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

A GUIDEBOOK FOR COUNTY GOVERNMENTS

UN HABITAT
FOR A BETTER URBAN FUTURE

HARAMBEE

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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 Mwanzia – 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.

Shipra Narang Suri
Chief, Urban Practices Branch
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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.

[1] County Government Act. Section 103(b)

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Chapter One

1. INTRODUCTION

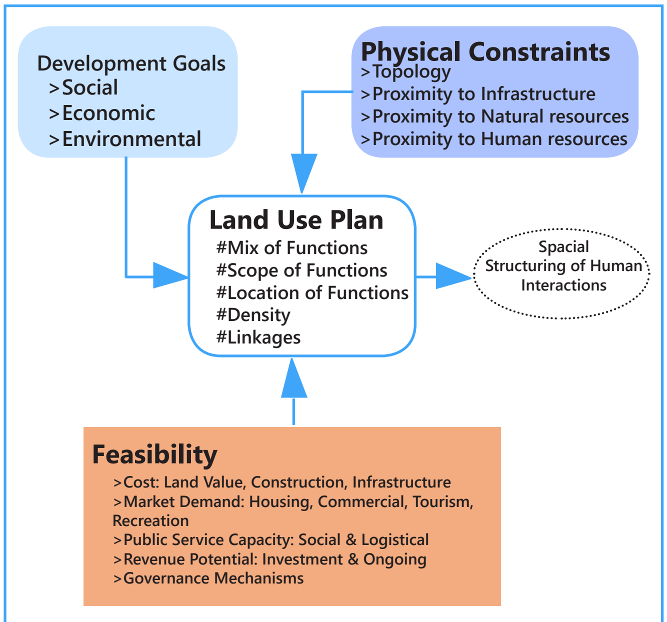
1.1 Background and Rationale

Kenya is going through a peculiar 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 the County Governments as well as a simultaneous reorganization of 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 conditions have taken place: urbanization and devolution. These two combined powerful forces will shape the social, economic, and political destiny for many years to come. This has created confidence in local communities and an irreversible momentum for economic development based on an inclusive development approach. Devolution has provided County Governments with authorities integrating spatial and sectoral planning, aligning of county financial and institutional resources, budgeting, investment, and service delivery. The vexing question, in the first decade of devolution, has been the varying institutional capacities of the 47 County Governments upon which the authority for the development of well-balanced human settlements is vested.

The enactment of the Physical and Land Use Planning Act 2019 (hereinafter also referred to as 'PLUPA'), with its renewed emphasis on mechanisms for the development of infrastructure, is a boon to effective local policies consistent with National policy. Physical and land use functions are now more clearly devolved to County Governments while urban growth and development management is a delegated function to city, municipal, and town authorities with the provisions of the Urban Areas and Cities Act 2011 (hereinafter after also referred to as 'UACA').

Just as devolution has dispersed resources and political influence in the Counties, so is urbanization in terms of the spatial expansion to accommodate the surging population resulting in high demand for urban infrastructure and services. Planning making for urban growth, on one hand, is widely recognized as a legitimate and valued aspect of public policy, which covers a wide range of issues including adequate supply of land for housing, industrialization, efficient transport infrastructure, best practice in building designs, and urban space designs. Development management, on the other hand, is a proactive process of managing urban growth in a sustainable manner.

Figure 1-1: Multi-Dimensional Approach to Planning



Source: Dr. Yoel Siegel

Urban planning and development management requires a multi-dimensional approach, as illustrated in Figure 1-1, which integrates social goals, physical constraints, and economic feasibility, that are translated into land-use functions. Together they structure human interactions.

Unfortunately, the formulation of physical and land use plans at County and urban levels has been slow, making the absorption of development benefits lag behind the speed of urbanization.

County Governments have been caught under the pressure of providing adequate infrastructure and services. By enhancing their institutional capacities for planning, financing, and legal processes, County Governments can shape urban growth within their Counties, thus reversing exclusion, promoting inclusion, and ensuring sustainability.

1.2 Development Fees and Application of 'User Pay' Principle

Beyond the elements of land use controls, the introduction of 'development fees' in the Physical and Land Use Planning Act requires fiscal interventions for a well-structured infrastructure financing mechanism. The authority to levy development fees for infrastructure development, vested in the County Governments, is among the new changes introduced by the Physical and Land Use Planning Act. The imposition of a 'development fee' as an obligatory infrastructure provision for large-scale developments, was an overdue intervention in this inevitable urbanization trend.

The levying of development fees must be premised on rational considerations and growth management principles. The application of the 'user pay' principle will be of immense benefit to County Governments as it will enable them to enhance their capacity to manage urban growth and weed out unfavorable developments. However, for the Counties to properly implement and benefit from this approach, they must have the necessary capacities and an in-depth understanding of their new responsibilities. County legislation, departmental organization, skills, and management platforms need to be incorporated into the institutional fabric of the County Governments to enable them to implement the processes as a statutory duty.

The provisions in this Act create the linkage of spatial recommendations with socio-economic development. There is a crucial difference between the two, but they are inseparable from investment in infrastructure, environmental concerns, and anything else that affects urban life. The past shortcomings in the delivery of infrastructure and other critical communal services may be attributed to this missing link. This distinction is becoming increasingly clear in Kenya's urban fabric.

1.3 Purpose of the Guidebook

The purpose of this Guidebook is simple: support existing initiatives and add momentum to substantive and procedural issues focused on urban growth management towards achievement of the "Big Four Agenda". As devolution governance was setting in, the Second Medium Term Plan (MTP II) 2013 – 2017 focused on implementation of the devolved system of government. The priority was laying the foundation for a sustainable urbanization process through integrated urban and regional planning management framework of Kenyan urban centers and towns. Currently, the Third Medium Term Plan (MTP III) 2018-2022 – the second to be prepared under the devolved system of governance – has prioretised initiatives undertaken to harmonize planning and implementation at the County level within the National planning framework. This included finalization and implementation of the National Spatial Plan (NSP) (2015-2045) and mainstreaming it with County Spatial Plans and Sector Plans (CSPs), the National Urban Development Policy (hereinafter also referred to as 'NUDP'), and guidelines for aligning the County Integrated Development Plan (CIDP) into MTP III. Among the programs and projects planned during this phase is Integrated Urban Development Planning, that includes the dissemination of the National Urban Development Policy to Counties, the creation of an Urban Observatory Centre, and developing standards for urban land management and development control.

In the context of the MTP III, the Physical and Land Use Planning Act cements the planning processes into the growth management systems of the County governance frameworks within the County Governments Act 201) to achieve economic development, support infrastructure development, promote economic investment and the provision of public services. At the urban level, the import of the Urban Areas and Cities Act 2011, on newly conferred municipalities across the Counties is becoming increasingly visible as they promote their economic development plans.

In its entirety, the Guidebook's focus is towards supporting and institutionalizing urban growth management .in each County, In the wake of physical and land use plans, investment in infrastructure programs and projects should focus on development control measures for quality, functionality, accessibility, disaster preparedness, and protection of the environment. However, diverse as infrastructure demands may be, the constant and common denominator is land development.

The purpose of the Guidebook, therefore, is to strengthen implementation of the existing legislation, provide key insights in the coordination of the spatial elements within the planning policies that define location and character of development, the economic regulation of the resources necessary to deliver value for money, and the efficient timing of the procedures and processes.

1.4 The UN-Habitat Support

The UN-Habitat has over the years supported County Governments to strengthen their institutional capacities to enable them better manage urban development in their areas of jurisdiction by assisting them to develop physical planning, regulatory and operational frameworks. To this end, we have partnered with several County Governments in the preparation of spatial plans and strengthening their planning units for the effective discharge of their functions. Over the last three years, in partnership with the Cities Alliance, we have supported several County Governments in enhancing their institutional capacities for planning, financing, and legal mechanisms that have enabled them to shape urban growth within their counties.

In this regard, we are glad to bring together legal and technical expertise in formulating ideas and measures of strengthening of 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".** The Guidebook will focus on enhancing the understanding of the complex planning function in the context of rapid urbanization and devolution and explore policy and regulatory intervention measures that may be required to strengthen County Governments in planning, implementation, and enforcement of their developmental plans. It will also identify physical and land use policy, as well as operational and regulatory issues not covered in the Act and suggest strategies to address them.

1.5 Structure of the Guidebook

The Guidebook is broken into eight chapters described hereunder:

i. Chapter 1: Background and Rationale

The chapter introduces the Guidebook as a tool for breaking down the complexities around the emerging challenges of managing urban development resultant upon current demographic trends in Kenya and the process of devolution. Amidst this period of fundamental restructuring and change, it is not just a matter of scale, but also, the style of information processing within, and across, institutions for managing urban growth. The Guidebook is oriented towards the pivotal ability of planning, and its inter-connectedness with the whole spectrum of the institutional devolution framework. The chapter will provide a rationale for the Guidebook as a value addition to urban planning as conditioned and limited by existing laws and, on institutional relationships in the exercise of administrative, political, and economic authority to manage urban growth.

ii. Chapter 2: The Urbanization Reform Agenda

The chapter delineates the principles of the New Urban Agenda (NUA) and the Strategic Development Goals (SDGs) and their localization in the use of natural resources i.e., food, water, waste disposal, and materials. Kenyan cities and towns are full participants in the worldwide process of urbanization; hence, the Guidebook will provide an outline of global policies and principles necessary for development management, community empowerment, and a planning culture aimed at quality development performance. The objective here is to promote and channel market dynamics by regulating private investment decisions on land use and to achieve equitable socio-economic objectives.

iii. Chapter 3: Demographic Change and Devolution

The chapter focuses on population and demographic transformation and the understanding of devolution in Kenya in the context of urbanization, the apparent increase in complexity of the planning tasks, and the challenge of growth being faster than planning, infrastructure development, and service delivery capacity. It will explore the wider implications of National resource sharing and governance procedures that can integrate social diversity and economic interests into a functioning system.

iv. Chapter 4: Urban Growth and Development Management

The chapter discusses the concept of governance concerning urban growth where Counties use their statutory powers to grant or deny development rights. Development management is characterized by myriad autonomous Authorities or Agencies, each with jurisdiction over a particular function. The Guidebook will examine the sporadic and haphazard coordination inherent within the current structure, and the need for comprehensive and SMART growth management under the objectives of development control, to ensure the proper execution and implementation of approved physical and land use development plans, and the County's responsibility and delegated municipal authority to ensure adequate infrastructure for development.

v. Chapter 5: Plan Implementation and Development Control

The chapter provides the broad guidelines of phasing the development processes from application procedures, multi-agency assessment for approval, implementation monitoring and progressive certification, and final compliance certification. The chapter will lay special emphasis on the strict adherence to regulations for infrastructure performance conditions, tied to the new idea of development fees, in promoting the development of urban infrastructure.

vii. Chapter 6: Development Fees and Infrastructure Development Management

The chapter presents a financing strategy for infrastructure development through development fees as provided for in Section 63 of the PLUPA. It explores the conditions under which such fees would be applicable, the rationale for their imposition or waiver, and the challenges to be addressed by the proper implementation of development fees.

vii. Chapter 7: Financing Management of Development Fees

The chapter outlines the guidelines for establishing institutional mechanisms such as County Revolving Funds for Infrastructure Development. It provides the rationale for ring-fencing development fees into a specialized fund, the financial management and reporting requirements for the fund, as well as the various infrastructure financing mechanisms that can leverage on the establishment and existence of the development fees fund. The chapter will also present alternative financing mechanisms for mitigating the time gap between, the payment for infrastructure development by the beneficiaries, and the need to provide infrastructure promptly.

viii. Chapter 8: Establishment and Role of a County Development and Management Company

This chapter explores the opportunity for County Governments towards establishing separate infrastructure development corporations, whose special and exclusive mandate would be to manage and coordinate the implementation of the infrastructure associated with the Development Fees. The chapter examines the different types of County Government corporations, the advantages of a County Development Company, and the legal regulations for their establishment and management.

ix. Generic Templates (Annexes)

The Guidebook will also annex several generic templates that can be adapted to the specific needs and context of each County Government. These will include:

- Draft Development Fees Regulations (Annex 2, Template 2)
- Draft County Infrastructure Development Corporation Bill (Annex 3, Template 3)
- Generic Development Control Procedures Flow Charts (Annex 1, Template 1)
- TOR for Infrastructure Master Plan (Annex 4, Template 4)
- TOR for a Private Project Management Company (Annex 5, Template 5)

The Guidebook will also provide the basis for conducting training programs for County officials, city and municipal boards, and the general community.

Chapter Two

2. THE URBANISATION REFORM AGENDA

2.1 Overview

The challenges of planning and managing urban development are not unique to Kenya. Beginning in 2008, half of the world's population is now living in urban centers. The movement of people from rural settings to city living requires a fundamental change from household management to collective 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 building materials. It is only through collective action that communities can thrive in cities.

In many cases, the influx of people into cities is unplanned and lacks adequate infrastructure. However, most fundamentally, the institutional and governance mechanisms are not in place to manage processes of rapid urbanization. Thus, slums become widespread, bringing with them the many problems of crime, poverty, poor health conditions, lack of sanitation, insecurity, and high susceptibility to climate-related disasters.

2.2 The Importance of Global Policies for Planning and Managing Urban Development

2.2.1 The Strategic Development Goals (SDGs)

The SDGs have five universal drivers that enable the localization and ownership of the 17 global goals and 169 targets; these drivers are: (i) sensitization and engagement of local actors, (ii) accountability mechanisms, (iii) participatory planning and service delivery, (iv) local economic development, and (v) partnerships.

Planning, which is a mechanism of governance, allows all these drivers to have anchorage in engaging the community in envisioning and creating goals. As a community-driven process, it involves making choices and deciding on planning strategies and actions. Sustainable Goal Number 11 (SDG 11), on sustainable cities and human settlements, brings world perspectives to local spaces for development and service delivery.

This Guidebook, in the spirit of the SDGs, places responsibilities on National and County Governments to set the targets and support urban governance. Cities, municipalities, and towns being the closest governance level within the community, play an important role in the planning process, as well as identifying the problems and possible solutions which constitute the goals and targets to be met.

2.2.2 New Urban Agenda

The New Urban Agenda (NUA) represents a shared vision of embracing urbanization as an opportunity to integrate equity in development and bridge the spatial planning gaps in human settlements in urban, peri-urban, and rural areas. The implementation of the NUA is premised on three pillars of: urban planning and design, urban rules and regulations, and municipal finance.

This Guidebook has made deliberate recommendations for strengthening institutional roles and aligning them to the vision of the community.

2.2.3 Africa Union Agenda 2063

Agenda 2063 is Africa's blueprint and master plan for transforming Africa into the global powerhouse of the future. The agenda is an affirmation of African leaders' commitment to supporting Africa's new path for attaining inclusive and sustainable economic growth and development. The Agenda was passed by an AU resolution in May 2013, and signed during the 50th Anniversary of the formation of the OAU.

The Agenda has 7 aspirations and 20 Goals, each with a set of priority areas of action. Table 2-1 shows selected Goals, (No 1, 4, 12, 19, and 20), that are relevant to Kenya's urban development and their linkage to the relevant SDGs.

Table 2.1 AU Agenda 1 and Linkage to Relevant Urbanisation SDGs

Agenda 2063 Goals	Agenda 2063 Priority Areas	UN Sustainable Development Goals
Goal 1. **A high standard of living, quality of life, and well-being for all citizens**.	(a) Incomes, jobs, and decent work (b) Poverty, inequality, and hunger (c) Social security and protection, including persons with disabilities (d) Modern, affordable, and liveable habitats and quality basic services	SDG 1. End poverty in all its forms everywhere in the world SDG 2. End hunger, achieve food security and improve nutrition, and promote sustainable agriculture. SDG 8. Promote sustained, inclusive, and sustainable Economic growth, full and productive employment, and decent work for all. SDG 11. Make cities and human settlements inclusive, safe, resilient, and sustainable.
Goal 4 **Transformed economies**	(a) Sustainable and inclusive economic growth (b) STI driven manufacturing, industrialization, and value addition (c) Economic diversification and resilience	SDG 8. Promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all. SDG 9. Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation.
Goal 12. **Capable institutions and transformative leadership in place.**	(a) Institutions and leadership (b) Participatory development and local governance.	SDG 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

Agenda 2063 Goals	Agenda 2063 Priority Areas	UN Sustainable Development Goals
Goal 19. Africa as a major partner in global affairs and peaceful co-existence.	(a) Africa's place in global affairs (b) Partnerships	Goal 17. Strengthen the means of implementation and revitalize the global partnership for sustainable development
Goal 20. Africa takes full responsibility for financing her development Goals.	(a) African capital markets (b) Fiscal systems and public sector revenue (c) Development assistance	SDG 10. Reduce inequality within and among countries. SDG 17. Strengthen the means of implementation and revitalize the global partnership for sustainable development

(i) Source: Africa Union

2.2.4 The implications for urban planning of SDG 11 and the New Urban Agenda - NUA

The importance of SDG 11 for planning and managing urban development, is the focus it places on the outcomes of planning. SDG 11 sets international standards and indicators that can be used to assess the expected impact of urban development plans, and to measure their effectiveness over time. It also reinforces the understanding that the planning process itself is a critical component of managing urban development. Planning is not a one-time event, but rather an ongoing process of formulating a vision and strengthening a commitment to a shared future. If done well, planning enhances joint learning and enables a city to flourish.

To make cities and communities sustainable, SDG 11 observes that "The world's population is constantly increasing. *To accommodate everyone, we need to build modern, sustainable cities. For all of us to survive and prosper, we need new, intelligent urban planning that creates safe, affordable, and resilient cities with green and culturally inspiring living conditions"*
(https://www.globalgoals.org/11-sustainable-cities-and-communities)

SDG 11 contains several targets, and for each target, specific indicators. Three of the targets with their indicators provide particularly important measures that can aid planners in setting their goals for a city's development. These include:

a. Target: 11.3

By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated, and sustainable human settlement planning and management in all countries

Indicators

11.3.1 - Ratio of land consumption rate to the population growth rate

11.3.2 - Proportion of cities with a direct participation structure of civil society in urban planning and management that operate regularly and democratically

This target addresses planning on two dimensions. The first indicator 11.3.1, is firmly rooted in the professional skills of planners in regulating the use of land and specifically highlights the need to address the importance of densification/compact cities and the prevention of urban sprawl. The second indicator, 11.3.2, relates to the importance of community engagement in the planning process. It is about creating a culture of involvement, co-creation, and commitment to a shared vision of the city. This enables effectively using local knowledge of all the stakeholders that increases the ability to plan accurately, therefrom overcoming the obstacles to development and leveraging resources to promote development.

b. Target 11.6

By 2030, reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management

Indicator 11.6.1 - Proportion of urban solid waste regularly collected and with adequate final discharge out of total urban solid waste generated, by cities

Although not new, Target 11.6 requires planners to give particular attention to the environmental impact of urban development. The contribution of indicator 11.6.1 is the emphasis on the operational impact of urban management. Ensuring good air quality and especially proper waste management (solid and liquid) are often not adequately included in urban planning. Therefore, the planning process needs to ensure not only that land is available for different functions, but the management mechanisms are also in place and included in the planning regulations.

c. Target 11.a

Support positive economic, social, and environmental links between urban, peri-urban, and rural areas by strengthening national and regional development planning

Indicator 11.a.1 - Proportion of population living in cities that implement urban and regional development plans integrating population projections and resource needs, by the size of the city

This target stresses the need to undertake planning with a regional orientation. Cities do not grow in a vacuum and their impact upon the surrounding rural areas is considerable. Often, cities are viewed as the "destroyers" of farmland. Agriculture and nature are sacrificed to the needs of a growing urban population. Target 11. opens a different opportunity. It directs planning to formulate a positive relationship between urban and rural sustainability, one where the sources of food security are protected and where liquid waste is recycled to serve as a source of irrigation rather than pollution. A full regional approach to planning can foster synergies between urban and rural settlements.

2.2.5 The New Urban Agenda (NUA)

The implementation of SDG 11 has been further delineated in the NUA as formulated by UN-Habitat and adopted in the World Urban Forum – Habitat III.

UN-Habitat has been mandated to lead in implementing SDG 11 and has outlined its strategy in the NUA. The significance of the **New** in the NUA, requires some clarification. Urbanization per se is certainly not new. It has been going on for centuries. Even though the scope of urbanization has increased greatly over the last decades, the more fundamental change needs to be in viewing urbanization as a transformation that can be leveraged rather than as a negative abandonment of rural communities.

Cities are the greatest source of growth. They are the centers of innovation. According to the UN Habitat report "The Economic Role of Cities" they produce over 80% of the world's economic growth. Their diversity and concentration of people afford a vast array of opportunities. However, cities are also the centers of poverty that can turn diversity into disparity. Consequently, it is the planning and management of urban development that determines the wellbeing of cities, and whether they are a center of creativity or conflict.

The NUA 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 development. The contribution of the NUA is on two levels. As mentioned above, the first is the changed view of urbanization as an opportunity. The second is in providing city leaders, politicians, communities, and professionals with a clear framework for action formally legitimized by the international community and ratified by their governments.

This second level enables local governments to understand and develop strategies of urban management that are anchored in a global perspective. Although cities are located within national boundaries and subject to state regulations, they are often exposed to global forces that are beyond the control of their national governments. The ability to compete for resources - human and natural, the ability to compete in international markets, the ability to attract international corporations, and the ability to foster local businesses are more and more a direct outcome of the way a city manages its development. In turn, its successful competition reinforces its ability to manage its development. Thus, there is a spiral, which is either upward or downward.

City 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 municipal financing (to generate the revenues for capital infrastructure and service provision).

By implementing these principles, cities have a greater chance to manage their urban development in a manner that creates the conditions for successful "Place Making", which fosters the development of cities that are **inclusive, safe, resilient, and sustainable.**

The NUA also has a preeminent commitment to **inclusion, innovation, and integration.** Indeed, these values are both a cause and consequence of the principles which are discussed thereafter.

1. National Urban Policies
2. Urban Legislation, Rules and Regulations
3. Urban Planning and Design
4. Urban Economy and Municipal Finance
5. Local Implementation

Throughout the NUA, some principles can guide urban planning, the most pertinent being Articles 37, 44, and 51.

Article 37. *Commits to promoting safe, inclusive, accessible, green, and quality* ***public spaces,*** *including streets, sidewalks and cycling lanes, squares, waterfront areas, gardens, and parks, that are multifunctional areas for social interaction and inclusion, human health and well-being, economic exchange, and cultural expression and dialogue among a wide diversity of people and cultures, and that are designed and managed to ensure human development and build peaceful, inclusive and participatory societies, as well as to promote living together, connectivity and social inclusion.*

This article sets forth a vision for urban design that emphasizes the role of public space that includes not only green areas and public buildings, but also streets that can serve both as arteries for transportation and as places of interaction. All the elements of public space need to be planned as arenas for social interaction that fosters economic growth and cultural diversity.

In many ways, article 37 is the prime measure against which urban planning can evaluate the purpose of a plan and provides the basis for assessing its impact.

Article 44. *Article 44. Recognizes that **urban form, infrastructure, and building** design are among the greatest drivers of cost and resource efficiencies, through the benefits of economies of scale and agglomeration, and by fostering energy efficiency, renewable energy, resilience, productivity, environmental protection, and sustainable growth in the urban economy.*

Article 44 stresses the need to include infrastructure development - roads, water purification, sewage treatment, waste management, public buildings, energy, and drainage as an integral part of urban planning. This involves not only designating the land use requirements for these functions, but also, including in the planning regulations, the mechanisms for financing, the preconditions for approval of plans, and the conditions for receiving building permits. In addition, it stresses the role of planning in ensuring the resilience of infrastructure in the face of climate change and the sustainable use of natural resources.

Article 51. *Commits to **promoting the development of urban spatial frameworks,** including **urban planning and design** instruments that support sustainable management and use of natural resources and land, appropriate **compactness and density, polycentrism and mixed uses, through infill or planned urban extension** strategies as applicable, to trigger economies of scale and agglomeration, strengthen food system planning, and enhance resource efficiency, urban resilience, and environmental sustainability.*

In this article, the function of planning as a tool to ensure the management of land as a scarce resource is foremost. Urban growth needs to be designed in a manner that prevents the negative impacts of urban sprawl. It furthermore emphasizes the principle of mixed-use planning that enables the emergence of "compact cities", which are more environmentally and economically sustainable.

2.2.6 Local Implementation - Action Framework for Implementation of the New Urban Agenda (AFINUA)

Regarding the SDGs and the NUA, the biggest challenge is translating the abstract principles into operational implementation. An important document that outlines practical steps is the AFINUA, which observes that:

Action at the local scale provides the opportunity to concretize abstract principles such as justice and equity in actual places, most notably in neighborhoods where residents' attachments are strong, and groups' identities forged. Significant progress will therefore be made towards the urban paradigm shift detailed in the NUA and it will become possible to readdress the way cities are planned, financed, developed, governed, and managed.

