



MANAGING AND FINANCING URBAN DEVELOPMENT THROUGH PHYSICAL & LAND USE PLANNING PROCESSES IN KENYA:

A GUIDEBOOK FOR
COUNTY GOVERNMENTS

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PREFACE

Word from the Cabinet Secretary, Ministry of Devolution

The establishment of the devolved system with two levels of government marked a significant shift in development planning in Kenya. The respective powers and functions of each level of government are provided for in Article 186 of the constitution. The constitution envisages development planning at various levels; national, regional, county and sub-county levels. The National Government is assigned the responsibility for the general principles of land planning and coordination of planning by the counties while county governments are responsible for county planning including land survey and mapping, boundaries and fencing. The National Government is also obligated to provide necessary support to County Governments to enable them perform their functions.

The Physical and Land Use Planning Act, 2019 was enacted to provide for matters relating to planning, use, regulation and development of land in Kenya including an inter-governmental framework for regional and inter-county development coordination. The Act, which came into effect, on 5th August 2019 introduces among others public participation, strict timelines for approvals, linkages to national, regional, county and sub-county plans through an inter-governmental framework in land use planning. County Governments also are required to enact laws and regulations relating to land use development planning and its enforcement to strengthen the legal and institutional framework.

Available data indicates that, 56% of Kenya's urban population lives in informal settlements and that the country's economy loses close to Kshs. 100 billion per annum due to traffic congestion in the major urban areas. These figures are indicative of challenges in the physical and land use planning regime. Poor enforcement of existing plans is a major concern as authorities are in most instances forced to demolish illegal structures in order to pave way for approved developments. Rating and taxation of properties for developmental control has also been a challenge to county governments due to poor legal framework. Well coordinated physical planning and land use regime would not only enhance sustainable urban settlements but also the revenue base for County Governments.

This Guidebook was developed in order to provide insights to managers at both levels of government to better appreciate physical and land use planning. It captures the unique challenges of development planning under a devolved system of government linking the New Urban Agenda to Kenya's long term development goals. The guide book suggests solutions authorities may adopt in order to enhance physical planning for sustainable development. It also includes Draft Physical and Land Use Planning (Development Fees) Model Regulations and County Development Authority Model Bills that may guide County Governments in development of relevant laws and regulations on the subject.

It is my sincere hope that this publication will contribute to a better understanding of development planning not only by the practitioners but also by the wider public at large. The development of the publication could not have been possible without the invaluable support of among others the UN-Habitat, the Council of Governors, Kenya Law Reform Commission and my colleagues at the Ministry and also at the County levels. I therefore wish to thank all those who contributed in collating the thoughts that culminated into the development of the Guide Book that will be used for generations to come.

Charles Keter, EGH
Cabinet Secretary

ACKNOWLEDGEMENT

We hope that this publication will help public leaders and professionals in the County Governments of Kenya to manage development in their counties and ensure the provision of necessary services and infrastructure. Furthermore, it is our expectation that this Guidebook will also strengthen the capacities of local authorities in other countries to plan, finance, and adapt their statutory regulation in order to meet the challenges of our rapidly changing world.

We would like to give thanks to Marco Kamiya the former head of the Urban Economy Branch in UN Habitat and Keith Mudadi of Cities Alliance who lead the Joint Work Program. Their leadership and guidance gave the impetus for this publication. Hazel Kuria has continued to ensure the ongoing continuity and organizational processing.

The preliminary draft benefited from the insightful inputs of UN Habitat staff Salvatore Fundarò, Gianluca Crispi, Samuel Njuguna, Melissa Permezel, Remy Sietchiping, and Laura Petrella. Their collegial and professional cooperation has been invaluable over the years and greatly enriched the content of the Guidebook.

The support of the Regional Office for Africa, UN Habitat was especially helpful in linking the understandings gained from the Joint Work Program with Cities Alliance to other projects with County Governments in Kenya.

The work especially in three County Governments was a unique period of learning and experimentation that enabled going from individual case examples to generic understandings regarding the management of urban development by county government. We would like to thank Gerald Githinji, the former Deputy Governor of Kiambu County, Mary Nguli, former CEC Kiambu County, Cecilia Mbuthia, the Deputy Governor of Nyandarua County, Lawrence Mukundi, CEC Nyandarua County, and Martin Moshisho Martine, the Deputy Governor of Kajiado County.

Although the authors have responsibility for the content of the Guidebook, the contributions of other professionals greatly helped to formulate the principles articulated here, Sagi Rochel - Local Government Financing, Ofer Gridinger- City Planning, Marcelino Pandin – Economist, Evelyne Otieno - Urban Planning, Cyrus Mbisi - Urban Planning and Yossi Offer - Urban Planning.

