15 (1) The functions of the county planning unit shall be —
(a) coordinate integrated development planning within the county,
(b) ensure integrated planning within the county,
(c) ensure linkages between county plans and the national planning
framework, and
(d) ensure meaningful engagement of citizens in the planning
process,
(e) hear and determine appeals lodged by persons aggrieved by the
decision of any sub county planning unit
(f) determine and resolve planning matters referred to it by any of
the sub county planning units,
(g) advise the county executive on broad physical planning policies,
planning standards and economic viability of any proposed sub
division of urban or agricultural land, and
(h) study and give guidance and recommendations on issues relating
to physical planning which transcend more than one local
authority for purposes of co-ordination and integration of physical
development

(2) The functions of sub county planning unit shall be to—
(a) co-ordinate integrated development planning within the sub-
county
(b) ensure integrated planning within sub county,
(c) ensure linkages between sub county plans, county plans and the national planning framework,
(d) ensure meaningful engagement of citizens in the planning process
(e) to inquire into and determine complaints made against the director in the exercise of his functions under this bill,
(f) enquire into and determine conflicting claims made in respect of applications for development permission,
(g) 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,
(h) determine development applications relating to industrial location, dumping sites, sewerage treatment or housing projects 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, and
(i) hear appeals lodged by persons aggrieved by the decisions made by the Sub County Planning units under this act

**Procedure of Planning Units**

16 (1) At every meeting of a unit one half of the members, excluding the co-opted members, shall constitute a quorum and all decisions of the unit shall be taken by a vote of the majority of the members present and voting, and in the case of an equality the matter is left to rest

(2) A unit shall meet at least once every month

(3) The secretary to a unit shall prepare the agenda for, and circulate minutes of, every meeting

(4) No member of a unit shall take part in the deliberation of any matter of which he is directly interested or concerned with

**Record of proceedings of Planning Unit**

17 The record of proceedings of a planning unit shall be kept and filed in the office of the secretary to the committee and may be inspected and copies thereof obtained upon payment of such fees as the county executive member may from time to time prescribe
Appeals

18 (1) Any person aggrieved by a decision concerning any physical development plan or matters connected therewith may within thirty days of receipt of notice of such decision, appeal to the respective sub county planning unit in writing against the decision in such manner as may be prescribed

(2) Subject to sub section (c), the unit may reverse, confirm or vary the decision appealed against and make such order as it deems necessary or expedient to give effect to its decisions

(3) When a decision is reversed by the unit it shall, before making any order under sub section (b), afford the County Executive Committee member 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

(4) Any person aggrieved by a decision of a sub county unit may within sixty days of receipt the notice of such a decision, appeal to the County planning unit in writing against the decision,

(5) The county planning unit may reverse, confirm or vary the decision appealed against

(6) The provisions of this act relating to the determination by Sub County planning unit of objections to physical development plans applications as the case may be, or the determination of an appeal under section 15, shall apply mutatis mutandis to the determination of appeals by the county planning committee under this section

(7) Any person aggrieved by a decision of the county planning committee under this section may appeal against such decision to the Environment and Land Court

Approval of spatial plan

19 (1) If after the expiration of the thirty days 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 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 it in which case it may 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 county executive committee shall, within thirty days of adopting the spatial plan transmit it to the county assembly for consideration and approval

Publication

20 The executive 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 widest circulation in the Kenya to the effect that the plan has been approved and may be inspected in such a place and at such times as stipulated in the notice

Amendments to spatial plan

21 (1) The Director may from time to time and in such manner as may be prescribed, submit to the executive member proposals for the revocation or modification of the spatial plan on either or both of the following grounds—

(a) that there are practical difficulties in the execution or enforcement of the approved plan,
(b) that there has been change of circumstances since the plan was approved

(2) The Executive 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 to him under subsection (b) the Director shall submit the proposed modification or revocation of the plan to the executive 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 proposed revocation or modification has been approved under subsection (g), the Executive 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

22 (1) The Executive 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 the purpose of preparation of a spatial plan

(2) Subject to subsection (c), the executive member may by notice in the Gazette, suspend for a period of not more than two years any development he deems 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 (a), a development permission has been granted by for development in the 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

23 The Directorate shall—

(a) ensure and facilitate the implementation of the spatial plan,
(b) ensure maximum compliance with the spatial plan and all the requirements with this Act