Also, horizontal coordination will be critical for the successful local implementation of the NUA. Smaller-scale actions and projects need to cohere with one another as much as they need to be integrated with sub-national and national policies, plans, and guidance. The involvement of local communities and groups—whether community-led design, community-based management, or some other form—will also be key to this theme. Local knowledge is a particular asset for implementation. Effective and transparent mechanisms will however be needed to ensure that processes can be participatory without creating risks of lobbying and/or dogmatic and categorical rejection of urban (re)development (e.g., 'NIMBYism') .

Box 2-1: Urban Planning and Design

UN-Habitat & New Urban Agenda - Action Framework for Implementation of the New Urban Agenda (AFINUA)

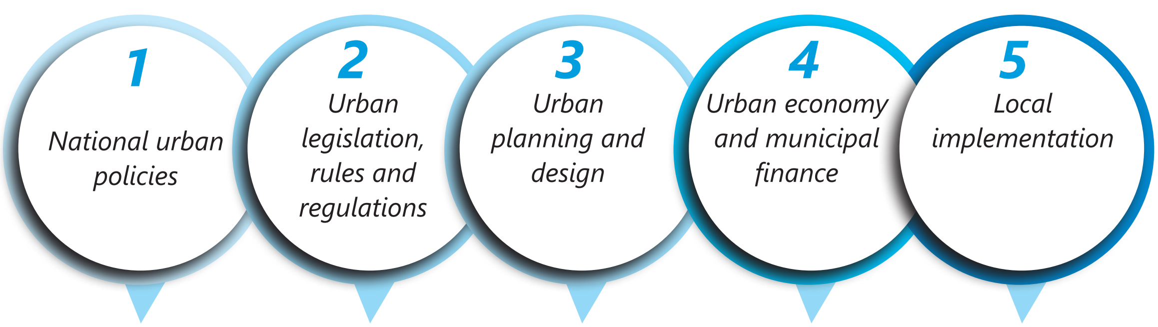
5. Urban Planning and Design (UPD)

Urban planning and design are an essential technical part of the urbanization process, and it refers to the physical layout of buildable plots, public space, and their relationship to one another. In line with the NUA. UN-Habitat believes that urban planning of design is a fundamental priority to achieving sustainable urban development.

Urban Design: the look and feel of the city
IRegarding urban design, many cities still underestimate the importance of a city's look and feel, public spaces, and public infrastructure, failing to fully comprehend the correlation with quality of life, social development, and other key components of human wellbeing. Likewise, appealing cities are more likely to attract a creative, innovative, and skilled workforce and the investments that are needed to drive the urban economy.

Unfortunately, when this understanding is present, lack of finance and capacity often de-prioritizes urban design in favor of more urgent development needs such as enhancing the provision of basic services. At a regional level, cities tend to grow along infrastructure corridors, emerging as new engines of growth. Very often, however, this growth is unplanned and uncoordinated between cities, thereby leaving the region to miss out on a wide range of social, economic, and environmental opportunities.

There are five sections to the AFINUA:



The AFINUA makes very specific operational guidelines for urban development. The principles of the SDGs and NUA are given the form of policy recommendations that can guide the different components for managing urban development including planning, legal regulations, and finance.

For this Guidebook, sections 2, 3, and 4 of the AFINUA are most applicable. The following are selected excerpts that underpin the chapters of the Guidebook.

i. Urbanization legislation, rules, and regulations

Section 3.3.3.1 of the AFINUA delineates several specific legal mechanisms that are critical for the management of urban development. It makes explicit the necessity of having adequate legal frameworks to control urban sprawl, ensure social equity, protect the environment, and design public space. These mechanisms are outlined in the table below.

Table 2-2: Urban legislation, rules, and regulatory mechanisms

Mechanism	Rationale
Establish a legal basis for the urban plan and distinguish public space from buildable urban land	Ensuring that urbanization is guided by the rule of law requires that the urban plan is a formal legal instrument enforceable against all within the jurisdiction and accountable to citizens (particularly in terms of modification and conflict resolution). At the national and provincial level, this requires linking land use, administrative bodies, and planning to define urban areas according to reasonable growth projections. At the local level, this requires linking planning, land use, and development control to delineate buildable/non-buildable land, such as environmental management areas.
Enact effective law for the definition, acquisition, and protection of public space	Public space, including green space, roads, streets and intersections, transport rights-of-way, and other corridors, is central to livability, efficiency, and equity in urban areas. It must be adequately provided for but not rely exclusively on expropriation for its acquisition, but also, on tools such as land readjustment. Clear public space protection responsibilities must also be established.
Develop equitable and legal instruments to capture and share the increase in land and property value generated because of urban development processes, infrastructure projects, and public investments, ensuring that these do not result in unsustainable land use and consumption.	Capturing and sharing the increase in land and property value generated because of urban development processes, infrastructure projects, and public investments. Gains-related fiscal policies can be adopted to prevent solely private capture, land, and real estate speculation. Ultimately, the generation of land-based finance must not result in unsustainable land use and consumption patterns.

ii. Urban Planning and Design

Section 3.3.3.2 of the AFINUA states that long-term and integrated urban and territorial planning and design is required to optimize the spatial dimension of the urban form and to deliver the positive outcomes of urbanization. It is therefore important to guide local governments so they can develop or revise their planning and design processes in line with the NUA requirements. Without the above, cities face multiple risks, including lack of livability and walkability, poorly articulated interfaces, dis-connectivity, low densities, unbalanced private and public spaces, exacerbated socio-economic segregation, and long and expensive commuting patterns.

Appropriate planning and design processes will contribute to the definition of compact urban footprints, preventing unwanted urban sprawl and identifying zones to be exempt from urbanization. These processes will also allow the development or reshaping of formal and informal urban spaces to create socially just, sustainable, inclusive, well connected, appropriately dense, disaster-resilient, and adapted to climate change spaces. These requirements are outlined in the table below.

Table 2-3: Urban Planning and Design Requirements

Requirement	Activity
Set up a planning and design process that is evidence-based, integrated and participatory	Define the scope of the plan and the process. Consider the participation of all the stakeholders, the vertical and horizontal integration across territories, systems, and sectors. Promote collaboration across jurisdictions and actors. Establish clear collaboration across disciplines (planning, finance, and legislation) to orient the process towards implementation.
Define connectivity and the quantity and quality of urban space including the structuring layout of streets, blocks, and plots	Reserve public space in adequate quantity and ensure equitable distribution in its layout. Design and define streets, blocks, and plots, creating blocks and plots in sufficient quantity and that support denser fabrics.
Promote housing as an integrating element of urban planning	Implementing the principles of *Housing at the Centre of the New Urban Agenda* can help relate adequate and affordable housing strategies and interventions with diverse land/ tenure options, achieve inclusive land use that supports integrated socioeconomic groups, promote investments in infrastructure, and provide proximity and equitable access to employment, services, facilities, and transport.
Protect and preserve natural resources and cultural heritage	Planning and design at all scales should protect natural resources and land features, control pollution, minimize vulnerability, prioritize the use of renewable energy resources, adopt energy and resource efficiency measures, provide adequate space for parks, wildlife habitat, and biodiversity hotspots. It should also preserve cultural heritage and local identity reflected in material culture and other formal elements of the urban landscape.

iii. Urban economy and municipal finance

Section 3.3.3.3 of the AFINUA observes that the capacity of the local government to finance both its capital investments in infrastructure and its ongoing service provision are critical to managing urban development and city life. Many of the tools for financing municipal government are based upon leveraging land uses and capturing the value generated from urban development.

Local governments with good capacities and knowledge of municipal finance can promote the creation, sustainability, and sharing of the value generated by urban development. Innovative practices, such as land value sharing or land readjustment, need to be encouraged. It will also be necessary to leverage more investments from the private sector to compensate for the decreasing investment capacities of the public sector in many countries and cities.

Even though County Governments are acquiring more and more responsibilities in relation to urbanization, tailored national government support will be key to the successful financing of urbanization. Effective fiscal devolution is for example key to ensuring that local authorities are provided with the funds they need to manage urbanization. Creating innovative partnerships, such as public-private and multi-stakeholder ones, will also be required to find efficient ways to finance urbanization. The involvement of civil society will ensure transparency, accountability, and integrity of processes relating to the financing of urbanization, which is necessary to ensure that public funds are dedicated to improving quality of life. Examples of support frameworks are outlined below.

Table 2-4: Urban Economy and Municipal Finance Support Frameworks

Support Framework	Rationale
Establish principles for enhancing the role of local government in fostering inclusive, equitable, and sustainable urban development and strengthen local leadership capacity for inclusive municipal finance	Principles for municipal finance may include a cadastral register as the basis for urban assets, property taxes, expenditures, and local infrastructure, and transfers, etc., and must create an enabling environment and support mechanisms for local revenue generation. They must create enabling conditions for access to credit by local authorities. And they must be based on a human rights approach.
Help local authorities design and implement a more inclusive, sustainable, equitable local financial and economic framework to operationalize municipal finance principles	Such a framework should consider the entire budgetary cycle including income, expenditures, the current capital, capital investment plans, etc., link to the local financial management system, and be anchored in local economic development potential including the role of local government to provide and distribute public goods and services and enhance local economic productivity.
Improve the equitable and progressive tax policy and revenue generation along with the requisite mechanisms and legal underpinnings	Increasing local revenue by improving the efficiency, transparency, and accountability of revenue-generating tools, mechanisms, and legal and regulatory frameworks. This can include innovative, endogenous financing instruments (such as congestions finance that can cross-subsidize), land value sharing and borrowing, and own-source revenue generation strategies from taxes and charges/ fees
Help local authorities design and implement systems that ensure social, economic, and safe physical access to quality basic services by all, and local economic development platforms that support community-led initiatives in service delivery	Investments are important for municipal own-source revenue. Multi-year capital planning—including comprehensive infrastructure assessments—can help ensure productive and efficient basic services (including ICT) and networks and their maintenance and meet backlogs and anticipated demands. Such investments must be structured to encompass total economic value, including land value appreciation and all other economic, social, and environmental impacts and benefits.

2.3 A Global Perspective for Planning and Managing Urban Development

The contribution of SDG 11 and the NUA is the recognition that the challenges faced by cities around the world have a combination of features that are on one hand unique and on the other hand universal. This places emphasis on the significance of local cultural heritage, social dynamics, and local economies. It provides legitimation for local governments to go beyond the limits of state geopolitical boundaries and use respected global standards that have been endorsed by their national governments.

By linking local processes to the international community, planners, political leaders, and communities can bring world-class expertise to supplement local knowledge. Each of the different articles presented here can be used by County Governments in Kenya to strengthen their planning capacities and institute the critical mechanisms for managing their urban development.

2.4 Alignment of Global, Regional and Local Strategies

Development is the production of transnational planning strategies, involving the examination of the global best practices and investigating where further domestication might be needed and strengthened. The rising salience of global, regional, and local cohesion is manifest in regional or cross-border cooperation and regional strategies such as the Inter-Governmental Authority for Development (IGAD) and the East Africa Community (EAC). The translation of the global vision of urban growth into regional and local statements is a potentially valuable exercise in identifying issues on that the country can act on.

2.5 The New Dawn of Urban Governance

Urban governance has awakened great optimism about planning, and indeed, as discussed extensively in this Guidebook, several new ideas and areas of planning have been explored. Expectations are high in re-balancing urban growth as seen through Kenya Vision 2030, where rapid urbanization is highlighted as one of four key challenges facing the Country. The Kenya Municipal Program (KMP) and the Kenya Urban Support Program (KUSP) that targets 59 Municipalities, are part of the new dawn in urban governance towards supporting County Governments to coordinate and integrate their spatial and sectoral planning in relation to County financial and institutional resources, budgeting, investment, and service delivery through the 5-year County Integrated Development Plans (CIDPs') and Urban Integrated Development Plans (UIDePs) for urban areas.

2.6 The National Urban Development Policy (NUDP)

As discussed in the subsequent chapters of this Guidebook, the NUDP was formulated in the spirit of global and regional outlooks and the need to deal with the unprecedented problems posed by surging urbanization. The policy couldn't have come at a better time as a matter of national importance and in the face of the evolving devolution governance. During the immediate post-devolution period, from 2010 to 2017, the greatest challenge was institutional restructuring and the distribution of functions between the National and County Governments in fulfillment of the Fourth Schedule of the Constitution. The urban challenge was temporarily obscured as the local authorities ceased to exist with the repeal of the Local Government Act.

The launch of this policy in 2016 was timely as the second political wave of the post-devolution phase – 2018 to 2022 – was about to begin. Since then, a host of municipalities have been formed and their first challenge has been dealing with rebalancing urban growth from where the defunct local authorities left off, and in some cases starting from scratch. The challenge is bigger and deeper as a result of the population burst and demographics tilting towards urban areas. Indeed, the potency of this policy is more urgent and more relevant at this critical time in providing strategic guidance on urban governance, finance and economy, urban planning, land, infrastructure, climate change, housing disaster and risk management, and social issues such as marginalized groups.

Chapter Three

3. DEMOGRAPHIC CHANGE AND DEVOLUTION

3.1 Overview

The theme of the eighth series of Kenya's population census conducted in 2019 was *"Counting Our People for Sustainable Development and Devolution of Services"*. This is the first census under the devolution governance structure. The importance of this census lies in its integrated picture of human capital amid multiple and continuous changes taking place in the Kenyan society today. Urban growth, one of the major changes, has proceeded in step with the evolving devolution, creating a powerful and fundamental transition that policymakers must embrace as the coming reality that will shape the socio-economic future of Kenya. This chapter attempts to build a broad picture of Kenya's demographic change, and the urban transformation since the inauguration of the Kenya Constitution 2010.

The census results indicate the population grew to 47.6 million people in 2019 from 37.7 million people in 2009[1]. In other words, this was a 26% growth, translating to approximately 10 million people in 10 years. In terms of (10-year) intercensal growth rate, there was a marked decline to 2.2% from 2009 which stood at 2.9%. Similarly, the average household size declined to 3.9 persons in 2019 from 4.2 persons in 2009. In urbanization terms, the decline in growth rates and household sizes is a paradox of sorts. Kenya's urban population is undoubtedly on the rise. The scale of change – the absolute numbers of people involved – is evident as shown in Table 3-1. From 9,482,262 people in 2009 to 14,461,523 people in 2019. This is a profound leap, growing at an average annual rate of 4.23%. This increase can have different spatial manifestations. However, it is important to maintain a distinction between the growth of the total urban population and that of an individual city or town.

Table 3-1: Urban Population Growth 2009-2019

Tear	Urban Population
2019	14,461,523
2018	13,891,531
2017	13,339,828
2016	12,804,943
2015	12,284,623
2014	11,778,202
2013	11,286,201
2012	10,809,150
2011	10,349,396
2010	9,907,051
2009	9,482,262

Source: World Bank 2019

[1]Kenya Population and Housing Census Report (Vol. 1), 2019

Globally speaking, this statistical information is necessary for expounding and appreciating global initiatives such as the SDGs and NUA, and the African Union Agenda 2063. In local terms, the same statistics become an absolute necessity for the implementation of Kenya's development agenda such as the Big Four and Vision 2030. Speaking in planning terms, this means a 'fast-forward' response to guide socially inclusive solutions and urban lifestyles. Speaking in governance terms, it provides insights into the planning interventions and process restructuring of urban development approaches into an enabling environment for both public and private sector drivers that influence urban growth. As towns grow and evolve – and now catalyzed by devolution – the task of managing them becomes ever more complex.

This demands instant decisions and prioritization from planners among other development players in the field to focus on the capacity to manage the emerging challenges.

In this regard, the year 2019 had a double bonus: the release of population census data and the enactment of the Physical and Land Use Planning Act. This is a renewed opportunity for physical and land use planners and the relevant sector professionals to "re-invent" their planning and management approach in the ability to use the data "as a platform for unifying planning, budgeting, financing program implementation, and performance review"[2] . This is an event and a process of great significance to Kenya's urban development.

The chapter makes a simple observation of Kenya's urban growth trajectory and pace and the likely meaning of these consequences that we may not perceive well but can visualize using the demographic data and plan accordingly. The breaking down of this census and household data to the lowest governance and planning units, will enable a robust formulation of the Local Physical and Land Use Development Plans[3] that define the economic and social enterprises of the public and private sector in urban development. This applies to all the other types of County plans[4] that should define their objectives and goals sought from the population served in the devolved units,[5] with a clear reporting mechanism.

3.2 The Demographics of Urban Growth

The urban size, scale, and pace of transition must be viewed as a salient part of the broader set of other National programs of economic and social change in the scope of planning and operation. Table 3-2 shows the urban population in 2019 closing onto the 15 million mark, representing 31.2% of the entire population. This is a remarkable increase from the 2009 figure of about 9.5 million representing 23.2% of the total population.

From the outset, it is not surprising that urban growth has been experienced in the larger cities of Nairobi and Mombasa which are 100% urbanized. Nairobi City ranks highest in Kenya with a population of 4,397,073 million people. This is followed by Mombasa City with a population of 1,208,333 million people. Kiambu County, at 70.6% urbanized, is a multiplicity of towns and home to 1,706,285 urban people. In a similar pattern, Kajiado County is 55.5% urbanized with 622,622 people, and Machakos County, is 29.1% urbanized with 414,078 people. It is not a coincidence that these Nairobi City bounding Counties of Kiambu, Kajiado, and Machakos are experiencing similar high-speed urban growth. Their combined population, which is just shy of 8 million people – a megacity in the making – is a powerhouse in financial liquidity, and globally competitive in trading, manufacturing, and the service economy. While there is no consensus on the type of urban governance that may emerge in this new era of urbanization, the fragmented approach, and sporadic actions by the four Counties, tends to be haphazard and slow to accommodate the emerging demographic dynamics.

[2]County Government Act. Section 104(h)

[3]The Physical and Land Use Plans, Section 45

[4]County Government Act. Section 107

[5]County Government Act. Section 48

Table 3-2: County Population and Urbanisation Trends

KENYA 2019 Population Census	Total Population 47,564,296	Urban Population 14,831,700	%age of Total 31.18%		
County	County Population	County Urban Population	%age of Kenya Urban	Level of Urbanization	Urban Status
Nairobi City*	4,397,073	4,397,073	29.65%	100%	Nairobi City
Kiambu*	2,417,735	1,706,285	11.50%	70.57%	Kiambu Municipality
					Ruiru Municipality
					Juja Municipality
					Kikuyu Municipality
					Thika Municipality
					Karuri Municipality
					Limuru Municipality
Mombasa City	1,208,333	1,208,333	8.15%	100%	Mombasa City
Nakuru	2,162,20	1,047,080	7.06%	48.43%	Nakuru City**
					Naivasha Municipality
					Njoro Municipality
Kajiado*	1,117,840	622,622	4.20%	55.70%	Kajiado Municipality
					Ngong Municipality
					Kitengela Municipality
Uasin Gishu	1,163,186	510,205	3.44%	43.86%	Eldoret Municipality
					Turbo Town
Kisumu	1,155,574	440,906	2.97%	38.15%	Kisumu City
Machakos*	1,421,932	414,078	2.79%	29.12%	Machakos Municipality
					Mavoko Municipality
					Kangundo/Tala Municipality
Kilifi	1,453,787	393,888	2.66%	27.09%	Kilifi Municipality
					Malindi Municipality
Mandera	867,457	270,467	1.82%	31.18%	Mandera Municipality
Garissa	841,353	210,890	1.42%	25.07%	Garissa Municipality
Bungoma	1,670,570	190,112	1.28%	11.38%	Bungoma Municipality
Kakamega	1,867,579	185,340	1.25%	9.92%	Kakamega Municipality
Trans Nzoia	990,341	178,734	1.21%	18.05%	Kitale Municipality
Wajir	781,263	177,174	1.19%	22.68%	Wajir Municipality
Migori	1,116,436	167,200	1.13%	14.98%	Rongo Municipality
Kisii	1,266,860	151,410	1.02%	11.95%	Kisii Municipality
Nyeri	759,164	150,755	1.02%	19.86%	Nyeri Municipality
Turkana	926,976	140,791	0.95%	15.19%	Lodwar Municipality
Meru	1,545,714	138,918	0.94%	8.99%	Meru Municipality
Kirinyaga	610,411	136,224	0.92%	22.32%	Kirugoya Municipality
Laikipia	518,560	127,360	0.86%	24.56%	Nyahururu Municipality
Kwale	866,820	126,431	0.85%	14.59%	Kwale Municipality
					Diani Municipality
Isiolo	143,920	125,669	0.85%	87.32%	Isiolo Municipality
Murang'a	1,056,640	118,427	0.80%	11.21%	Muranga Municipality
Busia	893,681	113,753	0.77%	12.73%	Busia Municipality
Homa Bay	1,131,950	113,079	0.76%	9.99%	Mbita Point Municipality
Marsabit	459,785	107,239	0.72%	23.32%	Marsabit Municipality
Narok	1,157,873	100,352	0.68%	8.67%	Narok Municipality
Taita/Taveta	340,671	93,774	0.63%	27.53%	Voi Municipality
					Mwatate Municipality
Kericho	901,777	93,538	0.63%	10.37%	Kericho Municipality
Siaya	993,183	85,417	0.58%	8.60%	Siaya Municipality
Makueni	987,653	77,076	0.52%	7.80%	Wote Municipality

KENYA 2019 Population Census	Total Population 47,564,296	Urban Population 14,831,700	%age of Total 31.18%		
County	County Population	County Urban Population	%age of Kenya Urban	Level of Urbanization	Urban Status
Embu	608,599	75,924	0.51%	12.48%	Embu Municipality
Tana River	315,943	75,722	0.51%	23.97%	Garsen Municipality
Baringo	666,763	75,289	0.51%	11.29%	Eldama Ravine Municipality
Nyandarua	638,289	66,535	0.45%	10.42%	Ol Kalou Municipality
Nandi	885,711	59,479	0.40%	9.74%	Nandi Hills Municipality
Vihiga	590,013	58,384	0.39%	9.90%	Mbale Municipality
Kitui	1,136,187	54,019	0.36%	4.75%	Kitui Municipality
Samburu	310,327	47,132	0.32%	15.19%	Maralal Municipality
Nyamira	605,576	47,036	0.32%	7.77%	Nyansiongo Municipality
Lamu	143,920	38,446	0.26%	26.71%	Lamu Municipality
Tharaka-Nithi	393,177	32,743	0.22%	8.33%	Kathwana
West Pokot	621,241	31,841	0.21%	5.13%	Kapenguria Municipality
Bomet	875,689	27,971	0.19%	3.19%	Bomet Municipality
Elg/Marakwet	454,480	20,579	0.14%	4.53%	Iten/Tambach Municipality

Compiled by: David Gatimu; Data Source: KNBS***
*Nairobi Metropolitan Counties
** Conferment of City status Underway
*** Kenya National Bureau of Statistics

Mombasa City, Kisumu City, Nakuru Municipality[6], and Eldoret Municipality are the other urban nodes experiencing urbanization levels surpassing 30%. How their pattern of growth differs from Nairobi's inter-County sprawl, does not diminish the essence of a comprehensive capacity dimension exerted by their external economies of proximity borne out of their previous regional (provincial) influence. Their economic diversity effects on the surrounding Counties have continued to impact the urban growth of the satellite towns of these neighboring counties.

The linkages and networks of all these cities in Kenya and the smaller towns and their surrounding regions, provide a stronger basis for urban growth support from their nascent stages. But also, in theory, the rapid increase in the total number of people that are being accommodated by the very rapid replication to smaller towns such as Isiolo (87%), Mandera (31%), and Taita/Taveta (27.5%), may be because of the pace of decentralization initiatives. The rate of change is astonishing in some of these hitherto dormant regions, where County Governments have invested in an outpouring of infrastructure development.

3.3 The Demographic Dividend

An enormous population of young people is coming of age in Kenya. According to the 2019 Census, 75% of the 47.6 million population is under the age of 35. Table 3-3 shows the population age structure that provides a strikingly high figure for the young populace. With the spread of globalization and information technology transformation, the youth have become the 'new wave' in consuming the immense amount of information. Despite the vast data and information required in business transactions and governance, the youth have proved to be both agile and efficient in its use. The age band of 25-54 years is the productive age in the human lifespan. This age band provides the current competitive advantage representing a healthy labor force and those below the age of 24, comprising 57.7%, a huge labor force in years to come.