In the final stages of preparation, the Guidebook was reviewed in two workshops together with the authors conducted by the State Department of Devolution in cooperation with the Council of Governors, The State Department of Urban Development, The National Lands Commission, Kenya Law Reform Commission and State Law Office. This was a significant process of validating and further refining the recommendations. We would like to thank Nicodemus Mbwika from the Council of Governors, Peter Chacha and Victor Ogutu from the State Department of Urban Development, Esterina Dokhe and Bernard Opaa from the National Lands Commission, Anthony Otieno and Damaris Mukala from Kenya Law Reform Commission, and Miriam Kakenya from the State Law Office.

The agreement of cooperation between UN Habitat and the State Department of Devolution was the critical factor that led to the publication of the Guidebook for Managing and Financing Urban Development by County Governments. Special thanks to Mr. Julius Korir, CBS, the Principal Secretary, State Department for Devolution, James Mwanzia, the Director of Policy and Research State Department of Devolution, Lesley Khayadi, Deputy Director Policy and Research, State Department of Devolution, and Shipra Narang Suri, Chief of the Urban Practices Branch, UN-Habitat.

FOREWORD

Guidebook – Managing Urban Development

Cities are confronted with an unprecedented set of challenges stemming from the pace of global urbanization, the climate crisis, a declining economy, and as seen over the past two years, the COVID-19 pandemic. The process of urbanization can be the force for sustainable, inclusive, and equitable growth and development, but it can equally deepen inequalities and worsen poverty. The key to achieving positive outcomes while avoiding negative externalities of urbanization lies in good planning and management of urban development.

Kenya is a rapidly urbanizing country in East Africa. On the one hand, the Nairobi Metropolitan Region is rapidly expanding, and on the other, rural towns throughout Kenya are becoming urban centers. The Kenyan constitution has given new authority and responsibilities to the County Governments to plan and manage their development. This task is multi-dimensional requiring both new skills and governance arrangements.

Planning needs to guide urban expansion, as well as, infill and support the provision of services, especially to the poorer and marginalized areas of cities. Of critical importance is ensuring adequate infrastructure, not only through sensible planning, but also effective financing and implementation. As such, managing urban development involves the complex balancing of different, and sometimes conflicting interests, be they social, economic, political, or cultural.

There is no lack of skilled professionals and public leadership in Kenya. However, the transition from a rural society to an urban society means a radical change in “rules of the game”. New governance procedures and organizational platforms are needed to plan, finance, and manage urban development.

Over the last decade, UN-Habitat has been actively working with the Government of Kenya in assisting County Governments to develop new tools and capacities to achieve sustainable urbanization. In particular, the cooperation with Cities Alliance, through the Joint Work Program, afforded a critical opportunity to develop many of the tools being presented here.

This Guidebook builds on insights gained from this cooperative effort. It is important to stress that the guidelines outlined here reflect the “hands-on” work with County Governments, keeping in line with the newly adopted national legislation, and particularly, the process of devolution.

The Guidebook provides County Governments with a set of tools to; improve their spatial planning procedures, link planning with finance, transform their statutory authority into legally binding procedures and establish the organization platforms for implementation. It also includes operational templates that can be adapted to the specific conditions and needs of each County Government.

I would especially like to thank Mr. Julius Korir, CBS, Principal Secretary, State Department for Devolution, James Mwanza – Director, Policy & Research, Ministry of Devolution and the ASALs (MODA), and Lesley Khayadi – Deputy Director, Policy & Research, MODA, for their initiative and cooperation in producing this Guidebook.

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EXECUTIVE SUMMARY

The Context and Background

Kenya is going through a unique time in its history of planning. The year 2020 marks 10 years of embracing change for better governance under the 2010 Kenya Constitution that ushered the devolution of power and resources from the National Government to County Governments. This reorganized local government with the consolidation of over 170 local authorities into 47 newly created county governments. During this period of socio-political transformation, two major transitions have taken place: urbanization and devolution.

In order to help local governments deal with urbanization, the New Urban Agenda -NUA formulated by UN-Habitat delineates a set of principles that have been adopted by the countries of the world and are being used by local governments to guide their urban development. The contribution of the NUA is on two levels. First is the changed view of urbanization as an opportunity. The second is in providing city leaders, political, community, and professional with a clear framework for action formally legitimized by the international community and ratified by their governments.