Reporting

24 (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 the Act
(b) measures taken by the directorate to facilitate implementation and compliance with the Act;
(c) challenges faced in seeking comprehensive implementation and compliance with the Act,
(d) any other information that the Executive Member may require

PART III—CONTROL OF DEVELOPMENT

Objectives of development control

25 Objectives of development control are—

(a) to ensure orderly physical development,
(b) to ensure optimal land use,
(c) to ensure the proper execution and implementation of approved physical development plans,
(d) to protect and conserve the environment,
(e) to promote public participation in physical development decision-making, and
(f) to ensure orderly and planned building development, planning, design, construction, Operation and maintenance

**Powers and duties of the Directorate**

26 Subject to the approval by the County Executive Committee, the Directorate shall have powers to—

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

**Development Permission**

27 (1) A person who wishes to carry out a development in a planning area shall do so after applying for and obtaining development permission from the directorate

(2) A person who commences any development without obtaining development permission commits an offence and is liable to a fine equivalent to not less than five per cent and not more than ten per cent of the value of the land on which the development is taking place, or to imprisonment for a term not exceeding two years or to both

(3) The directorate may require a person who has commenced a development without obtaining development permission to restore the land on which the development is taking place to its original condition or as
near to its original condition as is possible and that such restoration shall take place within ninety days

(4) Where a person who is required to do so fails to comply with the provisions of sub-section (3), the directorate may undertake to restore the land as required and may recover the cost of the restoration from the person required to undertake the restoration

(5) The directorate may modify the conditions imposed on development permission where circumstances require it or for any justifiable cause

(6) The directorate may revoke development permission if the applicant has contravened any provision of this Act or conditions imposed on the development permission for any justifiable cause

Application for Development permission

28 (1) A person intending to undertake any development regulated under this Act shall apply to the Directorate in the prescribed form and upon payment of the prescribed fees

(2) The application shall—

(a) provide sufficient details describing the land where development is proposed to take place,

(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

(2) Where an applicant is not the registered owner of the land for which development permission is being sought, that applicant shall obtain the written consent of the registered owner of that land and the applicant shall provide that written consent to the directorate at the time of applying for development permission

(3) Where an applicant does not receive written response for development permission within sixty days, such permission shall be assumed to have been given in terms of this Act
(4) 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.

**Plans and documents to be prepared by qualified person**

29 (1) A person applying for development permission shall ensure that any documents, plans and particulars that are provided to the planning authority while applying for development permission have been prepared by the relevant qualified registered and validly registered professionals.

(2) A person who purports to prepare a document, plan or particulars required under this Act shall prove that person's credentials when asked to do so by the planning authority and shall be required to authenticate the copies of the documents, plans or particulars provided to the planning authority in that person's name.

**Consideration of application**

30 (1) Upon receipt of the application under section 28, the Directorate shall within thirty days consider and review the application.

(2) The Directorate shall when considering and reviewing the application —

(a) consult with the following officers or Authorities who will form Development Control Committee —

(i) the County Director of Survey,
(ii) the National Land Commission,
(iii) the County Chief Engineer responsible for roads,
(iv) the County Public Health Officer,
(v) the County Director of Agriculture,
(vi) the County Director of Water Services,
(vii) the County Director of Environment,
(viii) the County Director of Housing & Urban Development,
(ix) the County Architect,
(x) the Director of Forests, and
(xi) such other relevant authorities as the Directorate deems appropriate,
(b) ensure that the proposed development is within the physical development plan and complies with the stipulated requirements therein, and

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

(3) Director Physical Planning will chair development control committee meetings

(4) The secretary of the committee will be a planner in the directorate of physical planning

(5) When the chairman is not present in the meeting, members will appoint one of the members to chair the meeting

Grant of Permission

31 (1) Where the Directorate is satisfied with the application, it shall grant the development permission in prescribed form subject to such conditions as the Directorate may stipulate

(2) Where the Directorate is not satisfied with the application, it 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) Directorate shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a development permission

(5) An applicant or an interested party that is aggrieved by the decision of the planning authority regarding an application for development permission may appeal against that decision to the County Physical Planning Liaison Committee within fourteen days of the decision by the authority and that committee shall hear and determine the appeal within fourteen days of the appeal being filed

(6) An applicant or an interested party who files an appeal under subsection (5) and who is aggrieved by the decision of the committee may appeal against that decision to the Environment and Land Court
Registers

32 (1) The directorate shall maintain a register of documents submitted by applicants for development permission and shall issue a submission certificate to every applicant who submits such documents.