[6]The Conferment of City Status is underway

Table 3-3: Kenya Population Age Structure

Age Band	% and Gender Share
0-14 years:	40.87% (male 9,592,017/female 9,532,032)
15-24 years:	18.83% (male 4,398,554/female 4,411,586)
25-54 years:	33.54% (male 7,938,111/female 7,755,128)
55-64 years:	3.84% (male 819,665/female 976,862)
65 years and over:	2.92% (male 590,961/female 775,842)

Source: KNBS

According to the East African Dialogue Series (EADS)[7], the "convergence of the youth bulge and rapid urbanization presents a challenge because a prosperous future for the youth is inextricably bound with economically and socially vibrant cities. In essence, the success of a growing majority of youth will depend on whether our cities deliver opportunity and shared prosperity that meets life, work, and leisure needs of the youth."

Among the many drivers of urbanization, patterns of demographic transition explain certain challenges specific to the local context, be it in 'high-speed' or 'catching up' urban growth. Yet again, the reforms undertaken in the last ten years should consider the heterogeneous progress Counties need to make in physical and land use reforms for employment generation as reflected in SDG 8-11, commitment 61 of NUA, and aspiration 6 of Agenda 2063.

3.4 Demographic Typologies of Urban Growth

Each city and town are unique and authentic in their growth trajectory. The responses to population growth define the settlement typologies to support human activities of a given magnitude and density sustainably. In this section, we attempt to define the fundamental mechanisms in the approach to understanding Kenyan typologies of urban growth, and how her cities and towns should chart their pathway to urban resilience – by inventing or reinventing themselves – and harmoniously accommodating old and new values in response to urban growth shocks and stresses.

The different paces of urban growth and demographic dynamics may be categorized as the 'high-speed', reflected in the expansion around Nairobi Metropolitan Region, the 'dynamic speed', reflected in the regional cities – largely the former provincial headquarters – and the 'catching-up speed', urban growth manifesting in the rest of county urban hubs.

i. Nairobi – The Hyper-Speed Growth City

Nairobi – Kenya's primate city – hyper-growth typology is grappling with an urban footprint whose sprawl covers four independent County Government administrations and almost a dozen newly formed semi-independent municipalities (see Table 3-2). The Nairobi Metro Vision 2030 and the Nairobi Metropolitan Spatial Planning Concept, both launched in 2008, had paid a profound recognition of the complex and hyper-growth socio-spatial implications and the intentions for action in enhancing its global competitiveness. Since then, subtle debates about metropolitan governance have dominated the urban development scene, citing the empirical findings and recommendations of the two documents. At a glimpse of time from their publication, more than five Nairobi Metropolitan Region (NMR) sub-counties (and by extension their towns with over 50% levels of urbanization) have surpassed the municipality thresholds and thrust into city status (250,000 people) limits. These are Ruiru (371,111 people), Kabete/Kikuyu (386,775 people), Ngong/Rongai (306,596 people), Juja (300,384 people) and Thika (284,776 people)

This has escalated to open political discussions over metropolitan governance which may have informed the recently witnessed changes in the core Nairobi City County Government. The Deed of Transfer[8] of selected key functions to the newly established Nairobi Metropolitan Services (NMS) is a stark indication

[7]Youth, Urbanization, Growth & Inequality, Alex Awiti & Bruce Scott (2017),
[8] The Kenya Gazette Vol.CXXII-No.38, 25 February,2020

of inevitable changes that have become necessary in a 'fast-forward' fashion, to leapfrog into new ways of dedicated responsive programs that naturally evolve in tandem with the hyper-growth trends. This may include constitutional reform requirements in the legitimate reorganization of the governing authority of the entire NMR. Given this scenario, the formal planning systems need radical reforms to respond not only to the current polycentric metropolitan network in the 4 metropolitan counties, but also, actively redirect their planning and urban management strategies in achieving a functioning Mega City.

ii. The Dynamic- Speed Growth Regional Cities

Mombasa, Kisumu, and Nakuru Cities – the regional city hubs – are struggling with dynamic growth powered by their own local urban and historic regional economic interests. Eldoret town, though yet to be conferred the city status, has the numbers (475,716 people). The challenge in these regional cities though, is that urban growth is not commensurate with urban services especially in their peri-urban zones, which is concomitant with 'urbanization of poverty'. Beyond their independent county city status, each of these cities possesses unique regional hallmarks: Mombasa, as a focal coastal city to the surrounding counties of Kwale, Kilifi, Taita Taveta, and Tana River, and the gateway port in the East and Central Africa region. Kisumu, the western Kenya hub with influence in the former Nyanza and Western Provinces and the regional focal point for the Great Lakes regional Countries. Nakuru, with its rich agrarian heritage, still commands a powerful influence in the vast former Rift Valley region. All these cities have been undergoing dynamic transformations – in demographics, infrastructure, and investments.

iii. The Catching-Up Speed Growth County Towns

These are the towns in the far-flung fringes of the country, hitherto neglected, marginalized, and starved of resource allocation and whose urban growth profiles have been dramatically propelled by the devolution dynamics. While the demographics indicate slow rates of urbanization, the coercive nature of devolution will undoubtedly prove itself, and the likelihood of accentuated urban disorder may follow the patterns discussed above.

3.5 Conclusion

Under the core values of devolution, the stage has been set for planning approaches that should be more flexible, adaptive, and responsive to the consequences of demographics and the varying burdens of the seemingly unstoppable chain reaction to population growth.

The level of services in each urban area varies and therefore one must be mindful of the ability in terms of problems in concepts and measures that plague the management of urban change in each county. In terms of development management intervention, the objective is to re-organize the functions and coordinate and improve the relationships between planning authorities, enabling them to absorb the shocks and stresses of development pressure while evolving and accommodating social, environmental, economic, and technological changes. The expected consequence and the desire of Kenyans is to access modern urban services[9].

[9] Urban Areas and Cities Act, First Schedule

Chapter Four

4. POST-DEVOLUTION URBAN GROWTH AND DEVELOPMENT MANAGEMENT

4.1 Overview

Kenya's devolution is in a constant state of evolution with progressive changes undertaken to meet the objectives of development management. This is a complex and inevitable effort in spatial, physical, economic, and social change in the context of planning goals, performance values, and interests. As discussed in Chapter Three, Kenya's demographic patterns and characteristics are clear indicators of urbanization. The foremost reason for urban growth is an increase in population. The changing patterns of population growth and human settlement, and related consumption, logistical, and mobility requirements are part of the multitude of imperatives that planning must respond to, and ensure cities and towns become livable and attractive.

This chapter examines some broad levels of planning and management strategies that have been – or are being – employed under devolution governance systems in managing development. Governance, in the context of this Guidebook, means the institutional structures and legal anchors used to manage and coordinate urban systems, how they interrelate with each other and with key stakeholders, how resources are allocated, and how outcomes are achieved.

The chapter refers to the County Government Act 2012, the Physical Planning and Land Use Act 2019, and the Urban Areas and Cities Act 2011 of which are aligned to the devolution frameworks against the provisions of physical and land use planning policy approaches and factors that influence urban growth. The future of our cities and towns depends on what the Government is doing (or should do) with these laws to establish and maintain carrying capacity levels of natural and social environments to support urban development. The role of each level of Government for better integration and aligning of plans and the need for reliable information is discussed.

In conclusion, the chapter examines the tensions of alignment (or misalignment) of development management and underscores how county planning policy can best mitigate the issues that arise at different stages of urbanization in each County.

4.2 Linking People and Places

A city or urban area can be defined as a human settlement characterized by a significant infrastructure base. Urban growth is the cumulative effect of people moving from one location to another seeking opportunities and different qualities of life. Devolution of power and dispersal of resources to the counties has triggered an exodus of people that can be – depending on how it is managed – positive or negative. As the demographic patterns show, the rural-urban balance is rapidly tipping towards urbanization. This movement of people could be because of the desperation of rural life and seeking better opportunities in urban settlements. The emerging urbanization pattern in our cities and towns is overcrowding and environmental degradation. As discussed in Chapter Three, these are common features in the 'high-speed' and 'dynamic-speed' urban areas and the likelihood in the 'catching-up' urban areas. The perception created by this unmanaged growth is that urban growth is negative.

4.3 Devolution, Urban Development and Access to Services[10]

Dispersed to 47 County Governments[11], devolution is a flexible and citizen-oriented governance system based on the democratic principles and separation of powers and where each is expected to have reliable sources of revenue to enable them to govern and deliver services effectively. In the last ten years, County Governments have been undergoing the process to "invent" the policy and operational levers and adapt to decentralized systems to act effectively. This includes the statutory planning obligation[12] and development facilitation through comprehensible controls catering to all sections of the community to create the planning culture and reform the planning practice at the County level.

Development in the context of urbanization brings about five dimensions that define the dynamics of planning, governance, and urban management. All the dimensions can be related to demographic dynamics and the quality of life of urban dwellers. The first and most obvious dimension is the capacity of urban services (physical and social infrastructure); the second is *diversity* in terms of inequality, fragmentation, and poverty leading to social instability; the third is *security* as an inevitable variable in the absence of regulated spatial and social order; the fourth is an *authority* in terms of political (elections) and public participation (planning) and distribution of powers for collective decision making; and the fifth and most critical, *financial resources* in the form of revenues for infrastructural development and to sustain governance systems.

Urban growth and development management should therefore be a proactive process of linking land use assessments in a local area to achieve the planning vision and objectives. The two key objectives of county planning is 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;"*[13].

4.4 The New Planning Approach

Because land use is so closely bound up with urban change, this translates to abstract principles of sustainability and into operational policies. It is in this creative exercise of balancing all the different elements that contribute to the quality of life, that is borne in the two interdependent twin functions of Plan Making and Development Control. The former is a multi-layered activity from the National to County and local levels (urban) while the latter is largely an urban management function. In pursuit of fulfilling these functions, the County Government Act has a dedicated section guiding County Planning (Part XI) and, for urban planning and management, the Urban Areas and Cities Act guides on the provision of physical and social infrastructure and associated urban services. The Physical and Land Use Planning Act was enacted to further align the administration and management of physical and land use planning in Kenya.

In this legislative framework, there is an increasing propensity on the part of the government to reform urban development through elaborate 'plan-led' systems. County Governments have been accorded the statutory duty with the considerable widening of the scope running through plan-making and implementation of programs and projects and service delivery, by establishing structures and networks that influence strategies and investment. The three Acts provide the principles, procedures, and standards for the preparation and implementation of physical and land use development plans at the national, county, Urban, and Cities level. On development control, the Physical and Land Use Act provides the procedures and standards for managing urban development.

By the wider concepts of planning under the Physical and Land Use Planning Act, the shape and nature of this institutional hierarchy is a matter not only for setting policy guidance, but also, defining the roles in the process of framing policies at all levels. The fulfillment of these policies lies in development control arising from the duty of securing consistency and continuity.

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[10]The Kenya Constitution, Article 6 (1)

[11]The Kenya Constitution, First Schedule

[12]County Government Act, Part XI

[13]County Government Act. Section 103(b)

This Guidebook places more emphasis on how development control plays this pivotal role in regulating urban land use and development. The ability to develop processes and procedures to manage the components of the built and natural environments – the amount, location, timing, and character of development i.e., the long-term coordination between land use controls on the one hand and capital investments on the other. The achievement of objectives of planning functions requires the resilience and vitality of financing mechanisms both in the public and private sectors. Land use controls and capital expenditure are two principle methods that County Governments may effect to spur investment in physical and social infrastructure and shape the land market so that they work together properly to achieve efficiencies, cost-effectiveness, and added value.[14]

The public sector plays a key role in value creation, whether through land use approvals using planning and regulatory tools, infrastructure and utilities provision, environmental improvements, or creating a business environment conducive to real estate development. Table 4-1 illustrates the pathway of transformation in urban infrastructure delivery. Each stage requires addressing these cross-cutting issues and funding options to create affirmative change.

[14] Clark, G et al, the Role of Real Estate Development in Urbanising Cities, UN-HABITAT (2016), Finance for City Leaders Handbook, UN, New York, https://doi.org/10.18356/83733259-en.

Table 4-1: Logical Operational Linkages for Urban Infrastructure Delivery

Urban Infrastructure	Planning Intervention		Development Control		Financing Mechanisms	
	Land Use	Physical	Development Permits	Physical Implementation	Public	Private
● Roads & Transport Services ● Water Supply ● Sewerage Reticulation ● Storm Water Drainage ● Solid Waste Management	● Residential ● Industrial ● Commerce & Trade ● Social Amenity ● Open Spaces & Recreation	●Bulk (Public) Engineering Services ● Internal (Private) Engineering Services ●Affordable Housing ●Social Housing ●Private Housing ●Public Social Amenities	●Planning Application ●Compliance with Development Plans & Policy ●Compliance with Environmental Considerations	●Detailed designs ●Budgeting/ Costing ●Work Plans ●Contracting ●Quality Assurance ●Delivery/ Commissioning	●National Treasury (Horizontal & Vertical Share) ●Fuel Levy ●Multi- & Bi-Lateral Partners ●Annuity Programs ●concessions	●Development Fees (administered through Revolving Fund) ●Private Sector Debt (Capital Markets, Bonds, Syndicated and Term Loans, ●Private Sector Investment (PPP, Joint Ventures, Leasing, concessions ●Planning Gain

The County Governments apply these instruments using logical operational linkages to match the spatial, technical, financial, and institutional aspects of urban infrastructure

4.5 Collaboration Across the Spheres of Government

Both levels of the government play a major role in urban development. This statement rests with the assumption of the Kenya Constitution Fourth Schedule division of functions. As devolution governance rolls into its 10th year, the first line of apparent tensions and conflicts is the question over who determines the delivery of infrastructure and urban service investments and the discrepancy between the National and County (and by delegation to the city/municipal) levels of competencies, and the actual distribution of resources needed for effective action.

On this question, the National Government can be seen to set the context through its National Strategic Policies, Inter-county (regional or metropolitan) policies, and programs. National policies can influence urban development – directly and indirectly – even when they do not have an explicit urban focus. Some of these policies and strategies have differential spatial and fiscal impacts and are an attempt to shape the drivers of urban growth rather than respond to them. These include Special Economic Zones (SEZs) and the Affordable Housing Program (AHP) that require huge amounts of infrastructural investment, and their subsequent outcomes, in terms of economic performance, which promotes capitalization of urbanization.

The second line of tension is the Inter-county relationships, especially on matters that stem from self-interests (County) and the regional scope (including metropolitan) necessary for planning and development. There exists a range of special cases where the National Government has intervened and is driving and delivering projects of strategic importance including those touching on urban growth. A primate city, such as Nairobi, or regional cities such as Mombasa, Kisumu, and Nakuru – mediated by their former provincial-territorial spheres – where a hands-on supra-regional involvement becomes necessary, can only be successful if the regional goals and objectives translate into corresponding National and County planning agendas, considering both the substantive underlying objectives as well as the delivery mechanisms for implementation.

The third line of tension is concerning the city and municipal governance. On urban development and civic services matters, County Governments have a duty to establish city or municipal boards based on the criteria provided under the Urban Areas and Cities Act. In the last two years, there has been a flurry of activity in establishing municipalities, where some counties have multiple eligible towns. Be that as it may, it is increasingly becoming evident there are simmering conflicts between County Governments and Boards of Municipalities about urban governance objectives, development priorities, and goals for services that may impede the uptake of urban governance. The willingness of the County Governments to delegate these functions, and the ability of municipalities to reconcile and comply with the strategic objectives at the National, Regional, and County levels, is decisive for local benefits.

4.5.1 Linking Policy to Operations

Government action in the urban developmental sphere cuts across Ministries, Departments, and Agencies. Devolution was aimed at reducing wasteful bureaucracy, but to some extent has ended up creating new ones. The development management approach is pegged on the broad 'big picture' of legal, policy, and institutional frameworks shown in Table 4-2 that should translate policy into operational effectiveness and vertical proportionality from the National to County Governments. Heralding of the PLUPA was meant to tidy up, while simultaneously separating and outlining, the responsibilities at the National and County levels.

Table 4-2: Development Management – Oversight & Operation Institutions

	Responsible Office/ Entity	Level of Government	Scope of Role(s)	Relevance to Urban Growth	Legal Reference
1	PLUP Consultative Forums	National	Policy Decision		PLUPA S.6-20
		County			
2	Cabinet Secretary	National	Formulating National Policy on PLUP	Policy Guidance to Public and Stakeholders	PLUPA S.10
			Issuing in *Gazette* policy statements, guidelines & circulars on general & specific aspects of PLUP		
			Approval & oversight over national PLUP		
		Inter-County	Planning Coordination	Approval of Strategic Projects	
3	National Land Commission	National	Monitoring & Oversight parameters of LUP	Public Land Trustee	PLUPA S.9; National land Commission Act
		County	Status Reports of PLUP	Liaison with County on public land planning & development	
4	Director-General Physical & Land Use Planning	National	Advising National Government on PLUP matters		
			Formulation of national planning policies, guidelines, and standards		
			Preparation of NPLUP		
			National Research & Advisory Services		
		County	Capacity building & technical support	Plan making development, control guidelines, and support to County government public services	CGA 118, 121
			Preparation of DPs for strategic national installations & projects	Classification of Strategic or Inter-County Projects	Legal Notice 165 0f 2019
	Responsible Office/ Entity	**Level of Government**	**Scope of Role(s)**	**Relevance to Urban Growth**	**Legal Reference**
5	County Executive Committee Member	County	Formulation of County PLUP policies	Policy Guidance to Public, County Assembly, and Stakeholders	PLUPA S.17; 57
			Promoting of integration planning policy and sectoral planning levels	Coordination with other County Executive Committee members towards planning, budgeting & project implementation	
				Approving Authority on Development Control	
6	County Director	County	Advising County Government on PLUP matters	Policy Guidance to Public and Stakeholders	PLUPA S.36: CGA Part XI; UACA Part V, PFMA
			Formulation of County planning policies, guidelines, and standards		
			Preparation of CPLUP		
	Physical & Land Use Planning		Preparation of LPLUP		
			Participation in preparation of inter-County PLUPs		
			Declaration of Special Planning Areas		
			County Research & Advisory Services	County Public Service	CGA, S.105(1)(a); 104(3); 116, 117, 118, 120
			Establishment of Planning Units		
			Maintaining County LIS		PLUPA S.20(h)
			Development Permits instruments		PLUPA Part IV & V; PFMA S.159
			Communicating planning determination		
7	Liaison Committees	National County		Dispute Resolution	PLUPA Part VI; S.9(e)

According to PLUPA definitions, the apex authority[15] is the Cabinet Secretary and the County Executive Committee Member for National Government and County Government respectively responsible for Planning. Cascading and translating the policy environment into the operational machinery, the Director-General and County Director of Physical and Land Use take the responsibility at National and County levels respectively. However, how each level operates has implications for many kinds of developmental issues. On the policy environment, and with a 'duty of care' on matters of urban development, the PLUPA defines a *"Local physical and land use development plan"* as a plan for the area, or part thereof of a city, municipality, town or urban center and includes a plan concerning any trading or market center"

This should herald a 'corporate approach' of working together from the County Executive Committee Members' policy level to the County Director of Physical and land Use Planning operational level. At this operational level, with a 'duty of care' on devolution, the situation is further guided by the provisions of PLUPA Section 20(g) that gives authority to:

> *Recommend to the County government the establishment of planning units as may be necessary*

This resonates with the County Government Act Section 104(3) that states:

> *The County government shall designate County departments, cities and urban areas, sub-counties, and Wards as planning authorities of the County.*

Cities and municipalities are therefore the operational institutions that require re-engineering of the tasks of 'who', 'why', and 'how' best value performance can be achieved under the devolution structures.

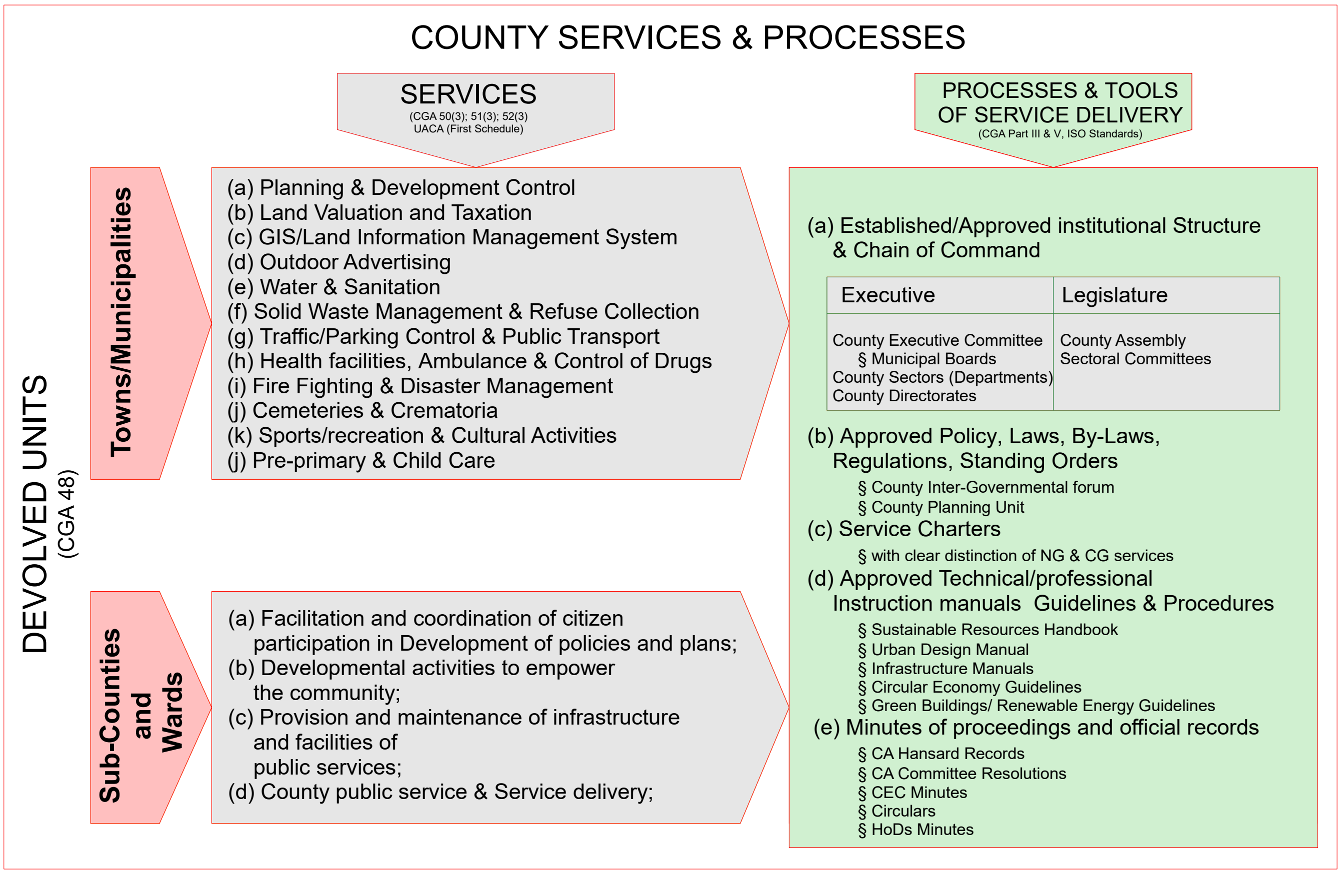
4.6 Development Control as a Public Service

Public service delivery under devolved governance is both a constitutional and statutory obligation for the County Governments. Figure 4-1 shows the public services, the devolved outlets, the processes, and tools to achieve the results. One of the public service principles set out in Section 116(2) of the County Government Act states that:

> **A county shall deliver services while observing the principles of equity, efficiency, accessibility, non-discrimination, transparency, accountability, sharing of data and information, and subsidiarity.**

[15]PLUPA pgs. 612-613

Figure 4-1: County Services and Devolved Outlets



Source: David Gatimu

Development control, as provided in the First Schedule of the Urban Areas and Cities Act, effectively is public service at the city/municipality/town level, and it is within their jurisdiction, under the provisions of Section 56 of PLUPA, to perform the following functions:

a) *prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area.*
b) *control or prohibit the subdivision of land.*
c) *consider and approve all development applications and grant all development permissions.*
d) *ensure the proper execution and implementation of approved physical and land use development plans.*
e) *formulate by-laws to regulate zoning in respect of use and density of development.*
f) *reserve and maintain all the land planned for open spaces, parks, urban forests, and green belts by the approved physical and land use development plans; and*
g) *consider and determine development planning applications made in respect of land adjoining or within a reasonable vicinity of safeguarding areas.*

If these functions are not appropriately addressed, they may compromise the delivery of urban services and reduce long-term urban growth potential. In fulfilling these functions as a public service, development control functions are bound by the principles, standards, and norms provided for under Part XII of the County Government Act. More fundamentally, when circulating an application to relevant authorities or agencies for comments and clearance, this is a shared function that is guided by Section 118 of the Act that states that:

> A county government may agree with the National government, another County or an Agency of the National government, to provide or receive any service that each County participating in the agreement is empowered to provide or receive within its jurisdiction, including services incidental to the primary purpose of any of the participating counties.

