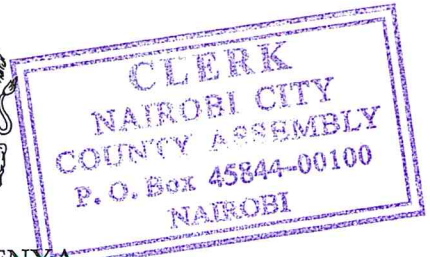


SPECIAL ISSUE

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REPUBLIC OF KENYA

**NAIROBI CITY COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2014

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THE NAIROBI CITY COUNTY REGULARISATION OF DEVELOPMENTS BILL, 2014

A Bill for

AN ACT of the County Assembly of Nairobi City to provide for the regularisation of unapproved developments; and for connected purposes

ENACTED by the County Assembly of Nairobi City as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Nairobi City County Regularisation of Developments Act, 2014, and shall come into operation on such date as the county executive committee member responsible for physical planning, may in consultation with the Governor, appoint. Short title and commencement.

2. (1) In this Act, unless the context otherwise requires— Interpretation.

“committee” means the regularisation advisory committee established under section 15;

“development” has the same meaning as ascribed thereto in the national Physical Planning Act; Cap. 286

“executive committee member” means the executive committee member responsible for physical planning;

“owner” means a person with proprietary interest in the development in question;

“provisional order of regularisation” means an order issued by the executive committee member pending the permanence of certain acts by the applicant or payment of fees by such applicant;

“regularization period” means the period referred to in section 5 as may be extended from time to time;

“relevant law” means a written national government or Nairobi City County law; and Cap. 286

“unauthorised development” means a development that has not received the necessary approvals under the national Physical Planning Act and other relevant Nairobi City County legislation prior to the commencement of this Act. Cap. 286

(2) The meanings ascribed to words, phrases or expressions in the national Physical Planning Act shall apply to those words, phrases or expressions respectively where the words, phrases or expressions are used in this Act and the words, phrases or expressions used in this Act shall have corresponding meaning as set out in the national Physical Planning Act, unless the context requires otherwise.

3. The objectives of this Act are to—

Objectives of the Act.

- (a) bring unauthorized developments under the umbrella of planning framework and to provide basic facilities and infrastructure to the residents of the concerned areas in the county;
- (b) provide for regularisation of unauthorized developments commenced or completed before the date of commencement of this Act;
- (c) exclude unauthorized development made on any public land from the benefit of regularisation;
- (d) provide for regularization of unauthorized developments made in conservation area declared as such under the relevant law;
- (e) provide for regularisation of unauthorized developments which fall within the required set-off specified in any law governing buildings;
- (f) provide for appointment of an advisory committee for the purpose of this Act.

PART II—THE REGULARISATION PROCESS

4. Notwithstanding anything contained in any law, but subject to such rules as may be prescribed, any unauthorized development made in the county, except those specified in section 7, made prior to the commencement of this Act by any person on—

Regularisation.

- (a) allotted land belonging to the county government;
or
- (b) private land,

may, on the application of such person made before such date as may prescribed, be regularised in accordance with the provisions of this Act.

5. (1) Developments shall be eligible for regularization under this Act from the date of commencement of this Act and shall lapse at the expiry of twelve months from such date. Regularisation period.

(2) The county executive committee member may, with the approval of the Governor, extend the regularization period.

(3) The power to extend the regularization period shall not be extended for an aggregate period of more than six months but may be exercised more than once.

6. (1) The executive committee member may serve a notice to the owner of an unauthorised development, within a period of six months from the commencement of the Act, or within such period as may be extended, requiring him or her to furnish such particulars and documents within a period of one month from the date of notice. Notices, etc.

(2) On receiving the notice served under subsection (1), the owner shall comply and furnish the relevant particulars and documents as specified in the notice.

(3) Any owner may, on his or her own motion, within a period of six months from the commencement of this Act or within such period as may be extended, make an application to the county executive committee member for regularisation of an unauthorised development.