(2) The directorate shall maintain a register of development permission and shall enter the details of each applicant for development permission, whether or not development permission was granted to that applicant and the details of the proposed project for which development permission has been applied for.

(3) A register maintained by the planning authority under this Act shall be open to the public for scrutiny and the planning authority shall publish guidelines for public access to that register.

Development fee

33 (1) The Directorate may levy a development fee against an applicant for development permission.

(2) Each county government may, by notice in the Gazette, publish Regulations determining the circumstances, under which a development fee shall be levied, the rates that shall be payable and the circumstances under which a development fee may be waived.

(3) Where a development fee has been waived in relation to an application for development permission, the planning authority may require that applicant to develop infrastructure in relation to the property in question for general use by the residents of the area where the property in question is located.

Lapse of development permission

34 (1) Where an applicant for development permission has been granted development permission but has not commenced the proposed project within two years of receiving the development permission that permission shall lapse.

(2) Despite sub-section (a), the directorate, where an applicant makes an application, may extend development permission by a period of one year if the directorate determines it is necessary or just to grant that extension.

(3) Where the directorate extends development permission, it may impose further conditions on the applicant that it considers fit.

Commencement and completion of building

35 The directorate may impose conditions or impose a fine to be prescribed in regulations on an applicant for development permission for
building works where that applicant fails to complete the building works within five years

**Prohibition of grant of license for development of a commercial or industrial nature**

36 A licensing authority shall not grant a license for the commercial or industrial use or occupation of any building or in respect of any premises or land, for which development permission has not been granted by the directorate

**Offences relating to development permission**

37 (1) A person commits an offence if that person uses or permits to be used any land or building in contravention of any conditions imposed by the directorate when granting development permission, or commences, undertakes or carries out—

(a) a development where development permission has been revoked,

(b) a development where development permission has been modified, and the development does not comply with the modifications in the development permission, or

(c) a development where the building works are inconsistent with the plans approved by the Directorate

(2) Despite the provisions of subsections (1) (a) and (1) (b) (i) of this section, in case of any material variations in a development permission, the applicant may apply to the directorate for development permission

(3) A person who commits an offence under this section is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both

**Right of entry**

38 (1) Directorate may demand the production of, and make extracts from all registers or other records or any deeds or instruments belonging to, or in the custody or possession of any public officer or any person and in which are contained particulars of any land or property affected by the relevant physical development plan

(2) The information obtained by the directorate in accordance with sub-section (1) shall be treated confidentially and shall not be disclosed to any other person except by an order of a court in connection with any legal proceedings

(3) Any request for information shall protect the rights enshrined in Article 31 of the Constitution
Enforcement notice

39 (1) The directorate shall serve the owner, occupier, agent or developer of property or land with an enforcement notice if it comes to the notice of the directorate that—

(a) developer commences development on any land without development permission after the commencement of this Act without the required development permission having been obtained, or

(b) any condition of a development permission granted under this Act has not been complied with

(2) An enforcement notice shall—

(a) specify the development alleged to have been carried out without development permission or the conditions of the development permission alleged to have been contravened,

(b) specify measures the developer shall take, the date on which the notice shall take effect, the period within which the measures shall be complied and

(c) require within a specified period the demolition or alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities

(3) Where a person on whom an enforcement notice has been served is aggrieved by that notice, that person may appeal to the relevant County Physical Planning Liaison Committee within fourteen days of being served with the notice and the committee shall hear and determine the appeal within thirty days of the appeal being filed

(4) Any party aggrieved with the determination of the county physical planning liaison committee may appeal to the court only on a matter of law and the court shall hear and determine the appeal within thirty days

(5) A person who has been served with an enforcement notice and who refuses to comply with the provisions of that notice commits an offence and is liable on conviction or to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two months or to both
Requirement to present development application

40 (1) The directorate in charge of an urban area or a city shall require an owner, agent or developer of property or land to present a development application for consideration of the directorate if, after the commencement of this Act—

(a) it comes to the notice of the planning authority that a development has commenced or has been completed where that development commenced or was completed before the commencement of this Act, and

(b) in the assessment of the directorate that development would meet the requirements of this Act.

(2) A notice under this section shall state the period within which the owner, agent or developer shall comply with the notice.

(3) The directorate shall serve on the owner, agent or developer who is required to apply for development permission with an enforcement notice as contemplated in section 65 if the directorate refuses to grant that owner agent or developer a development permission or—

(a) fails to make an application despite being afforded a chance to make such an application, or

(b) fails to make the application within the prescribed time.