Beyond the mantra of 'bringing services closer to the people', the other dimension of this shared service is the 'one-stop shop' whose consideration brings all fees payable under one invoice. The pricing of delivery of development control for the County planning authorities and the relevant Agencies should be guided by the tariffs and pricing policy guide as per Section 120 of the County Government Act.

4.7 Strategic National or Inter-County Projects

The integration of planning and infrastructure development aligns investment to ensure public investment is made in the right place by ensuring government policies are sensitive to places and services where they are most needed. This will ensure better engagement and governance, where all sectors work together, and each contributes its full potential towards public and private investments with clear development linkages.

This approach to infrastructure planning and public capital investment is a powerful shaper of the pattern of development. Public expenditure on bulk infrastructure – roads and highways, water supply and sewerage reticulation, energy generation and distribution, as well as other social goods – schools and hospitals, have a powerful effect on the pattern of land development. The extensive development of bulk infrastructure that has dominated the Kenyan landscape in recent years is a clear attestation of this. The accessibility created has been the largest determinant of land value. Developers – real estate and manufacturers – seek easy access for housing, supply, and marketing of products. The integration at the National, Inter-county and local levels will therefore enable working together to support more sustainable mobility choices and access to social infrastructure for a more inclusive society.

4.8 The County Planning Framework

The essence of devolution in the context of urbanization was anchored on building strong institutions and systems to exercise the total planning doctrine on the integration of development plans and development control. The County Government's planning obligation is premised on the condition that no public funds will be appropriated outside a planning framework that has been approved by the County Assembly.[16] County plans are also required to be based on the functions of the County Governments as specified in the Fourth Schedule of the Constitution of Kenya and take due cognizance of the financial viability of development programs.[17]

It is therefore imperative that County Governments not only plan as required in law and for the functions that are devolved to them, but also ensure compliance with the approved plans during implementation, while monitoring those financial resources are only allocated to approved activities within such plans.

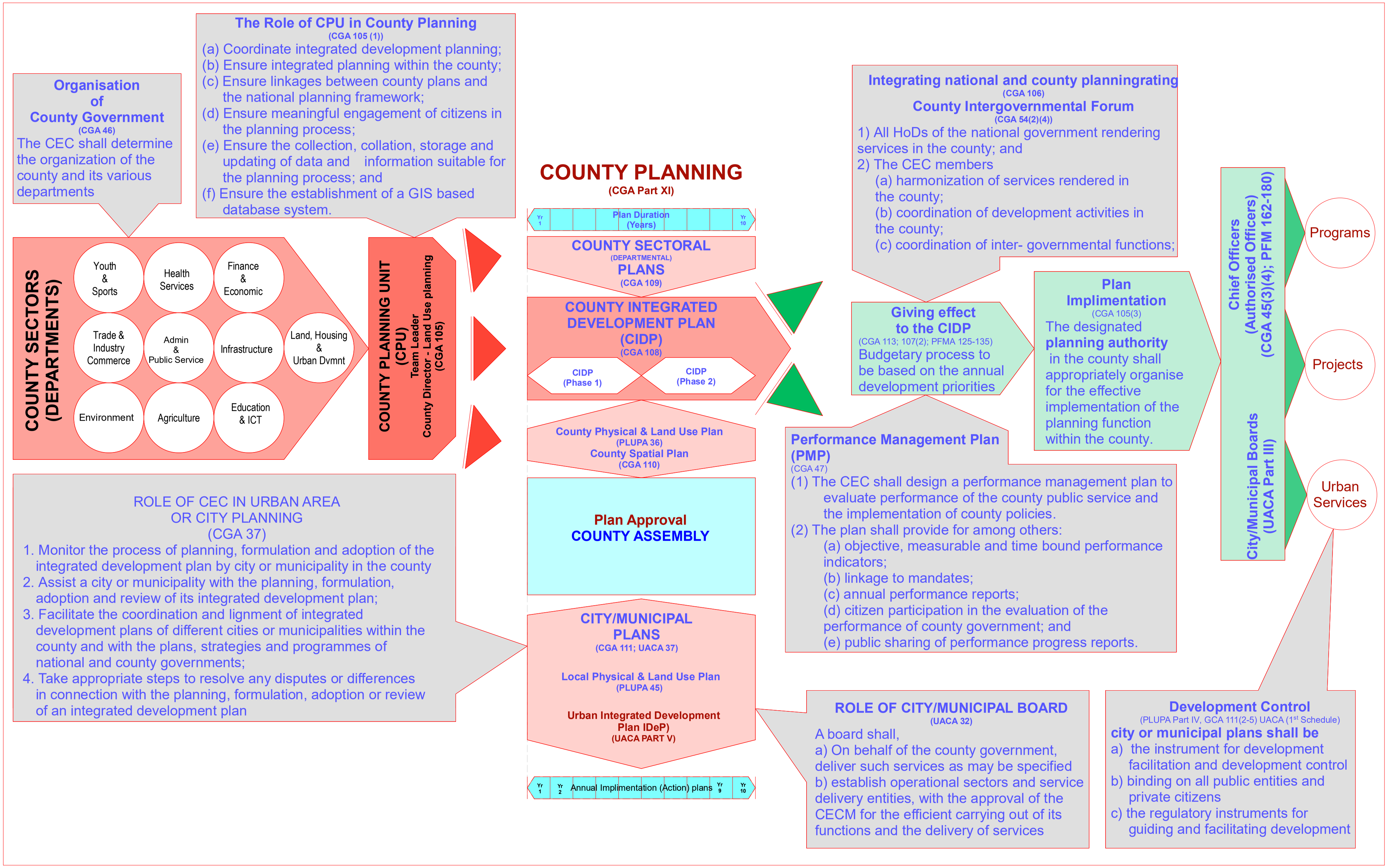
Given the critical role of the devolved planning function, County Governments are mandated to develop various plans with the objective of, amongst other things, ensuring harmony between National, County, and sub-County spatial planning developments, while facilitating the development of a well-balanced system of settlements and ensuring the productive use of scarce land, water, and other resources for economic, social, and ecological functions across the County. The planning role within Counties is also meant to ensure the harmonization of the development of country communication systems, its infrastructure, and related services as well as provide the pre-conditions for integrating underdeveloped and marginalized areas to bring them to the level generally enjoyed by the rest of the County.[18] Figure 4-2 illustrates the County planning functions and the critical role of the County Planning Unit (CPU)[19] in both vertical and horizontal coordination of plan/policy making, plan/policy implementation coupled with sound financial and performance management.

The structure illustrates the sets of interrelated plans that break down distinct sectoral problems and develop criteria of balancing all the different elements to county development.

[16]Section 104, County Governments Act
[17]Section 106, County Governments Act
[18]Section 103, County Governments Act
[19]Section 105, County Government Act

Table 4-2: Institutional Framework – Plan Preparation and Implementation

INSTITUTIONAL FRAMEWORK FOR COUNTY PLAN PREPARATION AND IMPLEMENTATION



Source: Salute Spatial Solutions

4.9 Planning Culture and Development Performance

Part X of the County Governments Act provides for civic education to empower and enlighten the community. Planning should be genuinely led by empowering local people to shape their surroundings and setting a positive vision for the future. The participatory approach further secures commitment from all stakeholders from the outset and makes everyone part of the process, thereby minimizing opportunities for resistance during the implementation of the proposed plans. Furthermore, the participatory approach triggers the engagement of often underrepresented groups such as women and youth in the urban planning and development process.

This approach will entrench a planning culture in Kenya's devolution trajectory in a market-friendly environment. This will ultimately translate into market signals such as land prices and housing affordability and set out a clear strategy for allocating sufficient land in a balance with community facilities and services to meet local needs.

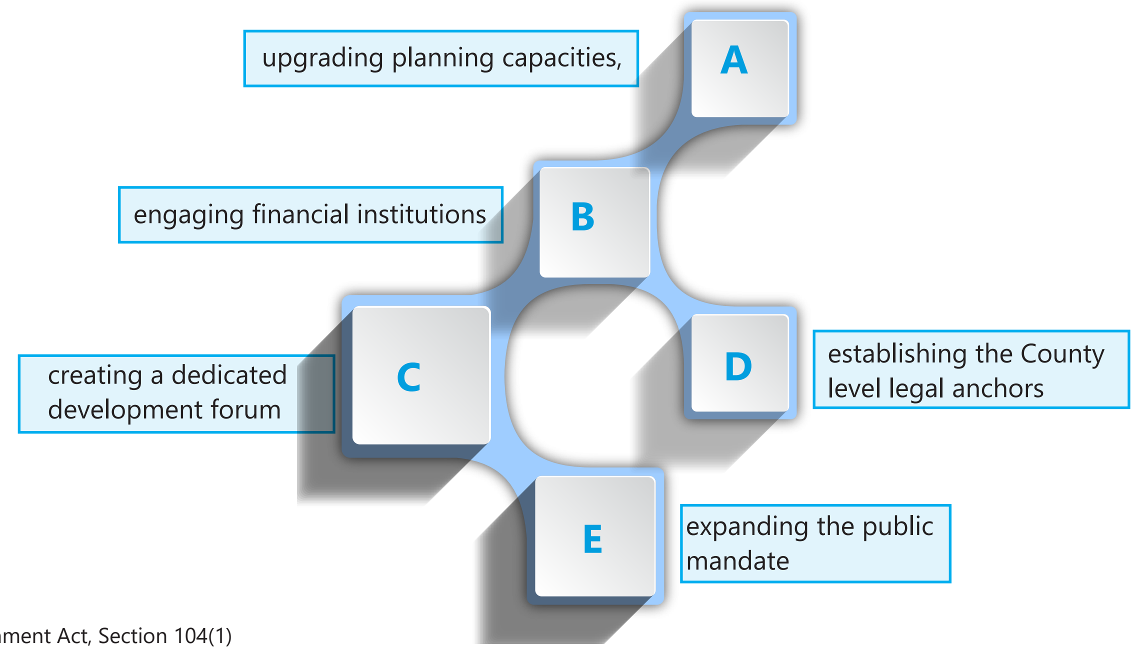
Premised on the public interest theme, these time-bound plan-making processes must be activated and always kept current and relevant to the County's development needs. On the count of their progression, the envisioned outcomes must be regularly audited and reviewed to eliminate uncertainties and performance risks in delivering outcomes.

4.10 Conclusion and Recommendations

i. *Translating Policy to Urban Management Operations*

The emergence of the concept of enabling 'County Planning' has also increasingly focused attention on the management of local resources. Under the current governance structures, *"a County government shall plan for the County and no public funds shall be appropriated outside the planning framework…"* [20] This is not an easy concept because of the quality of plans and assessment of the wide range of performance indicators. Development management signifies a particular style of planning followed by a structured management methodology rather than an ad-hoc approach managing a particular kind of activity. This underlines how best each city, municipality, or town should undertake both processes to succeed in the identified action plans spread across the visual horizon.

The challenge here is neither creating new models for local economic development or county or municipal finance, but, facilitating the County Government institutions in a way that will enhance their ability to utilize and adapt successful models. This requires an integrated strategy of action and organizational gearing up the following:



[20] County Government Act, Section 104(1)

The Inter-county integration of economies, the rising soul of urban impulses across all Counties, and the high mobility of people means solutions must be tailored to specific conditions and with rational indicators to produce locally specific outcomes.

ii. Big Data and e-Governance in the Land Sector

The automation of government services is becoming inevitable in a marketplace where productivity and efficiency to meet public service performance targets is paramount. The land sector, which is one key pillar in economic opportunities, is not an exception. The Land Information Management System[21] (LIMS) is the big data and spatial knowledge management system in urban growth and land development management.

The recommendations of the Government Taskforce[22] on the establishment of LIMs and formulation of related regulations to facilitate electronic registration, conveyancing, and other land transactions in line with existing land laws, are critical for planning and operational levels of both National and County Governments. As recommended in the report, the Director-General of Physical and Land Use Planning has the responsibility to establish the 'National Backbone' planning system linked to the LIMS, and from that pedestal, exercise the statutory authority in PLUPA section 13(c) in: *"undertaking capacity building and technical support for County planning authorities"*. At the County level, a 'County Sub-system' linked to the National Backbone is operated by the County Director of Physical and Land Use and has the responsibility of *"maintaining a land information system to guide physical and land use planning"* in exercise of responsibilities in section 20(h) of PLUPA.

iii. Population Catchment as Basis for Services and Infrastructure Development

As Kenya drifts deeper into urbanization, data on population and demographics will play a significant role in cities, municipalities, and towns. The apparent and seemingly paradoxical enactment of the Urban Areas and Cities Act was strong City, Municipal Boards, and Town and Market Centre Committees, classified and established based on population catchment. The Act provides for the city (population of at least 250,000); a municipality (population of at least 50,000) and town (population of at least 10,000) and Market Centers (population of at least 2,000). As enacted, the Act provides Boards of Cities and Municipalities with strengthened statutory functions.

This has created the impression that City and Municipal Boards across the country will start on a clean slate with a clear break from the discredited styles of the former local authorities. The automation of municipal services, under a 'one-stop-shop' platform, is expected to meet these demands and the expanding needs for accurate and up-to-date geo-information to achieve effective land governance and urban development to realize sustainable development.

However, ten years down the line, with the increasing population and urbanization levels, the establishment and the powers wielded by the Boards are yet to translate to the services. It is therefore imperative that some initiatives must be triggered towards serving the sheer numbers of new urban dwellers and the ever-increasing role to shoulder the responsibility of sustained urban development and economic growth.

[21]Physical and Land Use Planning act section 20(h)
[22]Gazette Notice No. 2170 of 13th March, 2020

Chapter Five

5. PLAN IMPLEMENTATION AND DEVELOPMENT CONTROL

5.1 Overview

Development control (and now a recent emergence of the term 'development management') is noted for promoting and safeguarding the public interest, eliminating negative externalities, and improving the information base for decision making. Without development control, in a laissez-faire market, the sheer complexity of urban growth would be chaotic. This means any development by a property owner must pursue the process of development application and obtain a permit. Therefore, there must be an integration of both the plan-making processes and development management mechanisms to avert demand-side land use and physical development pressure.

This chapter defines what constitutes a development application and moves on to discuss the general guidelines, processes, and procedures of evaluating the applications and granting development permission. The decisions relating to a specific parcel of land must be made concerning the whole spatial system. The scope of assessing an application is confined to the approved local physical and land use development plans, zoning ordinances, the building development regulations-also known as the Building Code- public health and safety standards amongst others, as space and form become complex. These, collectively, define the key parameters of development, permissible uses, the extent of site development, and site layout and design.

The effectiveness of assessment and determination of development applications remains important, so long as greater emphasis is placed on the professionals on both sides (development consultants and Government officers), and the existence of clear, transparent, and efficient systematic end-to-end procedures that do not burden the development process.

While criticism of the former local authorities over the discredited past development control practices abounds, the processing of development applications remains a critical area for discussion and innovation. Under devolution governance, the shift from 'development control' to 'development management' should herald the appreciation of the multiple perspectives and competing ways that land is understood.

This chapter provides a detailed process of application for development permission that would include various Government Departments and relevant Agencies (such as planning, public health, infrastructure, surveying, land administration, water, and sanitation). One prevalent and critical idea for development management advocated in this Guidebook is to ensure that essential infrastructure is provided at the right stage of development. In this approach, the free market in the Kenyan land sector will be well guided, and public interests safeguarded, resulting in a combination of supply- and demand-side approaches that are balanced. The aim of the chapter is to encourage the use of smart growth in a new dawn away from the common patchworks of non-compliant and sometimes, life-threatening developments.

5.2 Principles of Implementing Development Plans

Lifestyle and community values and norms keep changing progressively and, in the process, land uses and buildings designs, as well as mobility styles, change considerably over time. Logically, this requires a vast amount of intrinsic control and order by observing the following general guidelines.

i. Substance and Procedure

Good plans and policies cannot translate into positive results in an incorrectly formulated regulatory framework. In the practice of development control, substance and procedure are inseparable from the norms, guidelines, and standards for the delivery of physical and land use planning services. The existence of stable, predictable, transparent policies, plans, and development control tools, and a consistent environment of reliable processes and dependable procedures, serves to encourage development. Many people view the process of applying for, and obtaining development permission, as an unnecessarily slow, restrictive, and costly process, further complicated by bureaucratic red-tape and pervasive enforcement. Due to the statutory approval timelines, there must be, at each county – and where applicable, city or municipality – an efficient and transparent process that keeps up with the applications influx.

ii. Material Considerations

Material considerations constitute all aspects of land development and technical standards for quality assurance in public health and safety as set out in the minimum requirements and basic performance standards. This includes such things as the number, size, layout, siting, design, and external appearance of buildings and the proposed means of access, together with landscaping, impact on the neighborhood, and the availability of infrastructure.

On material considerations and quality control procedures, it is like the building industry that many professionals are involved. Much as each has its perspectives, their convergence must be related to the purpose of County planning, which is to regulate the development and use of land in the public interest.

iii. Infrastructure as a Development Factor

The operating efficiency of land development systems as an actual tool of control is the link between the infrastructural needs analysis in the physical and land use plans and the supply side development economy. Private sector investment that results in intensified land use must compete in the marketplace by providing key infrastructure as an enhancement of both site and buildings, and the infrastructure must be completed and brought into service before the occupation of the buildings under construction. An investor must therefore deploy a financing model against the prospect of financial return

The alignment of the 10-year sectoral plans with the physical and land use plans should allow for utilization and scheduling of the implementation of bulk infrastructure investments which would influence and promote private sector development initiatives and further guide the imposition of development fees to be utilized towards internal and link infrastructure.

iv. Environmental Considerations

The fact that urban spaces have a high concentration of people, business enterprises, industrial processes, and motor vehicles can make them hazardous. At the most general level, the overriding issue is that of striking an acceptable balance between the needs of economic growth and the protection of the environment.

With the mandatory requirements in the County Government Act that mandate County planners to work towards the achievement and maintenance of a tree cover of at least ten percent (10%) of the land area of Kenya, as well as protect the historical and cultural heritage, monuments and sites within the County, this balance needs to be treated with caution considering the likely or significant environmental effects by the nature, size, or location of the proposed development.

v. Socio-Economic Sustainability

There is a direct link between planning and local economic development. Planning triggers investment in social infrastructure, helping to create communities that are attractive to residents and businesses. The approaches of managing physical growth at the local level have direct interrelationships to problems and impediments to local economic development, as planning can enhance an area's competitive advantage and businesses cluster to benefit from supply chains and skilled labor in the local area. Any intensification of lane development must be tailored to balance the spatial capacity and the target population to meet the projected long-term vision for intensification. This is well-grounded in PLUPA Section 58(3) that states:

> *An applicant for development permission shall indicate the proposed uses to which the land shall be put, the population density to which that land shall be subjected, and the portion of the land the applicant shall provide for easements as a consequence of the applicant's proposed development.*

In the absence of adequate development control interventions, the levels of informality breed types of susceptibility to different adverse events.

vii. Community Aspirations

From a layman's viewpoint, it is difficult to distinguish between public and private interests. As a community – owners, occupiers, and users – the main objective of development control is to resolve or minimize conflict in the public interest. The basic question is not whether owners and occupiers of neighboring properties would experience financial or other loss from a particular development, but whether, the development proposal would unacceptably affect amenities and the existing use of land and buildings that ought to be protected in the public interest. Examples abound of developers putting up buildings without due consideration of the safety and wellbeing of the occupants and on several occasions, resulting in fatal incidents when these buildings subsequently collapse.

5.3 The Concept of Development

Development, in the planning sphere, must take the consequences of limitations to achieve spatial objectives and promote desired physical forms. The definitions of both "land use planning" and "physical planning" also serve to provide rationale and clarity to planning authorities and practitioners. Land Use Planning is defined as:

> *...the process of designating, regulating, evaluating, zoning, and organizing the present and future use and development of land in all its geographical areas and its resources to secure the physical, economic and social efficiency, health, and well-being of urban and rural communities.* [23]

Physical planning on the other hand is defined as:

> *the active process of organizing the physical infrastructure and its functions to ensure orderly and effective siting or location of land uses, and it encompasses the deliberate determination of spatial plans to achieve the optimum level of land utilization sustainably.*[24]

In the context of the two definitions above, development means *'carrying out any works on land or making any material change in the use of any structures on the land'.* In simple terms, development can be seen as a process of change from one state of the built environment or the use of land, to an alternative state.

[23]Section 2, Physical and Land Use Planning Act

[24]Section 2, Physical and Land Use Planning Act

5.4 The Concept of Control

Development control is fundamentally the relationship between demand and supply in the urban development market. This includes the enforced action to remedy illegal or undesirable developments. The Physical Planning and Land Use Act defines "development control" as

> *The process of managing or regulating the carrying out of any works on land or making of any material change in the use of any land or structures and ensuring that operations on land conform to spatial development plans as well as policy guidelines, regulations, and standards issued by the planning authority from time to time to achieve a purposeful utilization of land in the interest of the general welfare of the public*[25]

The Act further outlines the objectives of development control to include ensuring optimal land use, orderly physical and land use development, and ensuring proper execution and implementation of approved physical and land use development plans. Development control is also key in ensuring, the protection and conservation of the environment, orderly and planned building development, as well as the construction, operation, and maintenance of such buildings. Finally, it is envisaged that development control is also key to the safeguarding National security.

Since the Act criminalizes the carrying out of a development without development permission being granted by the relevant County Government[26], the development control processes must therefore be efficient, clear, and flexible enough to make it market-friendly and favorable to economic growth, as well as have due consideration of the welfare of the public in the long term. A plan-led process empowers local people to shape their surroundings within a practical framework upon which decisions on planning applications are made with a high degree of efficiency and predictability. The objects of PLUPA under Section 3 is to provide:

a) *a) the principles, procedures, and standards for the preparation and implementation of physical and land use development plans at the national, County, urban, rural, and cities level.*
b) *the administration and management of physical and land use planning in Kenya.*
c) *the procedures and standards for development control and the regulation of physical planning and land use.*
d) *a framework for the coordination of physical and land use planning by County Governments.*
e) *a mechanism for dispute resolution concerning physical and land use planning.*
f) *a framework for equitable and sustainable use, planning, and management of land.*
g) *the functions of and the relationship between planning authorities.*
h) *a robust, comprehensive, and responsive system of physical and land use planning and regulation; and*
i) *a framework to ensure that property investments benefit local communities and their economies.*

Under these objectives, the translation of a policy framework to operational activities is embedded in the inter-connectedness of plans from the National to the local level that is administered within the framework of the procedures and standards that have a bearing on long-term consequences that can either enrich or destroy the environment. Planning authorities (Cabinet Secretary and County Executive Committee Member) are given powers to consider and determine development applications depending on the nature of the development project.

The Cabinet Secretary, on behalf of the National Government, is empowered to coordinate inter-County projects and with discretionary authority under PLUPA Section 69(4) to:

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[25] Section 2, Physical and Land Use Planning Act

[26] Section 57 requires that 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. Further, the offence attracts a penalty of a fine of Ksh 500,000 or imprisonment not exceeding two months or both.

> *...consider and approve development permission for any development to be carried out within the prescribed projects of strategic national importance.*

Legal Notice 156 of 2019 provides the classification of projects of Strategic National Importance defined as:

> *Projects of Strategic National Importance" means projects that are conceived, designed, and implemented in furtherance of the Kenya Vision 2030, the Big Four Agenda, Medium Term Plan, and other National strategic objectives that arise out of the residual functions of the National Government...*

The Inter-county projects are defined as:

> *Projects carried out in the implementation of approved inter-County physical and land use development plans and projects for the realization of public purpose objectives of National significance beyond the jurisdiction of individual Counties.*

Both National and County Government planning authorities exercise the powers to undertake development control with objectives stated in PLUPA Section 55 that seek:

a) to ensure orderly physical and land use development.
b) to ensure optimal land use.
c) to ensure the proper execution and implementation of approved physical and land use development plans.
d) to protect and conserve the environment.
e) to promote public safety and health.
f) to promote public participation in physical and land use development decision-making.
g) to ensure orderly and planned building development, planning, design, construction, operation, and maintenance; and
h) to promote the safeguarding of national security.

Development control, therefore, encompasses the end-to-end processes that include, the pre-application review of approved plans to inform the specific development application, the pre-approval process of application circulation for review and approval, and the post-approval processes to ensure compliance.