(4) On receipt of the reply under subsection (2) or an application under subsection (3), the executive committee member shall, after making an inquiry in the manner as he or she considers necessary, is of the opinion that the development can be regularised, issue an order requiring the owner to pay the fees for the regularisation of the unauthorized development.

7. The following unauthorised developments shall not be regularised under this Act—

Unauthorised developments which shall not be regularised.

- (a) unauthorised developments on existing or proposed roads, including those proposed for widening, railway lines, communications and other civic facilities or public utilities;
- (b) unauthorised developments on forest land or river banks;

- (c) unauthorised developments done by any person on land belonging to another person over which the former has no title or where the title is disputed as evidenced by court proceedings;
- (d) unauthorised developments done in violation of any law other than planning law;
- (e) unauthorised development on public land or land otherwise reserved for public utility;
- (f) unauthorised development on land appurtenant to any building owned by the Government or by a company owned or controlled by the Government;
- (g) unauthorised development done on land belonging to the county government and not allotted;
- (h) unauthorised development on any land reserved for parks, play grounds, open places or for providing any public amenities;
- (i) unauthorised development which is otherwise structurally unsound or which poses danger to the occupants or to the occupants of neighbouring premises or members of the public generally;
- (j) such other unauthorised development as the executive committee member may determine.

8. All things done, or omitted to be done, and all actions taken, or not taken, with respect to obtaining approval for development during the period before the commencement of this Act shall, in so far as they are in conformity with, and regularised in accordance with the provisions of, this Act be deemed to have been done, or omitted to be done, or taken, or not taken, under the provisions of this Act as if such provisions were in force at the time such things were done or omitted to be done and action taken, or not taken, during that period.

Prior actions to be recognized under this Act

9. The executive committee member may regularise a development subject to such conditions as he or she may impose, and a certificate of regularisation shall not issue unless such conditions are met by the owner and within such timelines as the executive committee member may determine.

Conditional regularization.

10. (1) All notices issued by the county government for initiating action against unauthorised development in

Amnesty.

respect of such development shall be deemed to have been suspended and no punitive action shall be taken till the expiry of the regularisation period, if the development in question—

(a) commenced prior to the commencement of this Act;

(b) conforms to the safety standards as in force under any written law or such other safety requirements as may be notified by the county government; and

(c) complies with the directions with respect to safety, if any, issued by the county government.

(2) This section shall not apply to developments mentioned in section 7.

11. Within two months from the date of receipt of a provisional order of regularisation, the person in whose favour such order is made shall pay such amount, being regularisation fees, as may be prescribed.

Payment of regularisation fees.

12. Every unauthorized development which is not regularised under this Act after the expiry of the regularisation period shall be liable for demolition, and the supply of water or electricity shall be liable to be disconnected without notice and the occupants therein shall be liable to be evicted summarily.

Unauthorized developments not regularized to be demolished.

13. The provisions of the national Physical Planning Act relating to a matter of procedure or the manner of objections shall with the necessary modifications apply to the regularization process under this Act.

Application of certain provisions of the national Physical Planning Act.

Cap. 286

14.(1) An owner undertaking any alteration, modification or addition in an unauthorised development so as to get the unauthorised development regularised shall continue to be wholly and solely liable for any injury or damage or loss whatsoever that may be caused to any one in or around the area during the carrying out of such work, and no liability whatsoever in this regard shall lie on the county government.

Liability.

(2) Regularization of unauthorised development shall not in any way mean the acceptance of any statement, documents, structural report, design or drawings and shall not discharge the owner, engineer, architect or the structural designer from the responsibilities imposed upon

such owner engineer, architect or the structural designer under the relevant law.

PART III—REGULARISATION ADVISORY COMMITTEE

15. (1) There is established the regularisation advisory committee.

Establishment of the regularisation advisory committee.