PART V—PHYSICAL PLANNING LIAISON COMMITTEES

Establishment of County Physical Planning Liaison Committees

41 There is established a County Physical Planning Liaison Committee for Vihiga county.

Composition of the County Physical Planning Liaison Committee,

42 (1) The County Physical Planning Liaison Committee shall consist of—

(a) an advocate of the High Court nominated by the Law Society of Kenya and appointed by the

(b) County Executive Committee member in charge of physical planning, who shall be the chairperson,

(c) a representative of the National Land Commission,

(d) a registered physical planner nominated by the Kenya Institute of Planners and appointed by the County Executive Committee member in charge of physical planning, who should be a resident in the County.
(e) a registered architect nominated by an association of architects in Kenya and appointed by the County Executive Committee member in charge of physical planning, who should be a resident in the County

(f) a registered surveyor nominated by the Institution of Surveyors of Kenya and appointed by the County Executive Committee member in charge of physical planning, who should be a resident in the County

(g) two members, being male and female of which one should be a youth, nominated by the county chamber of commerce and appointed by the County Executive Committee member in charge of physical planning

(2) The county physical planning liaison committee may co-opt experts to assist in its deliberations

(3) The County Executive Committee member in charge of physical planning shall provide secretariat services to the committee

Functions of the County Physical Planning Liaison Committee

43 The functions of the County Physical Planning Liaison Committee shall be to—

(a) hear and determine complaints and claims made in respect to applications submitted to the directorate in the county,

(b) hear appeals against decisions made by directorate with respect to physical development plans in the county, and

(c) hear appeals with respect to enforcement notices

Procedure of the County Physical Planning Liaison

44 (1) The County Physical Planning Liaison Committee shall, subject to this Act or any other written law, determine its own procedure

(2) Despite sub-section (1), the quorum of the County Physical Planning Liaison Committee shall be half the members of the Liaison Committee

(3) Every decision of a County Physical Planning Liaison Committee shall be by a majority vote of the members present and voting and where there is a tied vote, the chairperson of that committee or the person acting as the chairperson of that committee shall cast the deciding vote

(4) Where the chairperson of a County Physical Planning Liaison Committee is unable to exercise his functions owing to illness, genuine
absence or any other reason, the members present shall elect one of their own to be the chairperson of the respective Liaison Committee.

(5) County Physical Planning Liaison Committee shall meet at least four times in a year.

**Appeal Physical Planning Liaison**

45 (1) A person who appeals to County Physical Planning Liaison Committee shall do so in writing in the prescribed form.

(2) A County Physical Planning Liaison Committee shall hear and determine an appeal within thirty days of the appeal being filed and shall inform the appellant of the decision within fourteen days of making the determination.

(3) The chairperson of a County Physical Planning Liaison Committee shall cause the determination of the committee to be filed in the Environment and Land Court and the court shall record the determination of the committee as a judgment of the court.

**Duty to appear before a County Physical Planning Liaison Committee**

46 (1) A person who has been summoned to appear before a County Physical Planning Liaison Committee or may do so through a representative or through any form of communication that the committee may permit for the purpose and if required to produce or deliver any document that person shall produce or deliver that document in accordance with the direction of the committee.

(2) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand shillings.

**Communication**

47 All summons issued or notices issued, or awards or orders made under this Act by a County Physical Planning Liaison Committee may be issued or made in electronic form or written form.

**Withdrawal of appeal and abandonment of appeal**

48 (1) A person who has made an appeal before a County Physical Planning Liaison Committee may withdraw the appeal in writing at any time before the appeal is determined by the committee.

(2) The County Physical Planning Liaison Committee shall notify each relevant party that an appeal has been withdrawn within seven days of receiving the written notice of the withdrawal.
(3) Where a County Physical Planning Liaison Committee determines that an appeal has been abandoned by the person who filed the appeal, that committee may require the applicant to submit to the committee, within fourteen days of the committee notifying the applicant in writing, reasons why the appeal should not be regarded as having been withdrawn.

(4) The County Physical Planning Liaison Committee shall consider the submissions made under sub-section (c) and shall either allow the appeal to be finally heard and determined or shall stop all proceedings and determine that the appeal has been withdrawn.

(5) Every County Physical Planning Liaison Committee shall maintain written records of all its proceedings.