5.5 Types of Development Applications

Development applications are prepared by a qualified person[27], (hereinafter referred to as 'consultant'), and in the current practice, planners, architects, and engineers fall under this definition. Table 5-1 lists the types of development applications seeking development permits

[27] PLUPA Section 59

Table 5-1: Types of Development Applications

Application Hierarchy	Type and Classification
Tier 1: Primary Applications - (PLUPA third schedule s.1(a)(b)(c)(d)(e)(f)(g) &(h))	**Development Applications namely:** • Change of use, an extension of use, sub-divisions and amalgamations, processing of easements and wayleaves. • Extension of the lease term. • Siting of education institutions, base transmission stations, petrol stations, eco-lodges, campsites, power generation plants, and factories. • Construction/building permits. • High impact advertisement and signage applications. • Low impact advertisements and signage, landscaping schemes
Tier 2: Secondary applications in fulfilment to conformance conditions (PLUPA third schedule s.11(c)(d)(e) S.12 (a)(b)(c)(f)(g)	**Development Applications that give rise to:** • development charges components contribution (Structural, civil, electrical, mechanical, and ICT engineering services). • performance conditions discharge through Interim, partial, and incremental certification. • environmental and social impact; (environmental reports, traffic management reports, urban design drawing schemes). • final discharge of land development completion or building pre-occupation certification. • planning gain instead of infrastructural services contribution. • being national strategic or inter-County projects
Tier 3:	**Development Applications in fulfilment of pre-commencement and performance condition(s) granted in Tier 1 and Tier 2. These include, but are not limited to:** • construction site board; • hoarding of construction sites; and • site safety and utility services.

Source: David Gatimu

5.6 Unbundling Development Control Workflow

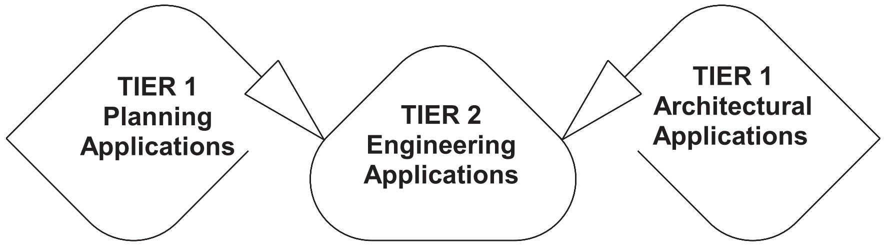
Before unbundling the workflows and relating them to the current institutional structures, it is useful to divide the development control procedures into distinct operational phases that define its full cycle. These four phases are:

1) **pre-application phase:** involving the (approved policy/plans) 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.

The schematic workflows of these phases are detailed in annex 1. The chart illustrates practical, reliable, and dependable workflows that are not new to Counties that have well-established procedures. Nairobi City and Kiambu County, for example, have largely adopted them to the extent of automating the pre-approval phase. The emphasis in this Guidebook is to cultivate the 'new normal' of re-inventing the realms of all the phases in urban development in a structured fashion. However, in resonance with section 63 of PLUPA, the Guidebook takes a deeper dive by providing comprehensive technical, legal, and financial models that Counties can domesticate as effective long-term solutions towards alleviating the current dire situation of development management especially in hyper- and dynamic-growth urban areas.

To start the unbundling, reference to section 5.5 is necessary. The types of development applications that dominate the apex of Figure 5-1, illustrate eight the (8) stages broken down into the first three phases. Each stage has its distinct activities, those responsible, reference documents, and the expected outcome. Further, Table 0-1 (Annex 2), illustrates specific types of applications showing typical planning, architectural, and engineering applications, and their handling in the first three phases that are critical in each type of development application.

Figure 5-1: The Development Control Process



Phase	Process Stage	Activities	Tools/Reference Documents	Responsible	Statute	Output
PRE-APPLICATION	1 CLIENT/CONSULTANT ENGAGEMENT	1 (a) Client/Consultant Briefing 1 (b) Physical Site/Property Verification 1 (c) Broad enquiries on technical & policy, 1 (d) Submission Fees, procedural matters 1 (e) Compilation of Submission Bundle	1. County Spatial Plan 2. City/Municipal Urban Integrated Plan (Municipal Land Use Plans) (Municipal Builing & Zoning Plans) * All Applicable Reference Documents Available at 1. Sub County Offices 2. Municipal Office 3. County Website 4. Land Info Management System	Consultant 1) Planner 2) Architect 3) Engineer	PLUPA 58(5) 58(7&8) 59(1) 68 CGA Part IX Part X Part XI UACA 21 36	Compliant Quality submission
Pre-Approval Phase	2 INVOICING & REGISTRATION OF APPLICATION	2 (a) Receiving 2 (b) Registration 2 (c) Invoicing	a) Prescribed Application Forms b) Planners/Architects Engineers Annual Practice Cert c) Applications Booking Register d) County Finance Act (Development Levies)	Sub County Team 1. Sub County Admin 2. Sub County Planner 3. Town/Municipal Manager	PLUPA 58(1)	Revenue Efficient Workflow and Tracking
Pre-Approval Phase	3 SIEVING CIRCULATIO & EVALUATION	3 (a) Sieving & sorting by development magnitude 3 (b) Local vetting for Zoning Compliance 3 (c) Fastracking of simple developments 3 (d) Circulation for Detailed Sectoral Evalutaion 3 (e) Determination of Development Fees for major developments - Infrastructure planning & design	a) Spatial Plan b) Infrastructure Master Plan c) Municipal Plan d) Development Ordinances Order e) Planning Handbook f) Building Code g) Application Fees & Development Fees (DF) Guidelines/Regulations h) WMA Guidelines i) Engineering Codes j) Public Health ByLaws k) Valuation Roll	County Technical Officers a) Planners b) Public Health Officers c) Engineers d) Revenue Officers e) Environment offocers f) Land Registrars g) Land Valuers	PLUPA 60(1) Third Schedule Sections 2-17	a) Comments b) Clearance c) Performance Conditions
Pre-Approval Phase	4 AGENDA COMPILATION & DETERMINATION OF DEVELOPMENT APPLICATIONS	4 (a) Agenda Itemisation 4 (b) Convening of Development Determination Commitee 4 (c) Items Deliberations & Resolutions	a) Agenda Listing Template b) Meeting Proceedings Guidelines b) Minutes of Resolution Meeting	Development Determination Committee (Line Directors/ Commenting Authorities, Professional Associations, Co-Opted Invitations)	PLUPA Part VII 90(b)(e) PLUPA 61(1) 6192)	Minutes of Proceedings & Resolutions
Pre-Approval Phase	5 COMMUNUCATION OF DETERMINATION & APPEALS	5 (a) Approval by CECM (responsibel for land development) 5 (b) Reporting to CECM (for Development Fund Administration) 5 (b) Reporting to Municipal Managers 5 (c) Signing & Stamping drawinga & Permits 5 (d) Dispatching Applications to consultants 5 (e) Receiving & Processing Appeals	(a) Minutes of proceedings Resolutions (b) All Refrence Documents used for evaluation (c) DF Application Procedures	a) County Director Of Phyisical & Land Use Planning b) DF Fund Manager	CGA 95 96 PFMA 116 Regulation 197 of the Public Finance Management (County Governments) Regulations	Development Permits
Post-Approval Phase	6 IMPLEMENTATION PLANNING	6 (a) Consultant/Client interpretation of Approval Conditions 6 (b) Securing Secondary Permits (EIA, NCA, Hoarding etc) 6 (c) Costing of the approved development 6 (d) Sourcing of Funding 6 (e) Bidding/Tendering Process 6 (f) Conract Awarding	(a) Funding Options References (b) Fund/Investment Sourcing References	(a) Developer (b) Relevant Built environment Professionals (County & Consultants) (c) County DF Fund Manager (e) Lending Institutions (f) Contractor (g) Insurance Underwriters (h) Legal/Judicial Officers (i) Enforcement Officers	Regulation 197 of the Public Finance Management (County Governments) Regulations	(a) Secondary Permits (b) BQs (c) Development Funds Administration (d)Implementation Contracts (e) Interim Inspection Reports/ Certificates
Post-Approval Phase	7 PROJECT EXECUTION	7 (a) Project Phasing 7 (b) Progressive Inspections & Reports 7 (c) Amendments or/and redisign 7 (d) Enforcement Notices for non-compliance 7 (e) Prosecution for non-compliance	(a) Approved Working Drawings (b) Quality Control References (c) Safety Procedures (d) Judicial Processes Reference Documents (e) Fund Disbursment Certificates (f) Interim Technical Inspection Reports & Certificates			
Post-Approval Phase	8 PROJECT COMPLETION	8 (a) Final Testing/Inspection 8 (b) Handing Over/Commissioning	(a) All Refrence Documents used for evaluation (b) Final Project Inspection Certification	Relevant Built environment Professionals (County & Consultants)		Completion/ Compliance/ Occupation/ Certificate

Source: David Gatimu

5.7 Development approved process

i. Phase 1: Pre-application

For all development intent and purposes, any consultant intending to undertake a development proposal must refer to an approved plan and any associated reference document. Three elements stand out in this phase:

a) The availability of Geographic Information System (GIS) -based plans and digital reference materials.
b) The role of consultants in preparing (digital and online)[28] development applications and submitting these using prescribed Forms (Forms suited for all the types of development will form part of the PLUPA regulations which are yet to be developed).
c) The (digital) instruments of engagement between consultants and County officials (PLUPA Section 20(j))

ii. Phase 2: Pre-Approval

In this phase, submission of applications is at the lowest service level, providing a closer match between public policies and rendering services, desires, and needs at the local level. This phase has fourteen distinct stages as follows:

a) Reception Offices (and digital focal points) – sub-County/wards/ municipalities.
b. Registers – permanent application reference for circulation tracking and archival of records.
c. Invoicing – graduated fees & charges, waivers, and complimentary submissions (CGA s.120; PLUPA s.58).
d. Sieving – determination of strategic developments, low- medium- and high magnitude applications (Ordinance Orders - Uses Class & Permitted Development).
e. Circulation – consultation relevant to a specific application, material issues (safety, public health, environment, etc.) (PLUPA s.60)
f. Reviewing, assessment, and comments – reference documents (plans, regulations, manuals, codes, etc.)
g. Material considerations for approval conditions including Modalities of charging development fees (new PLUPA s.63)
h. Agenda Preparation and Approval – agenda preparation, convening of Planning Technical Validation Committee (PTVC), procedures of conducting the meeting, capturing of minutes.
i. Calling/Scheduling of PTVC meeting intervals – routine roll-over.
j. Determination of Applications– approval, deferment, and declining of applications.
k. Post-meeting Documentation – Reporting to County Executive Committee Member as the permitting authority for approval, circulation of minutes, Stamping, and Signing (Digital Signatures/ Bar Codes)
l. Communication of Determination – Internal (to other devolved units) and external (to stakeholders & consultants).
m. Internal Secondary Circulation of mid-and high-risk applications, and
n. Development Permits Issuance (PLUPA s.20(g))

Key Highlights of Pre-Approval Phase include:

- **Receiving, Invoicing, and Registration of Development Applications:**

  The receiving of acceptable applications rolls over to invoicing based on prescribed fees[29] and registering in the prescribed register[30]. Things to consider in the determination of fees include evaluation of man-hours, zonal graduated charges based on urban fabric formation (urban, peri-urban, and rural settlement form), waivers, and complimentary applications. The registration serves multiple purposes that include formal acknowledgment, permanent reference number, application classification (planning, architectural, development type, etc.), and circulation tracking reference. The registration process also allows for other considerations such as waivers of fees to special developments (religious, charity, public service partnerships that are determined by gazetted guidelines), and complimentary submissions (County planning and public works projects).

[28]10A phased migration from analogue to digital id recommend
[29]PLUPA Section 58(1)
[30]PLUPA (62)

- **Sieving, Circulation, and Evaluation**

  This stage entails bundling of submission documents, sieving/initial vetting, and circulation for detailed evaluation[31]. The preparation of documents in an orderly manner and bundling for circulation is an activity of the coordinating department, namely, the Physical and Land Use Departments. Under the devolution principle, this is best handled at the sub-County or municipal level. In the sieving assessment for circulation, the presiding planner bears the responsibility to vet and weigh the nature and magnitude of an application and decide the stations to circulate.

- **Material Considerations[32]**

  This stage bears the heaviest professional responsibility against which an application is subjected to regulatory and policy matters. The circulation must ensure all relevant authorities of Agencies are allowed to evaluate with the option to recommend (with or without conditions) or comment for appropriate amends. In their evaluation and determination, development applications are subjected to the form of specific standards that are defined through planning, architectural, public health, environmental, and engineering requirements. These are also known as zoning regulations, ordinances, or codes depending on the field of assessment. These legally define three key parameters of development: permissible uses, public/environmental health, and safety, the extent of site development, and site layout and design. The processes in this stage, therefore, use the time and expertise of different professionals at the sub-County, city/municipal level, whose technical decisions inform and bind the approving authority[33].

- **Planning Conditions[34]**

  Planning decisions are often made subject to planning conditions. These conditions may be further divided into two: 'Compliance Conditions' and 'Performance Conditions' for complex developments that may require further processes to capture and conform to additional standards for compliance, including calculation of development fees. 'Performance conditions' include the actual provision of physical infrastructure (roads and stormwater drains, water supply and sanitation; power supply, etc.) and social infrastructure (contribution to community needs).

  Development Fees[35] are a once-off capital charge to accommodate the impact of intensified land use. The beneficiaries of infrastructure within the County should make an appropriate and fair contribution to the cost of the infrastructure without unduly burdening the rest of the taxpayers within the County that are not associated with that infrastructure. The surge in pressure for infrastructure development requires wider planning considerations with the application of innovative and more expansive mechanisms for infrastructure financing.

- **Determination of Applications**

  In the defunct Local Authorities system, planning determinations were done by the Town Planning Committees and thereafter ratified by the Full Council. Under the devolution governance, PLUPA places this authority under the County Executive Member responsible for Planning and Urban Development matters. There is widespread uncertainty and a lack of sound interpretation of the development control procedures and of the end-to-end milestone process to deliver development permission. Interpreted at "face value", County Executive Committee Members are receiving and approving development applications in a "raw" manner.

  From a professional standpoint, development applications should be subjected to the rigors of quality assurance through thorough processes before being approved. In a nutshell, County Executive Committee Members should not approve "raw" applications but "processed" applications.

  As an accountability and collective professional responsibility, all the Head of Directorates (at County and municipal level) need a joint forum to own or vary the decisions made at the sub-County or municipal level. Ideally, in strict adherence to the statutory timelines[36] provided for approval of

[31]PLUPA Section 60(1)
[32]PLUPA Third Schedule
[33]PLUPA Section 58(5) & (60 & 61)
[34]PLUPA Section 61(2)(a)
[35]PLUPA Section 63
[36]PLUPA Section 60(2)

development applications, the County Director of Physical and Land Use Planning should prepare a comprehensive agenda of all the recommended applications and share with all relevant Heads of Departments (HoDs) before convening a joint forum for ratifying the recommendations. Beyond the closed HoDs circuit, the forum should rope in the private sector through key land development stakeholders such as built environment professional bodies, financial institutions with a bias on matters development, and relevant recognized business and neighbourhood associations.

This committee fulfils two fundamental obligations: a professional undertaking and devolution accountability captured in well documented minutes. This provides the approving authority with the legal comfort to “approve”, “decline”, or “defer”, which is captured in the minutes.

In fulfilling the tasks highlighted above, each type of application is subjected to reference documents as indicated in Table 5-2.

- **Receiving and Processing Appeals**[37]

  If the issue of determination discussed above is not well streamlined, poorly handled processes and applications may find their way into the Liaison Committee[38]. This is one area in dire need of care setting and developing inquiry procedure rules. This being a judicial process, their function must safeguard the principles of open, impartial, and fair consideration of policy and material issues.

[37] PLUPA Section 61(3)
[38] PLUPA Part VI

Table 5-2: The Development Control Reviewers Tools

Type of Application	Review Tools/Reference Documents	Standard Conformance Condition(s)	Standard Performance Condition(s)	Compliance or Occupation Certificate	Reviewing Professional & Support staff	Review Stations
Land Use Change	Zoning Plan Planning Handbook Valuation Roll	(re-survey)	(re-valuation for stamp duty and Valuation Roll Entry)	Compliance Certificate	Sub County/Municipal Planner, Assistant Planner, Planning Assistant, Planning Prosecutor, Planning enforcement officers	**Sub County or City/Municipal** *(Sub County/Municipal Planner)* **County Headquarters** *(County Director PLUP)* **County Headquarters** *(Development Technical Validation Committee)*
Lease Tenure	Zoning Plan/Ordinance Orders Planning Handbook	(re-survey)	(re-valuation for stamp duty and Valuation Roll Entry)	Compliance Certificate		
Subdivision & Amalgamation	Zoning Plan/Ordinance Orders Planning Handbook Valuation Roll	(New survey) (Development Fees for Infrastructure)	(Construction of Roads & Drainage, Water Supply, Sewerage/sanitation, street lighting, Fiber optic cables	Subdivision Compliance Certificate		
Easement and wayleaves	Infrastructure Masterplan Planning Handbook	(New survey) (surrender) (compulsory Acquisition)	Taking Possession			
Siting of education institutions, base transmission station, petrol stations, eco-lodges, campsites, power generation plants, factories	Zoning Plan Planning Handbook Building Code	(Building Plans; Engineering Designs; EIA Reports; Urban design and Landscape schemes)	(Construction of Roads & Drainage, Water Supply, Sewerage/sanitation, street lighting, Fiber optic cables	Compliance Certificate		
Advertisement	Outdoor Advertisement & Signage Policy Building Code	(Structural Designs)	Construction of Girders or hoisting structures	Compliance Certificate	County Urban Designer	
Building Plans (Architectural)	Zoning Plan Building Code Urban Design Handbook	(Engineering Designs; Transportation Analysis Reports, EIA Reports; Urban design and Landscape schemes)	(Construction of Buildings Roads & Drainage, Water Supply, Sewerage/sanitation, street lighting, Solar Installation, Fibre optic cables	Occupation Certificate	Sub County/Municipal Planner, Sub County/Municipal Architect, Sub County/Municipal Engineer, Assistant Architect, Assistant Engineer; Development Control officers	
Building Plans (Structural)	Engineering Manuals Building Code					

Source: David Gatimu

iii. Phase 3: Post Approval

In this phase, the following activities take place:

a) Appeals – internal appeals and referral to the (County) Liaison Committee.
b) External Secondary Circulation of mid-and high-risk applications (more so under PLUPA Section 63).
c) Project Implementation Planning – phasing, safety procedures (Tier 3 applications)
d) Progressive Inspections – quality assurance and compliance (joint responsibility – consultants, relevant authorities)
e) Enforcement action – Breach or violation of approval conditions, judicial processes, and/or redress/ restoration (need for specialized planning/land prosecutors and lower-level Environment and Land Courts)
f) Final Inspection/Testing – joint responsibility by consultants, relevant authorities before issuance of certification for compliance)
g) Issuance of Occupation/Compliance Certification
h) Commissioning

iv. Phase 4: Post Occupation

This tail-end phase entails:

a) User suitability – real-life on-plot functionality and compatibility elements with neighbouring developments (visual, audio, common services, etc.)
b) Ease of maintenance – routine repair and maintenance.
c) Progressive adaptability and resilience – capacity/flexibility to accommodate new systems and user demands (e.g., ICT infrastructure, solar systems, gas supply, etc.)

5.8 Conclusion and Recommendations

To strengthen development management, changes must be made within the County governance systems through full-cycle county planning compliance, capacity building in results-based management, deployment and enhancement of technology, and entrenchment of professional values and ethics for successful development management.

i. Formulation of County Infrastructure Master Plans (IMP) and Urban Utilities

The infrastructure master plans provide a high-level direction about urban utility services including, transportation networks, wayleave and easements, water supply and sewerage works, etc. Of fundamental importance to the IMP, the neighbourhoods envisioned in the physical and land use local development plans are also best in combining social and economic sustainability of new urban settlements by allowing people to be served with communal basic services for their wellbeing and convenience. Taken together, the determination of the infrastructural needs and the limiting environmental impacts allows for priority intensification and maximizing of the returns on infrastructure investment.

An IMP aligns itself to the land use and zoning proposals with system-specific policies and performance assessment of the existing infrastructure asset base to plan and achieve prudent infrastructure investment and management. It moves further to combine with the principles of the County spatial plans into a reliable strategy to accommodate anticipated demand for capacity and, in a cost-effective manner.

The levying of development fees should therefore be carried out within the overall frameworks of development management where each service area must be judiciously and fairly targeted by ensuring there is adequate infrastructure capacity from bulk networks to connecting networks before the burden of the internal network is borne by developers under the ‘user pays’ principles.

ii. Development Control Shared Services – The 'One-Stop-Shop'

There is a strict relationship between government institutions and the professionals in the built environment whose roles and protocols need to be well understood in the plan preparation and development management processes. This is a critical aspect provided for in Section 118 of the County Government Act, which subscribes to Shared Services Agreements in the understanding of how different land use controls work and the reason for their consultation as stipulated under Section 60 of the Physical and Land Use Planning Act.

The time-bound development applications procedures under this one-stop shop should lay bare the existence of clear end-to-end systematic approval procedures that do not burden the development process and should conform to the principles of equity, efficiency, accessibility, non-discrimination, transparency, accountability, sharing of data and information, and subsidiarity.

The details in the Shared Services Agreements should embed adherence to all aspects of technical standards for quality assurance as set out in the minimum requirements and basic performance standards of each profession.

iii. Tariffs and Pricing of Planning Services

One of the most lucrative revenue streams in many urbanized Counties is land development. The determination and levying of fees for the various categories of development applications varies and is largely arbitrary. Some are charged on land size, land units, plinth, or a percentage of the cost of building. Some of these tariffs are prohibitive and deter the development management process.

The Physical Planning and Land Use Act provides for two sets of fees: Application Fees (Section 58) and Development Fees (Section 63). This Guidebook provides the guidelines for the latter in the next chapters.

There is a need to develop a comprehensive tariff and pricing policy to include development application fees. Time is ripe to move away from the misplaced notion and arbitrary urban development fee levying to rational and fair pricing in the administrative handling and technical evaluation.

iv. Simplifying Development Application Processes

From political and governance systems, devolution places development control at the doorstep of the city and municipal authorities. The knotty questions about the extent to which City and Municipal Boards can exercise development control functions will continue to rent the air if the safeguards of substance, procedure, and conformity between the County plans and strategic management of development are not exhaustively addressed.

In this approach, part of the reforms is simplifying the planning process and the planning systems through regulations and tailored guidelines that reach out to the community for specific purposes. These include:

a) Development Ordinance Orders (Use Classes and Permitted Development Order) that gives meaning to "land use planning" and "physical planning" as defined in the PLUPA – for easing the detailed interpretation of development applications for sifting during submission, elaboratetechnical vetting, and fast-tracking the entire development applications procedures.

b) Integrating strategic National or inter-County projects regulations into the development control processes i.e., coordination, public participation, and approval procedures. This includes bulk infrastructure and amenities for the public good.

c) Strategic Installations Regulations – their classified approval and safeguarding and preservation of strategic installation against any aggression – visual and physical; and

d) Development Fees Regulations – in pursuit of planning conditions and performance obligations – internal infrastructure by the private sector in contributing to urban development (see chapters 6, 7, and 8)

Chapter Six

6. IMPLEMENTATION OF DEVELOPMENT FEES AS AN INFRASTRUCTURE FINANCING MECHANISM

6.1 Overview

In the previous chapters, we have discussed the complexities associated with the decentralization of development as a result of devolution, as well as outlined the pivotal role of County Governments in planning and managing urban development. In the process, County Governments must adopt efficient and effective systems of providing the necessary infrastructure in their rapidly urbanizing centres. Consequently, infrastructure is a necessary pre-condition for achieving the development objectives of County Governments and Vision 2030.

Investors, both foreign and local, require assurance that the County Government's management of public funds relating to the provision of the necessary infrastructure can be relied upon to maintain fiscal discipline and ensure that contributions towards the provision of necessary bulk infrastructure are indeed utilized in a fair, transparent, and accountable manner, and only towards the purpose for which they were paid.

Every new development – whether because of subdivision, amalgamation, or otherwise - is associated with the intensification of a specific parcel of land. Development fees, introduced vide Section 63 of the Physical and Land Use Planning Act, are designed to ensure that the pro-rata share of the actual capital cost of County infrastructure required to service a particular development is borne by the persons who will benefit from the intensified use of the land, as opposed to all County residents.