(2) The committee shall consist of the following members appointed by the Governor—

- (a) a chairperson;
- (b) an urban planning expert;
- (c) a surveyor nominated by the Kenya Institute of Surveying and Mapping;
- (d) an environmental expert;
- (e) an engineer nominated by the Institute of Engineers of Kenya;
- (f) an architect nominated by the Architectural Association of Kenya;
- (g) the executive committee member responsible for finance;
- (h) the legal officer of the county government or an officer deputed by the legal officer;
- (i) the chief officer of the county government responsible for planning;
- (j) the chief officer of the county government responsible for lands;
- (k) a planner nominated by the Kenya Institute of Planners.

16. (1) The committee shall be responsible for—

Functions of the regularisation advisory committee.

- (a) advising the county government generally on the regularisation exercise, providing and facilitating the necessary stakeholder involvement in the regularisation exercise;
- (b) advising the county government on the human and other resource requirements for the regularisation programme;

- (c) undertaking stakeholder mobilisation for the regularisation exercise;
- (d) overseeing the regularisation exercise and recommending such measures as may be necessary to ensure its fair, equitable and efficient implementation.

(2) The county executive member and any officer deputed in that behalf shall provide such information, to the advisory committee as the committee may require on all aspects of the regularisation process under this Act including information on the pending applications for regularisation.

PART IV—MISCELLANEOUS PROVISIONS

17. (1) The executive committee member may, on the recommendation of the advisory committee and with the approval of the Governor, make regulations for the better carrying into effect the provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

- (a) the procedure of applications for regularisation and the processing of such applications;
- (b) the requirements with respect to documentation that may be required with the applications and other processes in the regularization process;
- (c) the forms to be used and the manner of communication in the regularization exercise;
- (d) action to be undertaken to make provision for expansion of access roads, disposal of solid and other waste, creation of space for amenities;
- (e) the manner of public participation in the regularization exercise;
- (f) the receipt and dealing with objections by interested parties taking into account the relevant provisions of the national Physical Planning Act and any other relevant written law. Cap. 286

18. The executive committee member shall put in place measures necessary to enable the full operationalization of this Act, including establishing the necessary administrative arrangements for that purpose. Administrative and other arrangements.

MEMORANDUM OF OBJECTS AND REASONS

The Constitution of Kenya, 2010 mandates and empowers the county governments with the responsibility of physical planning. Over the years, unauthorized developments have been made in the city and these need to be brought within the orbit of the planning framework.

This Bill seeks to establish a legal framework in order to—

- (a) bring unauthorized developments under the umbrella of planning framework and to provide basic facilities and infrastructure to the residents;
- (b) provide for regularization of unauthorized developments made up to the commencement;
- (c) exclude unauthorized development made on any public land from the benefit of regularization;
- (d) provide for regularization of unauthorized developments made in conservation area declared as such under the relevant law;
- (e) provide for regularization of unauthorized developments which fall within the required set-off specified in any law governing buildings;
- (f) provide for regularization of unauthorized developments having more than the allowed number of floors;
- (g) to provide for appointment of an advisory committee for the purpose of the proposed law.

PART I provides for the preliminary matters including the definition of terms used in the Bill. The objects of the Bill are also set out.

PART II provides for the general and specific requirements for the regularisation of unauthorised developments. It further provides for service of notice to the owner of an unauthorized development within such a period as envisaged in the Bill and the procedure upon receiving such notice. This Part also provides a list of unauthorized developments which shall not be regularized and that unauthorized developments not regularized shall be demolished.

There is also a provision on amnesty and payment of regularization fees

PART III makes provision for the establishment of the Regularisation Advisory Committee. This committee shall be responsible for, among other things, advising the county government generally on the regularization exercise, providing and facilitating the necessary stakeholder involvement in the regularization exercise. It also provides for the composition for this committee.

PART IV makes provision for miscellaneous matters including the empowerment of the executive committee member to make regulations on the recommendation of the advisory committee and with the approval of the Governor for the better carrying out of the provisions of the Bill. It further provides that the executive committee member, the county secretary and the county legal officer shall put in place the necessary administrative arrangements for the full operationalization of this Bill.

The enactment of the Bill into law shall entail expenditure of public funds to be provided for in the county estimates.

JAIRO ATENYA ASITIBA,
Chairperson, Planning and Housing Committee.