Declaration of personal interest

49 (1) A member of the National Physical Planning Liaison Committee or a County Physical Planning Liaison Committee who has an interest in a matter being considered by that committee shall disclose that interest at the meeting in which that matter is being considered.

(2) A member of a Physical Planning Liaison Committee who makes a disclosure under sub-section (a) shall not take part in any proceedings related to that matter.

(3) A member of a physical planning liaison committee who does not disclose an interest as required under this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

Disclosure of information

50 (1) A person shall not disclose, without the consent of the National Physical Planning Liaison Committee or a County Physical Planning Liaison Committee, as the case may be —

(a) any information obtained while serving on that committee, or

(b) any information obtained from the committees in the performance of its functions.

(2) A person who contravenes the provisions of subsection (a) commits an offence and on conviction is liable to a fine not exceeding one hundred thousand shillings.

(3) Despite sub-section (a) a person may disclose information that person obtained while serving on the National Physical Planning Liaison Committee or a County Physical Planning Liaison Committee in the
performance of its duties to a person authorized by any written law to be given that information or as may be required by a court of law

Physical Planning Liaison Committees to keep registers

51 (1) Each Physical Planning Liaison Committee shall maintain a register of each appeal filed, minutes of the meeting of the committee and the decisions of the committee

(2) Each register maintained by Physical Planning Liaison Committees shall be made available to the public for scrutiny

(3) An interested party may, in the prescribed form, apply to a Physical Planning Liaison Committee to examine a register maintained by that committee and that party may, after paying a prescribed fee where prescribed, make copies or take extracts from that register

(4) The Cabinet Secretary may, by notice in the Gazette, make Regulations for the better implementation of the provisions of this section

Remuneration

52 The remuneration of the members of the Physical Planning Liaison Committees shall be recommended by the Salaries and Remuneration Commission

Indemnity for public officers acting under this Act

53 A public officer acting under the Act shall not be liable in an action or a proceeding for or in respect of an act done or omitted to be done without negligence and in good faith in the exercise of any of the functions conferred by or under this Act

PART VI—GENERAL PROVISIONS

Regulations

54 (1) The executive member may make Regulations generally for the better carrying out of the objects of this Act

(2) Without prejudice to the generality of subsection (1), the Regulations may prescribe —

(a) the fees and charges payable under this Act,

(b) the forms applicable under this Act,

(c) the procedures for accessing records under this Act,

(d) procedure for making applications to the coordinating committee, and

(e) the conduct of business and affairs of the coordinating committee
Savings

55 (1) All approvals lawfully and duly undertaken and registered under the Physical Planning Act prior to the commencement of this Act shall be deemed to have been conducted under this Act.

(2) Any matter or proceeding commenced under the Physical Planning Act and pending or in progress immediately before the commencement of this Act, may be continued, completed and enforced under this Act.

Transition

55 (1) The owner, occupier or developer of land or building developed prior to this Act in contravention to the Physical Planning Act shall within six months comply with this Act.

(2) A person who contravenes this section commits an offence and shall be liable to a fine of three hundred thousand shillings.

(3) Subsection (2) shall be without prejudice to any other action being taken in accordance with this Act.
FIRST SCHEDULE

CONTENTS OF NATIONAL, INTER-COUNTY AND COUNTY PHYSICAL DEVELOPMENT PLANS

PART I

1 Introduction
   (a) Background of the Plan
   (b) Vision statement
   (c) Objectives
   (d) Scope of the Plan
   (e) principles of the Plan
   (f) Methodology
   (g) Outline of the Plan

2 Planning Context
   (a) Location-national, regional, local context
   (b) Legal and policy context
   (c) Stakeholder concerns

PART II

3 Situational Analysis
   (a) population and demographic
   (b) physiographic dynamic
   (c) land analysis
   (d) economy- industry, agriculture, commerce, mining and
   (e) quarrying, fisheries
   (f) transportation and communication
   (g) infrastructure services
   (h) urbanization
   (i) rural developments
   (j) Housing
   (k) Environments
   (l) Governance

4 Synthesis

PART III

(i) Development challenges, opportunities and alternative interventions

5 Plan Proposals
   (a) County Structure Plan
   (b) Strategies measures, Actions

6 Action Plans
PART IV

7 Implementation

8 Maps and graphics

(a) Spatially present the existing situation and Plan proposals for purposes of clarity in—