This Chapter identifies the development control applications that will give rise to a development fee, as not all land-use changes will give rise to the fee. It also proposes a methodology for determining the unit costs for use in computing development fees based on the impact on County services and infrastructure that a particular development will have. This will ensure that property developers have a clear guideline and can estimate these levies during their planning process and incorporate these costs into their property development costs.

In addition, land use applications that may be eligible for exemption from the development fee, the criteria for determining that such applications are exempt from the fee and, the conditions applicable where a particular land use could qualify for exemption from the fees are discussed.

Finally, a case for the establishment of a dedicated development fees fund, into which all monies contributed as development fees are to be paid and ring-fenced for utilization towards the sole purpose of implementation of the infrastructure associated with the development fees within the County, is presented. It is proposed that a separate County Infrastructure Development Corporation (CIDC) be established for purposes of implementing the necessary infrastructure across the County, through the funds collected in the form of development fees as well as other monies that would accrue to, or be raised for, the roll-out of infrastructure services within the County.

The recommendations in this Chapter are consistent with:

(i) Article 209 of the Constitution of Kenya which empowers County Governments to impose property rates and any other tax that they are authorized to impose by an Act of Parliament. Art. 209(4) of the Constitution further provides that the National and County Governments may impose charges for the services they provide.

(ii) Article 183(1) of the Constitution of Kenya requires the County Executive Committee to implement, within the County, National legislation to the extent that the legislation so requires.

(iii) Section 63 of the Physical and Land Use Planning Act, No. 13 of 2019 which empowers the County Executive Committee Member responsible for planning to levy a development fee against an application for development permission.

(iv) Section 106 of the County Governments Act, No. 17 of 2012 requires that County plans to be based on the functions of the County Governments as specified in the Fourth Schedule of the Constitution and take due cognizance of the financial viability of development programs.

(iv) Section 120(2)(b) of the County Governments Act requires that the amount individual users pay for services should generally be in proportion to their use of that service; and

(vi) Section 104(1)(d) of the Public Finance Management Act, No. 18 of 2012 requires County Treasuries to monitor, evaluate and oversee the management of public finances and economic affairs of the County Government, including mobilizing resources for funding budgetary requirements of the County Government and, putting in place mechanisms to raise revenue and resources.

6.2 How Are Counties Currently Funding Their Infrastructure?

As County Governments seek to effectively execute their service delivery mandate either through the County Government departments or the various Boards established under the Urban Areas and Cities Act, No. 13 of 2011, it has become evident that amid the devolution transition, increased development in the Counties, as elsewhere across the globe, is associated with a corresponding increasing demand for essential bulk infrastructure including water, sewer, stormwater management, roads, transport, solid waste, and electricity. Other services required as their respective populations continue to grow to include social services such as healthcare facilities, schools, parks and recreation, and other public amenities.

Funding to cover the cost of infrastructure is currently obtained from four main sources:

(i) ***National Government Transfers*** under Article 202(1) of the Constitution which requires that revenue raised nationally shall be shared equitably among the National and County Governments;[39]

(ii) ***Own Source Revenues*** under Articles 209(3) and 209(4) of the Constitution which entitles County Governments to impose property rates and entertainment taxes and such other charges for services they provide;[40]

(iii) ***Loans*** subject to the conditions imposed in Article 212 of the Constitution regarding National Government guarantee and County Assembly approval;[41]

(iv) ***Conditional Loans and Grants*** from Development Partners under agreements signed between development partners and National Treasury and line ministries.

[39]The Commission on Revenue Allocation (the "CRA") is mandated, pursuant to Article 216 (1)(a) of the Constitution of Kenya 2010, to make recommendations concerning the basis for equitable sharing of revenue raised by the national government between national and county governments. Article 216 (5) further requires the CRA to submit such recommendations to the Senate, National Assembly, the National Executive, County Assemblies and County Executives. The allocation of revenue between the National and County Governments is effected through the annual Division of Revenue Act (DORA) introduced to Parliament under Article 218 to give effect to the constitutional provisions of Articles 202 - 204 of the Constitution of Kenya. It is envisaged that a minimum of 15% of the national revenues are allocated to the county governments as County Equitable Share and a further 0.5% is allocated to marginalized counties under the Equalisation Fund. The maximum percentage of national revenues that the National Government may retain is therefore 84.5%. Finally, Article 218(1)(b) of the Constitution requires that while the Division of Revenue Bill is introduced to Parliament, a County Allocation of Revenue Bill be introduced to Parliament which divides among the counties the revenue allocated to the county government.

[40]These are effected through various legal instruments including the Public Finance Management Act, Urban Areas and Cities Act No. 13 of 2011, annual County Finance Bills, S. 120 County Governments Act No. 17 of 2012, Entertainments Tax Act, Cap 479 amongst others

[41]Article 260 of the Constitution defines "loan" to include any form of borrowing, lending, or deferred payment in respect of which money from a public fund may be used, or is required to be used, for payment or repayment.

Examples of some of these projects and programs are highlighted in Table 6.1. below[42]:

Table 6-1: World Bank-funded projects that involve the County Governments.

PROJECT	DATE	VALUE OF THE PROJECT	PURPOSE OF THE PROJECT	PARTICIPATING COUNTIES
Kenya Urban Support Programme	Commencement: July 26, 2017 Expiry: July 31, 2023	USD 300.00 million	To establish and strengthen urban institutions to deliver improved infrastructure and services in participating counties in Kenya.	All the 47 counties.
Nairobi Metropolitan Services Improvement Programme	Commencement: Commencement: May 10, 2012 Expiry: September 30, 2020	USD 330.00 million	To strengthen urban services and infrastructure in the Nairobi metropolitan region.	Nairobi, Kiambu, Machakos, Kajiado and Murang'a
Kenya Informal Settlements Improvement Programme	Commencement: March 24, 2011 Expiry: November 30, 2019	US$ 165.00 million	To improve living conditions in informal settlements in selected municipalities in Kenya	All the 47 counties
Second Kenya Informal Settlements Improvement Project	Commencement: August 7, 2020 Expiry: July 31, 2025	USD 165.00 million	To improve planning and delivery of infrastructure services in urban areas in selected counties.	All the 47 counties.
Kenya Municipal Programme	Commencement: May 4, 2010 Expiry: May 31, 2017	US$ 165.00 million	To improve planning and delivery of infrastructure services in urban areas in selected counties.	Thika, Eldoret, Machakos, Nyeri, Nairobi, Mombasa, Malindi, Embu, Kitui, Kericho, Naivasha, Nakuru, Kakamega, Garissa, and Kisumu
Water and Sanitation Service Improvement Project	Commencement: May 10, 2012 Expiry: N/A	USD 427.00 million	To increase access to reliable, affordable, and sustainable water supply and sanitation services; and to improve water and wastewater services in the areas served by Athi Water Services Board (AWSB), Coastal Water Services Board (CWSB), and Lake Victoria North Water Services Board (LVNWSB)	Kwale, Taita Taveta, Mombasa, Kilifi, Wajir,
Off-grid Solar Access Project for Underserved Counties	Commencement: July 26, 2017 Expiry: June 30, 2023	USD 150.00 million	To increase access to modern energy services in underserved counties of Kenya.	West Pokot, Turkana, Marsabit, Samburu, Isiolo, Mandera, Wajir, Garrisa, Tana River, Lamu, Kilifi, Kwale, Taita Taveta and Narok.
Kenya Devolution Support Project	Commencement: March 15th, 2016 Expiry: December 31st, 2020	USD 200.00 million	To strengthen the capacity of core national and County institutions to improve the delivery of devolved services at the County level.	Kenya's Ministry of Devolution and Planning (MoDP), National Treasury, and all the 47 County governments

Source: World Bank Website

Several Counties have transitioned, or are in the process of transitioning, from primarily agricultural or rural economies to urban or metropolitan economies ripe for increased local and foreign investment. However, the lack of enforcement of development controls has resulted in urban sprawl, replete with un-serviced and inappropriate or poorly sited developments and buildings without adequate facilities or infrastructure to support them.

[42]https://documents.worldbank.org/

As highlighted in previous chapters, current inadequate infrastructure and utilities have been associated with a history of poor service connections, poor network accessibility, inadequate capital investments, and inadequate operations and maintenance funding. As a result, the productivity of firms and individuals is compromised, there is a low attraction of foreign and domestic investments and poor exploitation of the vast opportunities presented within the Counties.

At the time of writing this Guidebook, it is evident that Counties are cash strapped, and efforts to fund their operations have ground to a near halt with several considering scaling down or entirely suspending all non-essential services. This is largely attributed to a long-standing stalemate between County Governments and the National government over the applicable formula for purposes of determining National government transfers under Article 202 of the Constitution and the proportionate share of such transfers amongst the Counties.

The need to expand and broaden their own source revenue base has never been more apparent than it is today. The proper implementation of development fees by County Governments is one way in which Counties can achieve this and increase their revenue within the ambit of the Constitution and the Physical and Land Use Planning Act.

6.3 Contextualising the County Infrastructure Burden

According to the World Bank, Kenya faces a significant infrastructure financing deficit estimated at USD2.1 billion annually and sustained expenditures of almost USD4 billion per annum will be required to meet the Country's infrastructure needs. With public debt standing at close to 57% of GDP, it is evident that this deficit cannot be met by public resources and the Country needs to mobilize the private sector and local and foreign investors to finance infrastructure needs. The Bank further estimates that increasing infrastructure financing could improve Kenya's per capita growth rate by 3%.[43]

The infrastructure deficit is not peculiar to Kenya at the National and subnational levels. The African Development Bank (AfDB) estimated in its African Economic Outlook 2018 that the continent's infrastructure needs stood at USD 130 – 170 million a year, with a financing gap in the range of USD68-108 billion per annum. These figures were far higher than previous estimates of USD93 billion in annual needs and annual financing gaps of USD31 billion published by *Agence Française de Développement* and the World Bank in the same period. The AfDB further noted that one of the key factors retarding industrialization has been the insufficient stock of productive infrastructure in power, water and transport services that would allow firms to thrive in industries with strong comparative advantages.[44]

The infrastructure deficits on the continent are also not unique to Africa. A comprehensive McKinsey study on transport, power, water, sanitation, and telecommunications systems found that the world needs to invest an average of USD3.3. trillion annually just to support currently expected rates of growth, with emerging economies accounting for some 60% of that amount.[45] Another study by the World Economic Forum estimates a global need for USD3,7 trillion in infrastructure investments each year, with only USD2,7 trillion invested by governments, leaving an infrastructure investment gap of about USD1 trillion per annum.[46]

Kenya, like the rest of the continent, must industrialize to reduce poverty and generate employment for the millions of young people who join its labour force every year. However, while the investments in large-scale infrastructure at the National Government level have been significant over the years through various programs funded via concessional loans and grants from international financial institutions and bilateral development partners, there has not been significant investment at the subnational level of a comparative nature.

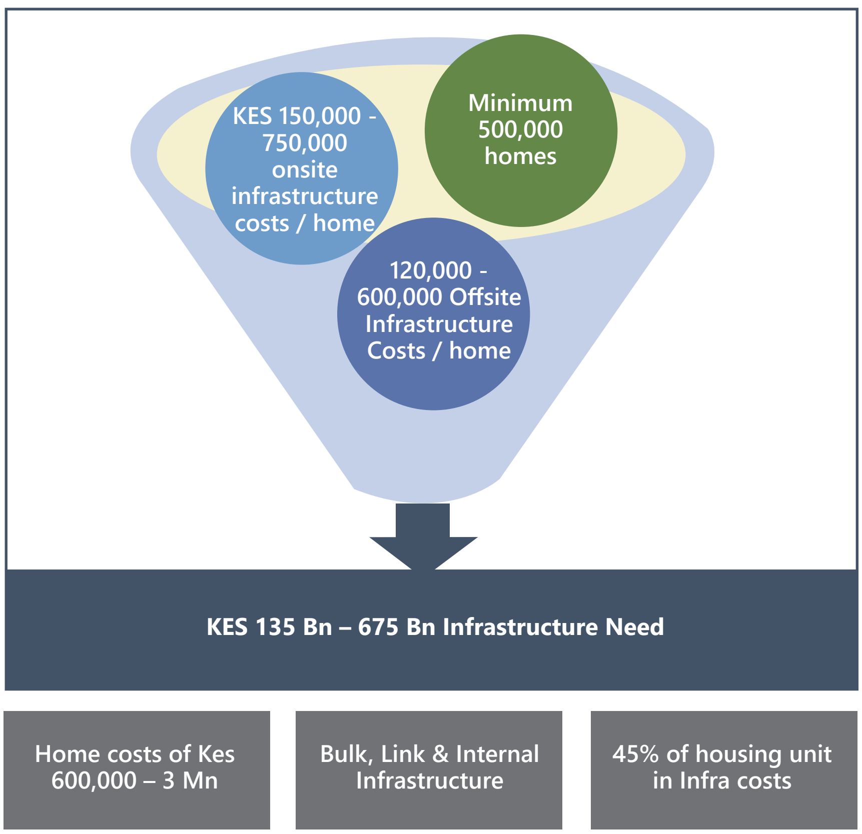
[43] Kenya: Enabling Private-Sector Participation in Infrastructure and Social Services, https://www.worldbank.org/en/about/partners/brief/kenya-enabling-private-sector-participation-in-infrastructure-and-social-services, 2018
[44] https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/2018AEO/African_Economic_Outlook_2018_-_EN_Chapter3.pdf, at 79
[45] McKinsey Global Institute, Infrastructure productivity: How to save $1 trillion a year, https://www.mckinsey.com/industries/capital-projects-and-infrastructure/our-insights/infrastructure-productivity
[46] WEF (World Economic Forum), Bain and Co., and World Bank. 2013. Enabling Trade Valuing Growth Opportunities. Geneva

At the County Government level, most Counties rely on their National Government allocations under Articles 202(1) and 204, or own source revenues under Article 209 of the Constitution, to fund their development programs. Conditional grants, such as those from the Road Levies under the Road Maintenance Levy Fund Act No. 9 of 1993, have also been largely utilized by the County Governments for maintenance of roads but these activities have been limited to rural roads, with minimal investments in rehabilitation of bitumen standard roads at the County level.

Developments such as special economic zones (e.g., Naivasha Industrial Park in Nakuru County, Dongo Kundu in Mombasa County,) and large property estates and other mixed-use developments (e.g., Tatu City in Kiambu County) across the country are bound to place a further strain on the existing infrastructure and finances necessary to implement the infrastructure to service these developments. These developments are aligned to the Government of Kenya's Big Four Agenda that focuses on Manufacturing, Food, and Nutrition Security, Universal Healthcare, and Affordable Housing.

On affordable housing, it is estimated that the costs associated with infrastructure delivery to service the 500,000 target homes is 25% for onsite infrastructure, and 20% for offsite infrastructure, computed as a percentage of the average housing unit cost. Based on these percentages, preliminary estimates show that over KES 135 billion for the bulk, link, and internal infrastructure is required to service these homes as per figure 6.1 below:

Figure 6-1: Estimated Infrastructure Needs for 500,000 homes



Source: Mary Chege

Section 107(2)(b) of the Public Finance Management Act, No. 18 of 2012 provides that *"...over the medium term, a minimum of thirty percent (30%) of the County Government's budget shall be allocated to the development expenditure..."*. This requirement is further reiterated in the Public Finance Management (County Governments) Regulations, 2015 under Regulation 25(1)(g)[47].

[47]Regulation 25(1)(g) provides that *"...pursuant to section 107(5) of the Act, if the county government actual expenditure on development shall be at least thirty percent in conformity with the requirement under section 107(2)(a) of the Act..."*

With mammoth investments needed in water and sewerage, transport, power, and solid waste management within Counties to support these developments, the allocation of 30% of their revenues to development projects is insufficient. County Governments will have to radically change their focus and strategy to accelerate their investments in key infrastructure. One of the key strategies at the sub-national level that has been employed in other jurisdictions has now been legitimized through Section 63 of the Physical and Land Use Planning Act, which gives County Governments a legal basis to levy development fees necessary to fund critical infrastructure associated with specific developments.

Development fees are recognized worldwide as a key source of revenue and an effective financing instrument available to sub-national governments which ensure that the people who benefit most directly from the availability of infrastructure, contribute their fair share to the cost of that infrastructure. Different jurisdictions refer to these fees by different names including development fees, development charges, community infrastructure levy, development impact fees, infrastructure services fees, engineering services contributions amongst others. The rationale is however the same, irrespective of the name by which the fee is known, which is, that the main beneficiaries of such infrastructure should make an appropriate and fair contribution to the cost of the infrastructure, without unduly burdening the County's ratepayers not associated with this additional infrastructure.

In the absence of an effective and efficient system of development fees, the County Governments will continue to face:

(i) an increased infrastructure deficit (both new and expansion); and
(ii) an increased burden on households and businesses that do not benefit from the specific infrastructure as the County Governments increase property rates and service charges in a bid to invest in additional infrastructure services that do not benefit these ratepayers.

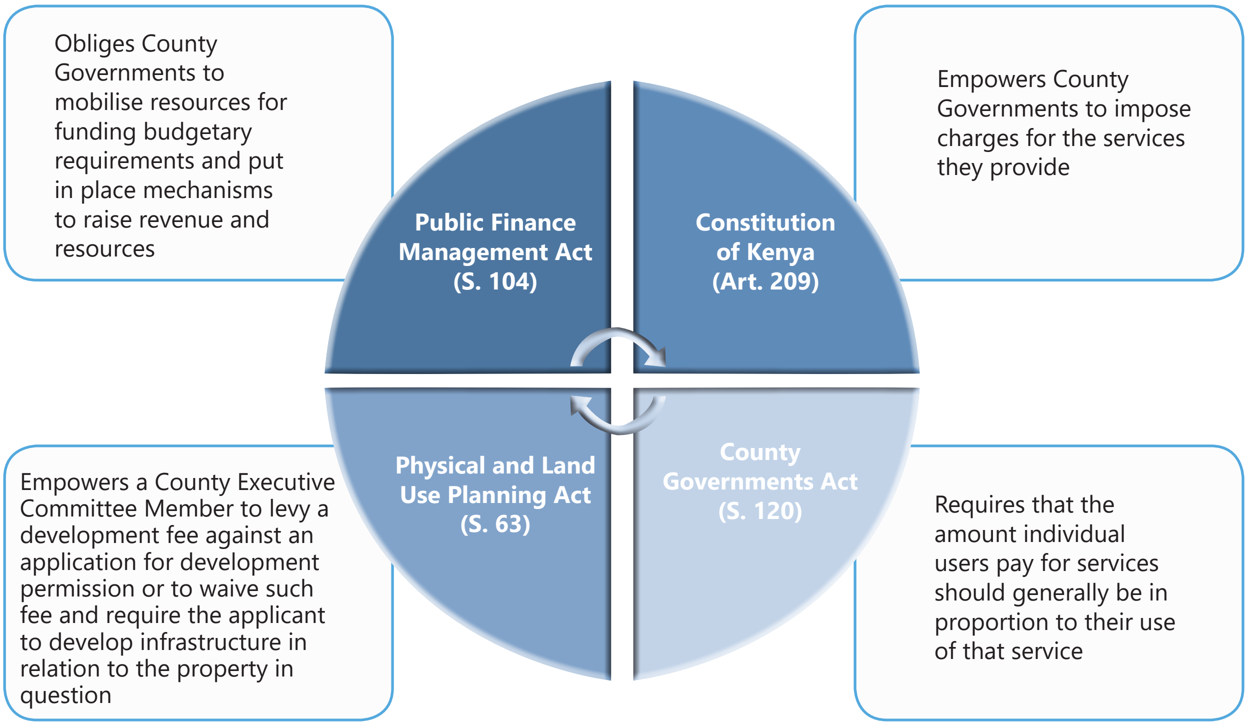
6.4 Legal Basis for Imposition of Development Fees

6.4.1 General

Development fees are an integral part of a broader legal framework for urban land development and County Government finance. Although largely premised on the notion that necessary infrastructure is the responsibility of the government, there should be clarity on the limits to the public sector mandate to provide bulk infrastructure in general, versus the private sector responsibility to contribute to bulk infrastructure resulting from the intensified use of land by the sector.

Until the recent enactment of the Physical and Land Use Planning Act in 2019, the absence of instruments to coordinate and regulate the latter obligation in Kenya has had a negative (overload) effect on existing infrastructure and resulted in an infrastructural deficit associated with upcoming large-scale projects within the Counties.

Figure 6-2: Regulatory and Institutional Framework Governing Development Fees



Source: Mary Chege

6.4.2 The Constitution of Kenya

The starting point for the discussion on development fees is Article 209(3) of the Constitution of Kenya which empowers a County Government to impose property rates, entertainment taxes, and "*...any other tax that it is authorized to impose by an Act of Parliament*." Art. 209(4) of the Constitution further provides that the National and County Governments may impose charges for the services they provide.

Article 183(1) of the Constitution requires that a County Executive Committee Member shall implement within the County, National legislation to the extent that the legislation so requires. To this end, section 63 of the Physical and Land Use Planning Act empowers the County Executive Committee Member to levy a development fee against an application for development permission, and to publish regulations determining the circumstances under which a development fee shall be levied, the rates payable, and circumstances under which a development fee may be waived.

Article 43 of the Constitution provides that every person has the right to, amongst others, "*...accessible and adequate housing ... and to reasonable standards of sanitation and to clean and safe water in adequate quantities...*".

At the minimum, it is envisaged that the following core functions of the County Government as outlined in Part 2 of the Fourth Schedule to the Constitution, would be necessary to ensure a decent standard of living for all its residents:

i. refuse removal, refuse dumps, and solid waste disposal.
ii. County transport (includes County roads, street lighting, traffic and parking, public road transport).
iii. electricity and gas reticulation and energy regulation.
iv. County public works and services (stormwater management systems in built-up areas, water, and sanitation services); and
v. Firefighting services and disaster management.

These functions are discharged through, among others, the provision, operation, and maintenance of physical infrastructure that makes it possible to service the County residents.

6.4.3 The County Governments Act

The County Governments Act, 2012 outlines the way County Governments may provide the services and perform the functions enumerated in the Fourth Schedule, while the Public Finance Management Act, 2012 prescribes how public finances may be planned and expended by the County Government in the performance of its functions, of which, are further enumerated in the Fourth Schedule of the Constitution of Kenya.

Section 113(2) of the County Governments Act requires that each County Integrated Development Plan shall provide clear input, output, and outcome performance indicators, including the percentage of households with access to basic services contemplated under Article 43 of the Bill of Rights of the Constitution.

The obligation to plan for future generations of the County is also emphasized in Section 102 of the County Governments Act, which provides that the principles of planning and development facilitation in a County shall protect the right to self-fulfilment within the County communities and with the responsibility to future generations. Section 103 further identifies one of the objectives of County planning as being 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 maintain a viable system of green and open spaces for a functioning eco-system"*.

The present practices for instance, of drilling boreholes and installing septic tanks for individual developments, as opposed to building large water treatment dams and sewerage facilities, fails to take cognizance of the impact of these boreholes on the water tables, and the pollution of the environment and water table resulting from the septic tanks, and their implications for our future generations.

Section 120 of the County Governments Act requires that a County Government or any Agency delivering services in the County shall adopt and implement tariffs and pricing policy for the provision of public services. Such a tariff policy is required to reflect several guidelines, some of which include:

(i) the amount individual users pay for services should generally be i*n proportion to their use of that service*.
(ii) tariffs shall reflect the costs reasonably associated with rendering the service, including the capital, operating, maintenance, administration and replacement costs, and interest charges.
(iii) provision may be made in appropriate circumstances for a surcharge on the tariff for service; and
(iv) Provisions may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users.

Section 120(4) of the County Governments Act also permits the County Government to differentiate between categories of users, debtors, service providers, services, service standards, geographical areas, and other matters, if the differentiation does not amount to unfair discrimination. Finally, the County Government is mandated to make laws and regulations to give effect to the implementation and enforcement of tariff policies.

6.4.4 The Physical and Land Use Planning Act

Section 63 of the Physical and Land Use Planning Act empowers a County Executive Committee Member responsible for matters relating to physical and land use planning in the respective County, to levy a development fee against an application for development permission and, where such fees are waived, to require that an applicant for development permission should develop the necessary infrastructure about the property in question, for general use by the residents of the area where the property in question is located. The way such fees shall be levied, together with the rates payable and circumstances for a waiver, are to be stipulated in Regulations published in the Kenya Gazette.

6.4.5 The Public Finance Management Act

Finally, Section 104(1)(d) of the Public Finance Management Act, requires County Treasuries to monitor, evaluate and oversee the management of public finances and economic affairs of the County Government, including mobilizing resources for funding budgetary requirements and putting in place mechanisms to raise revenue and resources.