Urbanization in Kenya is leading to the rapid spatial expansion of Counties to accommodate the surging population, and as a result, there are increasingly high demands for urban infrastructure and services. The complex process of managing urban development requires a proactive process of integrating spatial planning, legal regulations, and financing mechanisms to ensure that urban growth can be sustainable including adequate supply of land for housing, industrialization, efficient transport infrastructure, optimal building designs, and urban space designs.

Devolution in Kenya has provided County Governments with authorities integrating spatial and sectoral planning, aligning of county financial and institutional resources, budgeting, investment, and service delivery. In the first decade of devolution, the challenge facing County Governments has been the adaptation of the institutional capacities of the 47 County Governments upon which the authority for the development of well-balanced human settlements is vested.

UN-Habitat together with the Government of Kenya has supported several County Governments in enhancing their institutional capacities for planning, financing, and legal mechanisms that has enabled them to shape urban growth within their counties. The State Department of Devolution has been actively engaged in setting policy and enhancing capacity of County Governments. In this regard, we are glad to bring together legal and technical expertise in formulating ideas and measures of strengthening development mechanisms of urban infrastructure in this document titled **“Managing Infrastructure Development through Physical and Land Use Planning Processes in Kenya – A Guidebook for County Governments”**.

Findings

The movement of people from rural settings to city living requires a fundamental change from household management to citywide management of resources, housing, transportation, environmental impact, infrastructure provision, and service provision. Individual families in urban settings cannot rely on “Mother Earth” to supply and replenish their use of natural resources – food, water, waste disposal, and materials for building.

In many cases, the influx of people into cities is unplanned and lacking adequate infrastructure. However, most fundamentally the institutional and governance mechanisms are not in place to manage processes of rapid urbanization. Thus slums become wide spread, bringing with them the many problems of crime, poverty, poor health conditions, lack of sanitation, insecurity, and high susceptibility to climate related disasters. **Sub-national governments therefore, need to address not only specific planning issues, but most importantly, to use planning as a tool that focuses on the urban context itself.** Urban planning processes inherently create the conditions of a city’s social dynamics, its spatial design, its cultural heritage,

its economic productivity, its ecosystems, and its financing to generate the revenues for capital infrastructure and service provision.

As diverse as infrastructure demands may be, the constant and common denominator is land development. Therefore, urban growth and development management needs to be a pro-active process of linking land use planning to a vision of sustainability and with clear objectives. The two key objectives of county planning are to *“facilitate the development of a well-balanced system of settlements and ensure productive use of scarce land, water and other resources for economic, social, ecological and other functions across a county;”* and *“harmonize the development of county communication system, infrastructure and related services;”*¹.

Key recommendations

1. Incorporate development control procedures into distinct operational phases that define its full cycle. These four phases are:
 - 1) **pre-application phase:** involves scoping for appropriateness before submission of application for development permission;
 - 2) **pre-approval phase:** application acceptance, charging of submission fees, circulation for assessment and determination;
 - 3) **post-approval phase:** funding mechanism options, a regulated implementation process and completion/occupation upon strict compliance to all prior processes and procedures; and
 - 4) **post-occupation phase:** feedback on user suitability, ease of maintenance, progressive adaptability and resilience to the changing times.
2. Establish a one-stop-shop with clear end-to-end systematic approval procedures that does not burden the development process. It should conform to the principles of equity, efficiency, accessibility, non-discrimination, transparency, accountability, sharing of data and information, and subsidiarity.
3. Formulate an infrastructure master plan that provides a high-level direction for ensuring urban utility services including transportation networks, wayleave and easements, water supply and sewerage works etc.
4. Institute a policy of comprehensive tariffs and pricing policy to include development application fees. In keeping with Section 63 of the Physical and Land Use Planning Act. The primary role of an effective system of Development Fees is to ensure the timely, sustainable financing of required county infrastructure to support land development in line with county planning.
5. Use the powers of control over funds for infrastructure by county government to direct the pace, location, and form of urbanization. It can reduce urban sprawl and lead to a higher level of densification.
6. Establishment of a dedicated County Development Corporation in accordance with section 182 of the Public Finance and Management Act responsible for ensuring the provision and installation of necessary infrastructure assets and infrastructure services through the development fees.

In Summary

The purpose of the Guidebook therefore is to strengthen the implementation of existing legislation generally and provide key insights in the coordination of the spatial elements in the planning policies. These policies define location and character of development and the economic regulation of resources necessary to deliver value for money. It will also identify physical and land use policy, operational and regulatory issues not completely covered in the existing legislation and suggest strategies to supplement them.

¹County Government Act. Section 103(b)

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