9 Communication

(a) Contextual Aspects

National, Regional and Local context maps These maps indicate relative location and position of the county These are to the scale of 1 250,000 for national context, regional context ranges between, 1 50,000 and 1 100,000 and local context is 1 25 000

(b) Situation Analysis

Context maps to illustrate features and aspects of various thematic areas The scale depends on level of detail required to be illustrated or presented The recommended scales range from 1 10,000, and 1 25,000

(c) Plan Proposals

These maps indicate location of various Plan proposals The scale depends on level of detail required to be illustrated or presented The recommended scales range from 1 10,000 and 1 25,000

(d) Action Plans

These maps indicate areas for detail treatment The scale of the maps depends on area to be covered and particular aspects to be captured The recommended scales range from 1 5,000 and 1 10,000

10 Content of the Maps

(a) Key features to be captured in a Base map include

(i) physiographic and natural features such as rivers, wetland, lakes, forests and hills among others

(ii) contours

(iii) Main man-made features such as trunk roads, railway lines, water reticulation facilities, terminus, way leaves, and human settlements urban nodes among others

(b) Contents of Plan Proposal Maps

(i) Selected existing features and elaborated presentation of the proposals The maps should be geo-referenced and in layers
11 Purpose of the survey report

The survey report shall provide for

(a) matters that may be expected to affect development of the County,
(b) an inventory of the principal physical, economic, environmental, and social characteristics,
(c) a statement on national policies on economic, social, physical and environmental management and conservation
(d) the principal and expected land use effects on the County,
(e) population size, composition, structure, quality, distribution and trends,
(f) communications, transport system, and traffic flow
(g) Inter and intra county linkages and relations
(h) Projected changes on all sectoral aspects and effects that the projected changes are likely to have on development, or the Planning of the county
(i) any other matter that may be prescribed

12 Adoption of the survey report

(a) The County Executive Committee Member shall submit the survey report to the Executive Committee for adoption
(b) If the County Assembly disapproves the survey report it shall state the reasons for its refusal and refer it to the county Director for review
(c) Submission of a reviewed survey report shall be undertaken as provided in the manner provided in sub-paragraph (a)
SECOND SCHEDULE

CONTENTS OF LOCAL PHYSICAL DEVELOPMENT PLANS
PART A — MATTERS WHICH MAY BE DEALT WITH IN A LOCAL PHYSICAL DEVELOPMENT PLAN

1 Vision

2 Objectives

3 Statements of the problem
   (a) Aspects of housing, unemployment, traffic congestion, pollution, land tenure, lack of services, terrain, soils
   (b) Opportunities in tourism, fishing, manufacturing, etc

4 Objectives Statement
   (a) Ways of alleviating the problems
   (b) Ways of maximization of utility and opportunities

5 Analysis
   (a) Spatial analysis accompanied by physical and suitability maps and charts focusing on,
      (i) the terrain, soils and climate
      (ii) Existing land uses and development
      (iii) Potential pattern of development,
      (iv) Land tenure system and
      (v) Cadastral outlay of all development
   (b) Population analysis,
      (i) Population growth
      (ii) Migration,
      (iii) Density,
      (iv) Distribution, age and sex structure,
      (v) Household sizes
      (vi) Rates of household formation,
   (c) Economic analysis focusing on,
      (i) Employment and incomes and places of work
      (ii) Development trends and
(iii) Problems of service delivery,

(iv) Agricultural potential of the urban region

(v) Problems of transforming the agricultural land into urban use,

(d) Contextual analysis

(i) Pen-urban slum settlements and problems they pose

(ii) Potential, distribution and size of service centres within and outside the urban boundary

(iii) Evaluation of urban boundary extension,

(iv) Evaluation of the importance of such factors as commerce and tourism within extended areas

(v) Historical patterns and conditions

(e) Housing and infrastructure analysis

(i) Housing occupancy rates, accommodation density, housing requirements, type of residential areas and industrial locations,

(ii) Education

(iii) Recreation areas and other public purpose land uses

(iv) Power lines and way leaves

(v) Water and sewerage networks

(vi) Housing and infrastructure programmes

(f) Transportation and communication analysis

(i) Roads networks, footpaths, cycle ways, railway lines depots, waterways docks, etc

(ii) Telephone lines

6 Projections

(a) Land Use Projection Tables

7 Maps and Modeling

(a) Existing land use map

(b) Sieve maps of the physical constraints or thresholds to development

(c) Development model map indicating land use designation and distribution as well as a clear transport and communication network
PART B—CONTENTS OF SURVEY REPORT