6.5 Principles Guiding the Imposition of Development Fees

As County Governments prepare to implement development fees, care must be taken to reflect the principles enshrined in the various provisions of the Constitution, the Physical and Land Use Planning Act, the Public Finance Management Act, the County Governments Act, and the Urban Areas and Cities Act. Key among these include:

i. Equitable & Justifiable

Section 120(3)(a) of the County Governments Act provides that users of County services should be "…*treated equitably in the application of tariffs, fees, levies or charges*…". This implies that the development fees should be reasonable, balanced, and practical to be equitable to all stakeholders.

The key function of an efficient system of development fees is to ensure that those who benefit from new infrastructure investment, or who cause off-site impacts, pay their fair share of the associated costs of such infrastructure.

This position is entrenched in the County Governments Act under Section 120(3)(b) which provides that "…*the amount individual users pay for services should generally be in proportion to their use of that service*".

A key principle of local revenue management is that the services should be financed by their beneficiaries – "*the general benefit principle*"- directly or indirectly. Those residents of the County who are therefore not associated with the infrastructure installed for a specific development, should therefore not be burdened by it, and the development should ideally pay for itself.[48]

On the other hand, County Governments need to ensure that the imposition of development fees upon new developments to finance specified infrastructure, should not impose an unfair burden on such developments and adversely impact their viability. The ability to strike this balance is important, so as not to drive away or impede much-needed development within their respective jurisdictions.

The development fees should therefore be applicable after an assessment of the additional infrastructure needs and/or necessary improvement programs, thereby ensuring that new developments are required to pay only that portion of the costs of constructing the infrastructure facilities specifically and uniquely attributable to the new development(s).

ii. Limited to Purpose

Services provided by County Governments should be linked to the revenue sources needed to finance them. Development fees paid under section 63 of the Physical and Land Use Planning Act should therefore be dedicated to the exclusive purpose for which they were raised, i.e., paying for the infrastructure services, whether such payment is made directly or as a pledge against bonds, revenue certificates, or other obligations of indebtedness.

The Development fees a developer should make is limited to the expected impact on the infrastructure and services. Property developers in the County should not be asked to contribute to the backlog, or to provide services exceeding the impact the land-use change will have. The new development should therefore not subsidize existing communities, as the County Governments should fund the backlog and other infrastructure from funds specified for this purpose.

[48]Farvacque-Vitkovic, Catherine, and Mihaly Kopanyi, eds. Municipal Finances: A Handbook for Local Governments. Washington, DC: World Bank. doi:10.1596/978-0-8213-9830-2. License: Creative Commons. Attribution CC BY 3.0 IGO at 150

iii. Predictability

Development Fees imposed by a County Government should be a predictable, legally certain, and reliable source of revenue for providing the necessary infrastructure. To promote predictability and coordination, the costs associated with County infrastructure should be established before capital grants or subsidies from National Government or other funding. . sources are applied so that there is full transparency regarding the funding of County infrastructure.

This is further supported by Section 107(2)(g) of the Public Finance Management Act which requires that County Governments should ensure a reasonable degree of predictability concerning the level of tax rates and tax bases. By knowing the estimated cost of the Development Fees beforehand, developers will be able to build that cost into their viability calculations before lodging an application to the County Government for approval of the proposed development.

The Development Fees are additional and supplemental to, and not in substitution of, any other requirements imposed on the development by the relevant County Government. In no event should a property owner or developer, therefore, be obligated to pay for infrastructure services in an amount exceeding the amount calculated for that specified development.

Where the Development Fees are reviewed, it is important to note that Regulation 65 of the Public Finance Management (County Governments) Regulations 2015, permits County Governments to review all fees, charges or rates, scales, or tariffs of fees that are not fixed by any law that relate to revenue accruing to the County. Information on the tariff structure is required to be disclosed in annual reporting including, information on exemptions, discounts, free services, and any other aspect of material influence on the County's revenue yield.

iv. Full Cost Recovery

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. Under Section 120(3)(d) of the County Governments Act, the imposition of the development fees related to the provision of infrastructure services within the County needs to be reflective of not just the capital costs associated with rendering the service (e.g., road infrastructure or sewerage system), but also those costs relating to operating, maintenance, administration, and replacement costs, and interest charges.

The development fees should therefore at the minimum:

(i) be determined on identifiable and measurable costs to avoid distortions in the economy and in patterns of spatial development;
(ii) not be used as a spatial planning policy instrument. Inevitably, however, removing the current, implicit subsidies for urban sprawl arising from the under-recovery of Development Fees would lead to less sprawl; and
(iii) where appropriate, be levied on a sectoral or geographic scale to more accurately approximate costs within a specific impact zone.

v. Administrative Ease and Uniformity

The determination, calculation, and operation of development fees should be administratively simple and transparent. Citizens should be able to access clear and accurate information in reasonable detail on how the Development Fees are computed, which developments are subject to, or exempt from, the levies, the procedure for exemption for eligible developments or portions thereof, etc.

Finally, the roles, duties, and responsibilities of the County Government and the developer should be unambiguous, as should the complete process applicable for the computation, payment, or exemption of the development fees. Details on the enabling legislation and all administrative forms, development fee calculators, County Spatial Plans, County Master Plans, County Infrastructure Plans per affected services, and other related documents should be publicly available at the County Offices, Website, and such other medium as the County Government may choose, to make such information and documentation publicly available under the provisions of Part IX of the County Governments Act. Such a system will provide greater certainty to landowners, developers, and investors while improving administrative efficiencies within the County Government.

6.6 Justification for Development Fee Implementation Guidelines

One of the key factors identified by the African Development Bank explaining the low infrastructure provision on the African continent is weak legal, regulatory, and institutional frameworks that serve as major constraints to attracting private capital to infrastructure.[49] They have been either ineffective or non-existent and when laws are enacted, they may not be implemented or may lack the necessary framework to ensure actual implementation.

The lack of appropriate legal, regulatory, and institutional frameworks not only increases project costs but also hampers the ability of the private sector to engage appropriately and effectively with public sector Agencies as each project is treated on a case-by-case basis, which potentially opens doors to corruption and uncompetitive pricing as well as undermining infrastructure maintenance and sustainability of any benefits that may accrue with such infrastructure. The ad hoc processes further impact the ability of the public sector to develop the necessary skill set required to not only assess projects and their associated infrastructure service needs, but to also define these infrastructure needs in well-articulated infrastructure master plans within their respective jurisdictions.

Finally, even where a sufficiently skilled workforce may exist within the public bureaucracy, poor coordination between relevant National and County Government processes, or within various County Government departments, makes the process complex and time-consuming, further discouraging investors.

It is recommended that these Guidelines form the basis for adoption by County Governments across the Country, subject to such customization necessitated by circumstances peculiar to the respective Counties. In so doing, developers can expect standard terms and conditions irrespective of the County in which they operate, thus promoting development across the Country as opposed to specific Counties. Some of the benefits that would accrue to both County Governments and developers have been summarised in Table 6.2 below:

Table 6-2: Summary of Benefits of Implementing Development Fees

Benefits to County Governments	Benefits to Developers	Benefits to Citizens
Enhance the revenue streams for financing strategic County infrastructure for service delivery	Assurance of a mechanism to finance new infrastructure for the proposed development and provide a basis to hold County governments accountable for timely delivery of required infrastructure	Assurance that infrastructure required to service new development is paid by direct beneficiaries so that existing residents do not subsidize new developments
Promotion of integrated planning and budgeting among spheres of government by ensuring each sphere bears the full cost of infrastructure provision and adequate resources allocated to service infrastructure for poor households	Developers involved in the provision of affordable housing are assured of adequate allocation of funding for infrastructure to service these houses as County funding is released from infrastructure provision for higher-income developments	Increased infrastructure investment to service poor households reduces the sprawl of informal settlements without adequate infrastructure
Spatial impact of development charges has the potential to guide planning by discouraging urban sprawl which perpetuates unequal spatial patterns thus reversing the unsustainable low-density expansion of urban and peri-urban settlements not supported by requisite infrastructure	Developers are encouraged to undertake infill development by investing in areas where infrastructure already exists	Residents assured of developments that are supported by adequate infrastructure

[49]https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/2018AEO/African_Economic_Outlook_2018_-_EN_Chapter3.pdf, at 76

Provide pledgeable revenue stream to support borrowing by counties for infrastructure with development charges being pledged to repay this debt which will reduce finance charges in rates and tariffs	Provide a mechanism to compute the costs of the infrastructure associated with the development and accurately pass this on to the end-users in a coherent manner	Reduction in rates and tariffs reduces the cost burden of new infrastructure on existing residents
Uniformity across County governments on the application of Development Fees which will eliminate unfair competition and/or treatment of developers	Ensures that developers only pay their proportionate share of the infrastructure which are directly attributable to their development	Residents in less urbanized areas are assured of the availability of adequate infrastructure thus reducing mobility and strain on key urban centers and cities
Enhanced ability to provide sufficient infrastructure in a timely and efficient manner to support property developments and economic development	Availability of infrastructure unlocks further development in a specified area thus increasing the value of the developments	Assurance that the requisite infrastructure will be available for new developments that they are moving into thus encouraging economic investments in the area

Source: Mary Chege

With the cost of infrastructure for specified property developments being directly financed through a development fee on a "user pays" principle, County Governments would be able to release resources that would otherwise have been dedicated to meeting these infrastructure needs, to be spent on other development priorities.

6.7 Classification of Infrastructure Services

The physical and land use planning linkage with adequate infrastructure can be promoted by specific County infrastructure development policies that integrate land use planning with the environment, and the different types of infrastructure within different sectors to build a more inclusive society. Section 8 of the Third Schedule of the Physical and Land Use Planning Act, therefore, requires a County Government to have due regard to the availability of various factors including *adequate infrastructure* where development involves the erection of a building.

Figure 6.3 below summarises the key categories of infrastructure necessary to service any development:

Figure 6-3: Key Categories of infrastructure Services

Internal	• infrastructure **within** the development site boundary to service that development
External Bulk	• infratructure external to the development site boundary servicing **multiple users** at a county-wide scale (new or existing)
External Link	• infrastructure external to the development site boundary required to **connect** internal infrastructure to existing or proposed external infrastructure

Source: Mary Chege

The Second Schedule of the Physical and Land Use Planning Act provides further guidance on the scope of analysis in respect of housing and infrastructure that needs to be undertaken, within the context of a local physical and land use development plan. These include:

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 use.
iv. Power lines and wayleaves.
v. Water and sewerage networks.
vi. Housing and infrastructure programs.
vii. Transportation and communication analysis.
viii. Roads networks, footpaths, cycleways, railway lines, depots, waterways, docks, etc; and
ix. Telephone lines.

The components of what constitutes each of the three infrastructure categories can therefore be further broken down as follows (list not exhaustive):

Figure 6-4: Key Components of Internal and External Infrastructure Services

Internal Infrastructure	External Bulk Infrastructure	External Link Infrastructure
• Internal roads • water reticulation • storm water mangement • solid waste management • sanitation / sewerage • parks and recrational areas • last mile power connectivity	• sewerage plant • bulk water • bulk power • solid waste • roads and storm water management • fire fighting and disaster management	• sewerage trunk lines • water trunk lines • access roads • LV network to transformer

Source: Mary Chege

i. Internal Infrastructure Services

This is infrastructure whose installation is the sole responsibility of the developer within the boundaries of the development in question. While these costs are traditionally not included in the development fees, every County Government will have to determine its enforcement mechanism for ensuring that this infrastructure is indeed rolled out within the development.

Historical experience has shown that developers are prone to receiving approval for their site which is, conditional upon installation of internal infrastructure services, but who subsequently fail and/or neglect to install this infrastructure.

ii. External Bulk Infrastructure

This Infrastructure usually includes:

- Potable water provision.
- Sewerage collection and treatment.
- County roads and associated infrastructure.
- Storm water management.
- Solid waste disposal (landfills and transit stations)
- Electricity distribution;[50] and
- Public transportation.[51]

[50]Under the Fourth Schedule of the Constitution, the reticulation of electricity is a joint function between National and County Governments and the Energy Act, No. 1 of 2019 makes requires county governments to participate in the distribution of electricity within their jurisdiction.

[51]The provision of public transport is a devolved function under the Fourth Schedule of the Constitution. As with electricity reticulation, several county governments are undertaking preliminary studies to determine the viability and necessary structures for the provision of public transport for its residents in various parts of the County. At present, the immediate need has been identified for a rapid transit system within the urban centres of the Nairobi Metropolitan Area comprised of five counties (Nairobi, Kiambu, Machakos, Kajiado and Murang'a counties), Mombasa County and Kisumu County.

It is good practice, and indeed imperative, to ensure that developers pay a pro-rata share of the cost of the Bulk Infrastructure directly associated with the development.

Where the County Government and the developer agree that the developer will install aspects of bulk infrastructure, the cost of that installation can be set off against the developer's overall development fee liability. Should the set-off value described here be greater than the total development fee for bulk infrastructure services for all phases of development, the developer shall be responsible for the additional cost.

iii. External Link Infrastructure

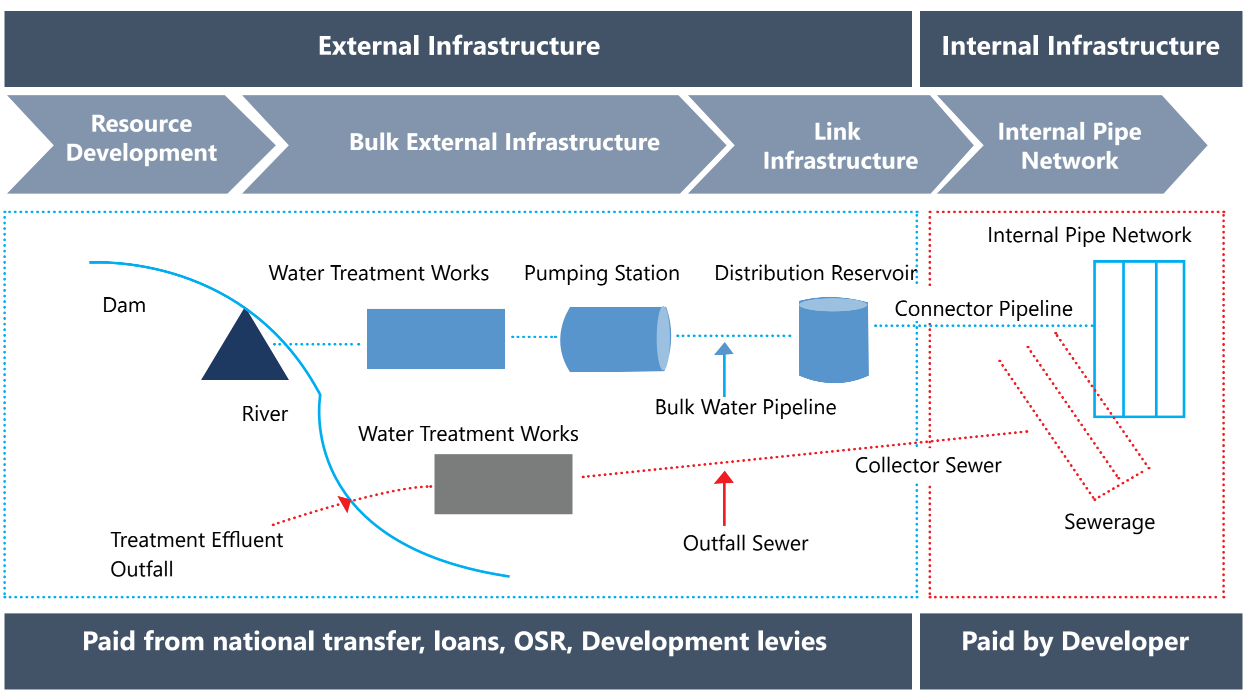
Where development takes place ahead of planned infrastructure provision, link external infrastructure services may be required to link the development's internal infrastructure to external infrastructure, and to maintain the functionality of the overall network.

In the case of link infrastructure, the installation is generally the direct responsibility of the developer who is liable for the costs associated with connecting the internal infrastructure to the external bulk infrastructure (e.g., the sewerage trunk lines necessary to connect to the sewerage plant). In this case, the value of the required link infrastructure must be determined by the developer, who will be responsible for the full cost of such link infrastructure component.

Where the County Government identifies that the link infrastructure installed by the developer must be of a greater capacity than that required by the specific land development, and to maintain the functionality of the County Government's long-term plans and master planning as envisaged in the County Governments Act, then the County Government may require that the developer install such greater capacity. The cost of the additional link infrastructure services can then be offset against the developer's overall development fee liability.

Figure 6.5 below captures the role of the different key players and the source of financing of the three types of infrastructure services discussed in this section, using the example of water and wastewater treatment works.

Figure 6-5: Development Fees Principle – Water and Wastewater Treatment Works



Source: Mary Chege

In an ideal situation, the actual infrastructure required should be determined for each development and charged to the developer concerned. However, because this is not always practically possible, regard must be had to the various principles outlined in this Chapter when determining a suitable formula for arriving at the actual development fee to be imposed on developers.

6.8 Identifying Applications That Would Attract Development Fees

The Physical and Land Use Planning Act prohibits any person from carrying out development within a County without development permission granted by the relevant County Government. Any such unauthorized development is categorized as an offense that is punishable by the provisions of the Act. Further, a person who undertakes a development without the requisite permission would be required to restore the land on which the development is taking place to its original condition, or as near to its original condition, within ninety days of being directed to do so by the County Government.[52]

Section 55 of the Physical and Land Use Planning Act outlines the objectives of development control as, but not limited to, ensuring orderly physical and land use development, promoting public safety and health, and ensuring orderly and planned building development, planning, design, construction, operation, and maintenance. The Third Schedule to the Physical and Land Use Development Act further lists the applications that are subject to the development control processes and procedures as contemplated in Section 55. These include:

i. Change of User.
ii. Extension of Users.
iii. Extension of Lease.
iv. Sub-division scheme and amalgamation proposals.
v. Building plans.
vi. Processing of easements and wayleaves.
vii. Siting of educational institutions, base transmission stations, petrol stations, eco-lodges, campsites, power generation plants, and factories.
viii. Advertisements; and
ix. Others as the County executive committee member may prescribe from time to time.

Of the eight development control processes and procedures enumerated in the Third Schedule above, the County Government is obliged to have due regard to the *availability and adequacy of the infrastructure* as far as permissions for Change of User, Extension of Users, Extension of Lease, sub-division scheme and amalgamation proposals and building plans are concerned.

About sub-division schemes and amalgamation plans, the County Government is obliged to consider the linkage and indication of classified roads, in addition to the availability and adequacy of the infrastructure.

Finally, in analysing the adequacy of infrastructure addressed in any local physical and land use development plan, Section 48, and the Second Schedule to the Act guide on the matters that must be considered. Section 5(e) and (f) of the Second Schedule, requires that the housing and infrastructure analysis and transportation and communication analysis should include:

i. Housing occupancy rates, accommodation density, housing requirements, type of residential areas, and industrial locations.
ii. Education.
iii. Recreational areas and other public-purpose land use.
iv. Power lines and wayleaves.
v. Water and sewerage networks.
vi. Housing and infrastructure programs.
vii. Road networks, footpaths, cycleways, railway lines, depots, waterways, docks, etc; and
viii. Telephone lines.

[52] Sections 57 and 58, Physical and Land Use Planning Act

In evaluating development applications, the County Government is obliged to ensure that all relevant agencies and authorities review and comment on the application and in so doing, address the following matters (list not exhaustive):[53]

i. Roads and transport.
ii. Public works and utilities; and
iii. Urban development.

Under the Physical and Land Use Planning Act, County Governments have the powers to impose planning conditions and infrastructure obligations and to determine the circumstances under which a development fee is applicable on private sector developments. As indicated earlier in Chapter Two, development fees are a one-off capital charge to accommodate the impact of intensified land use.

Whilst no clear rationale for why the County Governments should impose development fees is provided, the justification can be inferred from the provisions of subsection (3) which provides thus:

> *Where a development fee has been waived about an application for development permission, a County Executive Committee Member may require that applicant to develop infrastructure about the property in question for general use by the residents of the area where the property in question is located…*

Based on the above, it can reasonably be deduced that the purpose for which the development fee is to be imposed is, therefore, to enable the County Government to *"…develop infrastructure about the property in question for general use by the residents of the area where the property in question is located…"*

By limiting the infrastructure to that which would be required for general use by the residents of the area where the property in question is located, section 63 of the Act captures the spirit of the "benefits principle", which posits that the main beneficiaries of infrastructure should make an appropriate and fair contribution to the cost of the infrastructure without unduly burdening the rest of the taxpayers that are not associated with that infrastructure. The development fee should therefore ensure that the pro-rata share of actual capital costs to service a particular development is borne by the persons who would benefit from the intensified land use.

In keeping with clause 63 of the Act, it is critical to incorporate a development fee that is to be paid to the County Government by developers as an integral part of the development application process and granting of building permits. Based on comparative practices in other jurisdictions, it is envisaged that these Development Fees will go towards the expansion and upgrading of central systems (when available at reasonable cost and timeframe), or towards integrated neighbourhood systems such as sewage systems.

By the development control processes and procedures enumerated in the Third Schedule that specifically require the County Government to have due regard to the *availability and adequacy of the infrastructure,* the following applications would therefore attract development fees as envisaged under section 63 of the Physical and Land Use Planning Act:

[53]Section 60, Physical and Land Use Planning Act

Table 6-3: Scope of Infrastructure Considerations per Development Control Category

Application Type	**Scope of Infrastructure Considerations**
Change of User	Infrastructure availability and adequacy
Extension of Users	Infrastructure availability and adequacy
Extension of Lease	Infrastructure availability and adequacy
Sub-division scheme	Linkage and indication of classified roads and other infrastructure availability and adequacy
Amalgamation proposals	Linkage and indication of classified roads and other infrastructure availability and adequacy
Building plans	Access to and parking on land which the building is to be erected Provision for rainwater harvesting facilities and water storage tanks in every building Infrastructure adequacy

Source: Mary Chege

6.9 Limitation of Development Fee Mandate

Fiscal theory suggests that local fees and taxes should ideally bear three features – they are easy to administer locally, are imposed on residents, and do not raise competition with other local or central governments. The tax base should therefore be immobile so that the County Governments can vary the rate without the taxable base moving somewhere else. It should be visible to ensure accountability and residents should perceive the tax as fair.[54]

In determining which of the infrastructure services enumerated in section 5(e) and (f) of the Second Schedule of the Physical and Land Use Planning Act may attract development Fees, the County Government must have due regard to those functions that it is empowered to provide by the Fourth Schedule of the Constitution. The County Government cannot, therefore, charge development fees associated with any infrastructure that it does not have a direct responsibility to provide.

The Fourth Schedule of the Constitution provides guidance on which infrastructure services associated with specified developments will likely attract Development Fees as outlined in Table 6.4 below:

[54]Farvacque-Vitkovic, Catherine, and Mihaly Kopanyi, eds. Municipal Finances: A Handbook for Local Governments. Washington, DC: World Bank. doi:10.1596/978-0-8213-9830-2. License: Creative Commons. Attribution CC BY 3.0 IGO at 149

Table 6-4: Allocation of Key Infrastructure Services to be considered under the Physical Planning Act and the Fourth Schedule of the Constitution of Kenya

Section 5 (Schedule 2) Physical and Land Use Planning Act	Part 2, Fourth Schedule, Constitution of Kenya
Education	Pre-primary education. village polytechnics. home craft centers; and childcare facilities.
Recreational areas and other public purpose land uses [55]	sports and cultural activities and facilities; and county parks, beaches, and recreation facilities.
Power lines and wayleaves	electricity and gas reticulation[56]
Water and sewerage networks;	stormwater management systems in built-up areas; and water services; and sanitation services.
Housing and infrastructure programs;	refuse removal, refuse dumps, and solid waste disposal Firefighting services and disaster management.
Road networks, footpaths, cycleways, railway lines, depots, waterways, docks, etc.; and	County roads Street lighting Traffic and parking Public transport Ferries and harbors
Telephone lines.	N/A

Source: Mary Chege

6.10 Methodology for Computing Development Fees

A County Government that publishes regulations for the imposition of development fees to be imposed under section 63 of the Physical and Land Use Planning Act must ensure that the developers will only be required to cover the provision of infrastructure for which the County Government is responsible under the Fourth Schedule of the Constitution. Further, any regulations must ensure that there is no duplication of costs in the way development fees are calculated and must, therefore, set out the methodology for calculation of a unit cost per infrastructure service.

In determining the development fees, the relevant County Government should have due regard to the provisions of section 107(2)(g) of the Public Finance Management Act, which requires that there be a reasonable degree of predictability concerning the level of tax rates and tax bases, considering any tax reforms that may be made in the future. This, therefore, means that it is imperative for County Government Regulations to provide developers with sufficient details to determine not only when the development fee will be payable, but also the rates that shall be payable by the developer.