8 Before commencing preparation of a local spatial development plan a survey report shall be prepared providing details on—

(a) Spatial analysis. Existing and projected land use patterns, land tenure, land suitability analysis, spread and trends

(b) Demographic dynamics, population growth, migration, density, and distribution, age and sex structure, household sizes and rates of household formation, employment and incomes including where people go to work and what trend and problems there are in relation to services,

(c) Economic base analysis

(d) Reports on State of the environment, environmental assets, and condition

(e) Transport, mode, level of service, traffic flow and congestion

(f) Communications networks such as roads, footpaths, cycle ways, railway lines, depots, water ways, docks, etc

(g) Housing situation, housing occupancy rates, accommodation density, housing requirements, type of residential areas and industrial locations

(h) Pen-urban slum settlements and problems they pose,

(i) Problems of transforming the agricultural land into urban use

(j) Other social aspects including education, recreation areas and other public purpose land uses

(k) Infrastructure and services, existing, projected and gap analysis

(l) Opportunities commerce, trade, transport, tourism, fishing, manufacturing, etc

(m) And any other matter as may be prescribed
PART C—CONTENT FOR RENEWAL AND REDEVELOPMENT PLAN

(i) Maps of the project area

(ii) Justification statement for eligibility of the areas as a substandard, decadent or blighted open area

(iii) Land use pattern analysis and proposals

(iv) Project objectives including specifications of all proposed redevelopment and detailed job creation and retention estimates

(v) A financial Plan including cost estimates and a project budget

(vi) Local approvals

(vii) Site preparations including land protections and measures to address environmental or flood problems, conservation of areas of historic, architectural significance

(viii) Traffic systems including safe pedestrian movement, access to buildings convenient and ample public car parks as well as efficient road links

(ix) Public improvements including how the improvements will help achieve the objectives of the Plan

(x) A relocation Plan

(xi) Redeveloper's obligations (restrictions that are or will be placed on owners of individual parcels)

(xii) Disposition for each parcel including any known redeveloper

(xiii) A report on citizen participation describing meaningful citizen participation in the Planning process and expected citizen participation during project execution
THIRD SCHEDULE

MATTERS WHICH MAY BE DEALT WITH UNDER DEVELOPMENT CONTROL

1 The development control process and procedures Aspects may relate to any of the following

(a) Change of user
(b) Extension of users
(c) Extension of lease
(d) Subdivision scheme and amalgamation proposals
(e) Building Plans
(f) Processing of easements and way-leaves
(g) Sitting of education institutions, base transmission station, petrol stations, eco lodges, camp sites, power generation Plants, factories
(h) Advertisement
(i) Any other as the Planning authority may prescribe from time to time

2 The Planning Authority shall, when considering a development application submitted

(a) be bound by approved physical Plans
(b) have regard to relevant national and county policies
(c) have regard to the health, safety amenity, efficiency, aesthetics and conveniences of the community generally and to the proper Planning and density of development and land use in the area,
(d) have regard to any comments received from the officers or authorities and or relevant stakeholders as referred to in Clause (7)
(e) in the case of a leasehold, have regard to any special conditions stipulated in the lease

3 If any development application requires subdivision or change of user of any agricultural land, the Planning Authority shall require the applicant to obtain consent from the relevant Board

4 Planning authorities shall require applications for major development projects
The Vihiga County Physical Planning Bill 2019

5 The following factors shall be considered in the determination of change and extension of user—

(a) Provisions of an approved physical development Plan

(b) Probable effects on the character of the neighborhood

(c) Effects on vehicular and pedestrian safety

(d) Visual impact

(e) Effect on the right to a view

(f) Defined location and size of the land

(g) Current user

(h) Area zoning regulations

(i) Infrastructure availability and adequacy

6 Extension of Lease —

(a) Whether the land is required for public purpose

(b) Whether special conditions in the lease were adhered to

(c) Whether the land is developed

(d) Whether the buildings on the land have been well maintained

(e) Provisions of relevant approved physical development Plans

(f) Defined location and size of the land

(g) Current user of the land

(h) Infrastructure availability and adequacy

7 Subdivision and Amalgamation Proposals

(a) The design of the Plan

(b) Provisions of relevant approved physical development Plans

(c) Land reference number, size and shape of land

(d) The location Plan/inset

(e) Resultant subplots, their access and adequate truncations

(f) The owner of the property, name, signature identification and telephone number

(g) Linkage and indication of classified roads, and other Infrastructure availability and adequacy

(h) Surrender of land for public utilities
(i) Change of user considering the minimum size of sub-plots,

(j) Consent from the relevant agency in case of agricultural land

8 Where the development involves the erection of a building the Planning authority will consider the following—

(a) The use of the building

(b) The sitting of the building within the plot

(c) The elevations of the building, plinth area, canopies and height of buildings

(d) The design, shape, civic design and facade and appearance of the building,

(e) the set back and the building line,

(f) Access to and parking on land which the building is to be erected

(g) Loading bay

(h) Density

(i) Plot coverage

(j) Provision for rainwater harvesting facilities and water storage tanks in every building

(k) Landscaping

(l) Character

(m) Ventilation and lighting

(n) Infrastructure adequacy

(o) Environmental, health and cultural considerations

(p) Any other matter that the planning authority considers necessary for purposes of planning

9 Where the building plans submitted do not meet the required standard, the Planning authority shall communicate the areas of improvement to the applicant

10 The applicant to whom any written directions are given shall amend the buildings Plans or drawings accordingly and resubmit within such a period as the Planning authority may specify

11 The building Plans or drawings to be submitted include—

(a) Development Plan and drawings,

(b) Architectural drawings and specifications,
(c) Civil and Structural engineer's drawings and specifications,
(d) Electrical engineer's drawings and specifications,
(e) Mechanical and Plumbing drawings & specifications, and

12 The following services require easements and ways leaves—
(a) Telecommunications
(b) Electrical power supply
(c) water and sewerage networks
(d) oil Pipeline
(e) Fibre optic
(f) Base transmission stations
(g) And any other service as may require easement and or way leave

13 The National Land Commission shall not grant a way leave as in
Clause 144 of the Land Act without approval from the directorate

14 The owner of a building may display the following illustrated
advertisements without the prior consent of the directorate
(a) In the case of shops the name and occupation of the occupier
Provided that the letters are not greater than 0 3 metre (12 inches) in
depth and contains not more than 6 words
(b) in the case of offices a notice Board displayed at the ground floor
entrance to the premises not exceeding 0 3 sq metre (1 sq ft) total
for all occupiers,
(c) Any advertisement displayed within a building or on land or
building not visible from a street,

15 (1) The display of advertisements not mentioned in (a) shall
require permission from the directorate
(2) The grant of permission under paragraph (a) shall depend on
(a) The location, size and colours of the billboard,
(b) Traffic and pedestrian safety,
(c) Religious, cultural and moral character of the advertisements,
(d) preservation of the natural environment,
(e) scenic beauty,
(f) The preservation of natural monuments and archeological sites,
(g) General amenity, and
(h) Any other factor that the Planning authority may consider necessary

16 The directorate may by notice in writing, require any person who displays an advertisement without permission to remove such advertisement within the time specified in the notice

17 Authorities responsible for licensing educational facilities shall not issue licenses without advice from the directorate

18 In processing the applications the following planning considerations are taken into account -

(a) The adequacy of the physical facilities,
(b) Land use conformity, and
(c) Size of land
MEMORANDUM OF OBJECTS AND REASONS

Firstly, This Bill aims at implementing 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 in regard to spatial planning.

Secondly, this Bill provides a legal framework for developing and implementing the county spatial plan as well as regulating the developments on land.

**PART I** of the Bill provides for preliminary matters such as the purpose of the Bill which include coordination of spatial planning and development in the county, promotion of organized planning and development of physical infrastructure as well as enhancing regulation of physical development and land use among others.

**PART II** of the Bill provides for administration matters. It provides for the establishment of the Directorate of spatial planning, the appointment of the Director responsible for spatial planning and the respective powers and functions. It also establishes the County Planning units which consist of County and National Government officers responsible for matters related to spatial planning.

**PART III** of the Bill provides for control of development on land. It empowers the Directorate to control development on land as well as land use. It provides for regulation of matters such as subdivision of land, development control and building control among others.

**PART IV** of the Bill provides for enforcement of development control permits or licences and makes provisions for enforcement notices and requisition notices.

**PART V** of the Bill provides for liaison committees, their powers and functions at both national and local level. These are the National Physical Planning Liaison Committee and the County Physical Planning Liaison Committees. It also makes provisions for the procedures of the liaison committees and appeals from their decisions.

FRANCIS OKIRU GODEKA,
Chairman, Physical Planning, Land and Housing Committee