While the imposition of development fees has been legally formalized through Section 63 of the Physical and Land Use Planning Act, their application is not a new phenomenon in urban Kenya. An example of this is demonstrated through the Nairobi City County which imposed an infrastructure development fee computed at 0.05% of the estimated cost of a proposed new building, which had to be paid before obtaining development permission.[57]

[55]The Physical and Land Use Planning Act does not define what constitutes a "public purpose" but this is clarified in the subsidiary legislation promulgated in October 2019 by the Cabinet Secretary which defines a "public purpose" to include the purposes of (list not exhaustive and limited to county functions):
(a) Transportation including roads.
(b) Public buildings including schools, libraries, hospitals.
(c) Public utilities for water, sewerage, electricity, gas; and
(d) Public parks, playgrounds, gardens.

[56]The Energy Act, No. 1 of 2019 provides a framework for county governments to distribute electricity as well as reticulate gas to its residents. With the Government of Kenya targeting universal electricity access, the performance of this key function by the county government and ensuring that every household within its jurisdiction has access to electricity is an integral part of attaining this universal access and no development permission should be granted where adequate electricity reticulation is not demonstrated.

[57] The last known published mention of such a levy by the City County was in 2010 when the then City Council of Nairobi gazetted its fees and charges for that financial year under the Special Gazette Notice No. 12582 of October 15, 2010.

Other examples include obligations under the Streets Adoption Act[58] under which property owners undertaking construction, and who intended to layout, construct, widen or alter an unadopted street, were required to submit applications to the local authority with detailed plans for such a street. Such plans are to outline the intended levels and gradients of the street, and specific details on mode of construction, sewage and stormwater drainage, lighting, alignment, and spaces to be reserved for the planting of trees and other flora, amongst other information. The local authority would, once such unadopted streets were completed and properly paved at the cost of the property owner to the satisfaction of the local authority, declare such an unadopted street to become an adopted street and its maintenance would henceforth be at the expense of the local authority in question. The local authority is empowered, like it was under the Subdivision Rules promulgated under the now-repealed Physical Planning Act, Cap 286, to undertake the works at the expense of the property owners and was empowered to recover sums invested in such construction from the property owners.

The implementation of the provisions of the Street Adoption Act has been ad hoc, and the same fate mustn't befall Section 63 of the Physical and Land Use Planning Act. There is, therefore, need to develop and promulgate substantive and clear regulations to operationalize the implementation of development fees, to ensure they are effectively and efficiently collected and utilized in a manner that is consistent and easy to manage, for both the County Governments and the developers.

The County Government should therefore be able to calculate the Development Fees to approximate as closely as possible the *pro rata* share of the actual costs of related County infrastructure needed to service a particular development. The determination of costs is based on estimated unit costs for each service, which are calculated based on the various key county planning instruments and guidelines including but not limited to the following:

(i) ***County Spatial Plan (County Physical and Land Use Plan)*** that includes generic land uses and densification. As required by the County Governments Act, the County Spatial Plan should, in addition to other information, indicate where public and private land development and infrastructure developments should take place. This information would be used to develop optimum service models for roads, transport, water, sewerage, stormwater, solid waste, and electricity to correspond to the future land-use scenario.

(ii) A ***service master or framework plan*** for each infrastructure sector that identifies future infrastructure requirements based on identifiable impact zones (or sub-areas) of the County Government, provided that such plans only need exist for the impact zones in which development fees are to be levied; and

(iii) ***A comprehensive infrastructure plan*** that establishes the levels and standards of service, current replacement costs of facilities, depreciation, and renewal requirements for each service sector for which development fees will be calculated. For purposes of this requirement, current replacement costs include all land costs, professional fees, materials, labour, preliminary and general items. The capital cost to address infrastructure backlogs is excluded from the total cost. Each County must develop engineering ***standards for infrastructure*** to ensure that all infrastructure installed within the County meets the requirements as set out in any National or County guidelines for human settlement and planning, and minimum standards stipulated for the civil infrastructure services in respect of such human settlements, including various design manuals and engineering practice in the industry as amended from time to time.[59]

It is imperative that County Governments can compute the average fixed cost per unit of infrastructure to be installed subject to the provisions of Section 120 of the County Governments Act, regarding full cost recovery of such infrastructure e.g., (capital costs, operating maintenance, administration, replacement, and interest charges associated with such infrastructure asset).

[58]Cap 406, Laws of Kenya
[59]Examples of such manuals include the *Roads Design Manual,* Ministry of Transport & Communication, *1987 and the Street Design Manual for Urban Areas in Kenya,* 2019

Referring to other jurisdictions that have successfully implemented development fees, or a variation thereof, Table 6.5 below provides a summary of the standard units of measurement that County Governments will need to consider when conducting an impact assessment of development on infrastructure services:

Table 6-5: Standard Units for Measurement of Impact on County Infrastructures

Service	Factor	Yardstick	Unit of Measure
Roads	Increased road capacity required - the 'width' component or 'capacity' component	Increase in vehicle trip generation	Vehicle trips/day
	Reduction in road life as a result of the development – the 'strength' component	Increase in heavy vehicle traffic	Heavy Load Vehicle trips /day
	Boundary roads	Street frontage	Kms required
Sanitation	Additional sewerage effluent generated	Average Annual Daily Outflow	kℓ/day
Solid Waste	Increase in landfill space required and transfer station capacity	Solid Waste Generation Capacity	Solid waste tonnage per day
Storm Water	Increase in the overall quantity and the peak flow rate of the runoff	Runoff coefficient	Impervious area
		Area of the development	m^2
Water	Additional consumption per distribution or reservoir zone	Average Annual Daily Demand (AADD)	kℓ/day
Electricity	Increase in peak capacity requirement per substation zone	After Diversity Maximum Demand (ADMD)	kVa/day
Transport	Increased number of passengers using public transport and requiring additional facilities	Person trip generation	Person trips per day

Source: National Treasury, South Africa[60]

In appropriate circumstances, the County Government may further require that a developer provides infrastructure services to a higher capacity than warranted by the proposed development to accommodate future developments. In such circumstances, and when developers are required to fund the provision of bulk infrastructure services, suitable arrangements need to be incorporated in a Services Agreement relating to control over the costs of such external services, and the refund (where appropriate) of costs over the costs which the developer would have incurred if normal capacity standards were applied. Such arrangements may include the application of set-off of development fees against such costs.

In all circumstances, where lawful development exists on the site to be redeveloped, development fees should be required only to the extent that the redevelopment for which approvals are required under the Physical and Land Use Planning Act, place an additional burden on the existing bulk services infrastructure.

6.11 Issues to Consider When Apportioning External Infrastructure Services to Multiple Developers

The degree of investment in new infrastructure and impact on existing infrastructure by a proposed development is largely determined by the type of development under consideration. In determining the proportionate share of an infrastructure facility, the County Government has to evaluate the cost of such infrastructure service specifically and uniquely attributable to the proposed development after consideration of the generation of additional demand from the development, and any appropriate credits for the contribution of money, and land or taxes dedicated for such projects.

County Governments therefore must develop the internal capacity – or outsource professional advisors – to undertake a comprehensive needs assessment for additional infrastructure services, to determine what is specifically and uniquely attributable to each proposed development.

[60]Policy Framework for Municipal Development Charges, National Treasury – Intergovernmental Relations, 2014

i. Brownfields Developments

In this scenario, sufficient existing bulk infrastructure services are available within the County, and the construction of new bulk services is not required to service the new development. The developer should, however, make payment of development fees for his portion of the capacity of the existing infrastructure where it is evident that the development will increase pressure on such infrastructure (e.g. the demolition of a single four-bedroom home on a one-acre property in Kileleshwa, Nairobi to construct 100 two and three-bedroom apartment units that will need to be connected to water and sanitation services, etc).

It is recognized that it would likely be complicated, impractical, and time-consuming to calculate this precisely for each development on a case-by-case basis, and it is therefore recommended that County Governments apply the guidelines provided in Table 6.5 above for purposes of determining the standard units of measurement of impact on County infrastructure by such a development.

ii. Greenfield Developments

In this scenario, no bulk services are available to service the new development, and all bulk services still need to be constructed. The developer would therefore be required to pay a development fee for their portion of the capacity of the bulk services to be installed, based on the units of measurement outlined in Table 6.5 above.

However, if the development is self-contained and all bulk services are only for that development, then the actual costs of the infrastructure services can be calculated and charged to the developer in full. This can occur where the proposed development is of an unprecedented scale or will give rise to an exceptional dependence on or independence from one or more County infrastructure services.

Some larger developments such as Tatu City in Kiambu County would be suitable developments for this scenario given the scale of external infrastructure needed to service the mixed-used development over the long term.

iii. Combined Approach

In this scenario, use can be made of spare capacity in some bulk services, but additional bulk services may also need to be constructed to cater for the intensified use of the infrastructure as a result of the development. The developer will therefore be required to pay development fees for his use of the existing services and his portion of the new services based on the units of measurement outlined in Table 6.5 above. A good example is the proposed affordable housing project envisaged in Naivasha, Nakuru County, in which the business case identified that 25% of the project site will not be able to drain into the existing sewer line and the water supply capacity was also insufficient.[61]

In determining how to compute the proportionate costs to be borne by a developer about water infrastructure, for instance, County Governments would have to ensure that the developer is responsible for the proportionate share of capacity and/or increase in capacity of the County water reticulation infrastructure to accommodate the needs of the new development, including:

- Link infrastructure outside the development site required to connect the new development to the existing County water network; and
- the proportionate cost of the existing distribution pipelines, reservoirs, water towers, pump stations, and control valves required for the new development, and/or the proportionate cost of creating additional capacity for the mentioned respective infrastructure components, downstream of the bulk water meter.

[61]Unlocking the Affordable Housing Market in Kenya: The Naivasha Prototype – Business Case Report, May 2018.

In the case of sewerage, the County Government would consider the proportionate share of capacity and/or increase in capacity of the County sanitation infrastructure to accommodate the needs of the new development, including:

- Link infrastructure outside the development site required to connect the new development to the existing municipal sewer network.
- The proportionate cost of the existing collector and outfall sewer pipelines, pump stations, and diversion structures required for the new development, and/or the proportionate cost of creating additional capacity for the mentioned respective infrastructure components, downstream of the new development; and
- the proportionate cost of a share in the capacity of the existing wastewater treatment works or sea outfalls, and/or the proportionate cost of creating additional capacity at such a facility, where these are owned by the County.

One area of great concern in the urban areas that requires special mention is the impact of new developments on the transport infrastructure. In Nairobi County, for instance, neighbourhoods that were previously zoned for single homes on approximately 2,000 – 4,000 sqm now house apartments blocks with no less than 40 units, and in many instances, these sites have more than 70 units on average per 4,000 sqm of land. What does not seem to be evident is whether traffic impact studies are undertaken before the approval of these developments, which are built along single carriage roads that do not have sufficient road reserve necessary for expansion. What the traffic impact studies do, is to compare future traffic within the area with and without the proposed development, by estimating the traffic generated by the proposed development as well as pass-by traffic that will be attracted to the development.

With a proper development fee regime, County Governments will have to ensure that these studies are indeed undertaken by the developers who should be obliged to perform, at their costs, a traffic impact study to determine if there are any adverse impacts on the traffic flow patterns and parking in the area of the development.[62] The traffic impacts associated with new developments can be determined using available transportation planning and engineering procedures, and within the study area, and the developer should therefore be able to use maps and other documentation to identify the components of the existing transportation system, including the following:

i. all adjacent and nearby roads, indicating the number of lanes and the posted speed limit on each.
ii. all adjacent and affected intersections, indicating the type of control, lane configuration, lane widths, and any turning or similar restrictions.
iii. on-street parking locations and areas with parking prohibitions in the vicinity of the site, clearly identifying those that would be affected by the proposed development.
iv. transit routes.
v. heavy vehicle prohibitions and restrictions; and
vi. other transportation facilities, as appropriate[63]

Further, potential future transportation improvements that are currently being considered, and may accommodate a proportion of the traffic demand produced by the development, should be identified. These improvements should be described in sufficient detail to assess their implications for travel to/from the development, and in each case, the status and anticipated date of implementation must be identified.

The transport infrastructure component of the development fee should therefore include a proportionate share of capacity or increase in the size of the transport infrastructure including County roads (class D, E, etc) that will be necessary to accommodate the needs of the new development and maintain an acceptable minimum level of service. Key costs should include:

[62]Robert W. Draper, "A Closer Look at Impact Fees", Transportation Research Record 1107

[63]*Procedures and Requirements for Conducting a Traffic Impact Study in Baltimore Pursuant to Ordinance 06-345,* Baltimore City Department of Transportation, 2007

i. cost of the access points being either an intersection, driveway or opening on a public street providing entry to private development or property.
ii. proportionate share of existing external road capacity (widening) or increase in length or capacity of external roads due to the generalized (non-local) impact of the development. This should be done in collaboration with the National Government road authority responsible for the area in question e.g., Kenya National Highway Authority, Kenya Urban Road Authority, or Kenya Rural Road Authority.
iii. Road structures, minor stormwater facilities, sidewalks, traffic controls, street lighting, and signage associated with such roads.
iv. Proportionate share of existing capacity at, or new junctions and interchanges.
v. Street-to-street pedestrian access; and
vi. Non-Motorised Transport including pedestrian and motorcycle/bicycle lanes.

While the above are simply guidelines, each County Government will need to determine the impact of each development on the various infrastructure components affected by the development, provided that these fall within their mandate by the transferred functions under Part 2 of the Fourth Schedule of the Constitution.

Finally, it is important to ensure that the County Governments do not overstep their mandate as far as imposing development fees for infrastructure services is concerned. Some of the instances in which development fees would not be applicable include:

i. new works, or the portion of new works, required to eradicate infrastructure backlogs within the County. As already noted above, developers should not be asked to foot the bill for infrastructure backlogs as this is not the purpose for which development fees are to be imposed under Section 63.
ii. Infrastructure services that the County Government does not have the authority to provide. The County Government's mandate to provide infrastructure should be limited to the functions it is constitutionally permitted to provide; and
(iii) the costs of providing Internal Infrastructure that is within the boundaries of the development site, which remain the full responsibility of the landowner or developer.

6.12 Waiver of and Exemption from Development Fees

Section 63(3) of the Physical and Land Use Planning Act permits the County Executive Committee Members to waive a development fee provided that, they may require the applicant develops infrastructure in relation to the property in question for general use by the residents of the area where the property in question is located.

It is therefore obligatory that where a County Government waives the development fee, that it demonstrates the alternative funding source for the required infrastructure services. Without identifying the source of the alternative funds, exemptions from development fees will negatively affect the ability of the County Government to provide infrastructure sustainably if no alternative funding is provided to compensate for the shortfall created by exemptions. The County Government should therefore seek to minimize the number and value of exemptions and instead, apply exemption of development fees in an equitable, transparent, and administratively feasible manner.

It is further recommended that such exemption is granted only in accordance with an approved framework for exemptions under the Public Finance Management Act and the development fee regulations promulgated by the County Government under Section 63 of the Physical and Land Use Planning Act. Such exemption criteria:

(i) should establish categories of owners of properties, or categories of properties, to grant exemptions, rebates, and reductions.
(ii) May exempt specified categories of land use (e.g., early educational learning centers) or specified geographical areas (areas largely inhabited by poorer communities and lower-income earners) or a combination of both.
(iii) May not specify individual developers or properties.
(iv) Should consider the effect of development fees on the poor and include appropriate measures to alleviate the financial burden on them; and
(v) may consider the effect of development fees on organizations conducting specified public benefit activities and registered in terms of the Income Tax Act, Cap 470 Laws of Kenya, for tax reductions because of those activities, in the case of property owned and used by such organizations for those activities.

It is further recommended that where the County Government exempts a development from the development fees, it should only do so after it has calculated the full development fees liability before authorizing or providing an exemption and ensure that it has made projections regarding revenue to be forgone for a financial year about all exemptions, rebates, and reductions and reflected these in its budget. The County Government should be able to demonstrate that it has made a budgetary provision for the realization of the associated revenue foregone from another realistically available source of revenue.

Further, the County Government should be able to ensure that the value of the exemption, together with any other payments by the landowner, developer, or other parties, is at least equal to the calculated development fees liability. For purposes of transparency and accountability, the County Government should ensure that it discloses the value of any subsidies and exemptions provided in its annual financial report.

6.13 Special Exemptions under the Affordable Housing Programme

As part of the Government's Big Four Agenda, it is anticipated that 500,000 affordable homes will be delivered by 2022. Specific consideration, therefore, needs to be made in respect of development applications for affordable or social housing developments that qualify for exemptions under the affordable housing program (AHP) of the Government of Kenya. This is particularly important as development fees should not have any adverse impact on the indigent and low-income earners within our communities, and to attract investments into this program, it would be necessary to offer a development fee exemption as one of the key incentives. Infrastructure for servicing households under this program should therefore be funded from the fiscal budget through conditional grant transfers by the National Government.

As part of AHP, various settlements have been identified across the Country, including social housing projects in Nairobi and other towns, to support the delivery of the 500,000 affordable homes. Besides various greenfield sites, the project includes slum upgrading settlements, and three have so far been identified in Nairobi comprised of Kibera, Mariguini, and Kiambu, all of which are located on publicly owned land.

The Housing Fund Regulations, 2018[64] were issued under the Housing Act, and the State Department of Housing and Urban Development has published Development Framework Guidelines on how the Fund and AHP will operate.[65] The Affordable Housing Regulations, 2018, define an affordable housing scheme to include *"social housing designated for monthly income earners earning up to KES 19,999".[66]* The AHP Framework also designates the pricing for homes eligible under the AHP to range between KES 600,000 for a single room and capped at KES 3 million for a three-bedroom home, which will be made accessible to income earners within the thresholds of KES 19,900 and 150,000 per month.

Based on these average incomes, County Governments have a guideline on which housing developments would be eligible for exemption from the imposition of development fees. This is particularly so as it is envisaged that the Government's central role in the AHP is to facilitate the unlocking of private capital for purposes of funding the AHP, besides taking the responsibility for financing bulk infrastructure (water, sewage,

[64]Kenya Gazette Supplement No. 154, Legal Notice No. 238 of December 18, 2018, developed pursuant to section 57(1) of the Central Bank Act. The Regulations are intended to provide a clear framework for licensing, capital adequacy, liquidity management, corporate governance, risk management, and reporting requirements of MRCs.
[65]http://www.housingandurban.go.ke/wp-content/uploads/2018/11/Development-Framework-Guidelines-Release-Version.pdf
[66]Regulation 3(2)(a)

power, access roads), with the assistance of development partners and other sources. Support has come from development partners in the form of programs such as the World Bank USD250 Million Kenya Affordable Housing Finance Project (KAHFP)

Further, the Kenya Mortgage Refinance Company (KMRC) has already been established. Its primary business includes, amongst other things, the refinancing of eligible mortgage loans, and extending finance to primary mortgage lenders (PMLs) for the financing of eligible mortgages.[67] KMRC will refinance PMLs, such as commercial banks, microfinance banks, and Savings and Credit Cooperatives (SACCOs), using funds from the capital markets, to provide affordable mortgages to eligible members of the public.

While the KAHFP recognizes that the provision of bulk infrastructure is a key enabler to the success of the AHP and attracting the private sector, USD240 million of the USD250 million is designated towards support of the KMRC, with no allocation towards key infrastructure provision at these AHP target sites, and no clear strategy is evident for the provision of bulk infrastructure to these sites. The significance of the Government provision of bulk infrastructure is that it eliminates 30 – 40 percent of the capital expenditure for the developers, thus enhancing project affordability for homeowners, as this benefit would be a pass-through cost. Presumably, these infrastructure costs will have to be covered through allocations by National Treasury and conditional grants to County Governments.

It is therefore imperative that County Governments develop a mechanism for the exemption of development fees for these affordable housing projects to ensure that they can release much-needed financial resources towards the initiative. The development fee Regulations should therefore clearly set out criteria aligned to the National Government AHP, which may include consideration of whether the development is for:

i. providing social and affordable housing as defined in the regulations from time to time; and
ii. The beneficiaries of the social and affordable housing, who are primarily within the thresholds set out in the Housing Fund Regulations, with the following possible inclusions:
    - persons dependent on pensions or social grants for their livelihood.
    - Persons situated within an area affected by a disaster within the meaning of the National Disaster Risk Management Policy, 2018 and any legislation ensuing therefrom;[68]
    - servicing community conservation, educational, institutional, or public purposes as defined in the Physical and Land Use Planning (Classification of Strategic National or Inter-County Projects) Regulations 2019.

It is recommended that County Governments granting such exemptions under its development fee regulations for projects under the affordable housing program, should have to demonstrate that the infrastructure services can be budgeted for, and funded through, a fiscal transfer from the National Government, or the County Government's own source revenues. As such, the development fees that would apply to these projects would need to be computed in full and then "written-off".

Care would therefore need to be taken to ensure that the qualifying projects for a development fee write-off meet specified criteria. Further conditions can also be imposed by the County Government, e.g., the obligation of the developer to employ all the unskilled labour from the community thus creating jobs, commitment to training semi-skilled labour up to a certain level thus improving the earning power of the existing labour force, the obligation to source a specified percentage of materials for the construction project from the immediate community, etc. Each County Government will have to develop its own set of additional criteria based on the relevant project and its communities' needs.

[67] Section 3, Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019

[68] The National Disaster Management Authority Bill, No. 10 of 2019 is currently pending before the National Assembly. Section 2 defines a "disaster" as a *"..sudden, calamitous event, caused by nature or human beings, that seriously disrupts the functioning of a community or society and causes human, material, economic or environmental losses that exceed the community's or society's ability to cope using its own resources."*

6.14 Administrative Processes

Any regulations promulgated under Section 63 should be designed to ensure that the process is administratively efficient and transparent for both the County Government and the developers. In particular, the process should not inconvenience developers so that the ultimate effect is a reduction in the number of developments within the County due to uncertainty in the process and unbearable bureaucratic red tape.

i. Application Procedure

All applications for development permission should be submitted to the County Government's planning department in the prescribed form under the Physical and Land Use Planning Act, or equivalent County Legislation as amended from time to time. When the Department receives an application, it should be within the period specified and the Department should:

- review the adequacy and quality of the internal infrastructure services and their related costs proposed to be installed by the developer.
- determine whether adequate bulk infrastructure services are available to serve the proposed development; and
- determine whether the upgrading of such services will be required and/ or what new bulk services will have to be installed to serve the proposed development.

The developer should be informed at this stage that development fees may have to be paid and will be assisted by the County Government in understanding what would constitute bulk and link external infrastructure services, in the context of the particular development.

The limitations to the scale of permitted development, which were used to calculate the development fees, must be set out. However, should a developer in the future wish to acquire additional development rights over and above those already approved, the development fees regulations should indicate whether a new application will be required for purposes of recalculating the development fee liability.

The final development fees must be reflected in the calculation and form part of the conditions to be approved. Cost and certainty are a developer's overriding concerns and it is therefore recommended that the formula for computing the development fees should be publicly available – on the County Government's website or other publicly accessible portals – before the developer lodging their application for development permission, to enable them to have a baseline indication of what these fees would likely be in respect to their development. This will ensure that there are no surprises to the developer and will assist in their financial modelling and planning.

Once the County Government has finalized the computation of the applicable development fees, it should inform the applicant of the conditions relating to the provision of bulk infrastructure services and the payment of development fees (stating the amounts that will become due and payable) and shall allow the applicant to make representations in respect thereof. The final approval of the conditions will then be binding in terms of the development fee regulations, subject to any appeal mechanisms provided in such regulations.

ii. Payment of Development Fees

It is inevitable that developers would want to minimise up-front capital costs and would therefore prefer to phase payment of any fees or improvements to coincide with every phase of a development's build-out. The conditions of approval appended to a land development application should therefore set out the payment requirements and should specifically address the following key issues:

- the amount to be paid, including provisions for escalation over time; and
- the date when the development fee payment is due, which may include more than one payment date for more than one payment in the case of phased developments.

- subject to paragraph (ii) above, the developer will make one payment in response to a detailed invoice, provided by the County Government to the developer, and no payments by instalments will be permitted unless the balance is secured in a form of a bank guarantee, pledge against bonds, revenue certificates, or other obligations of indebtedness acceptable to, and approved by, the County Government in any development fee regulations promulgated under Section 63 of the Physical and Land Use Planning Act;
- in large and/or complex projects, the County Government may approve a development in phases thereby allowing development fees to be paid before commencement of each approved phase. The fees should however be computed for the entire development before obtaining approval to proceed with the development, to provide certainty to the developer on his full development fees liability and enable the developer to incorporate these costs into their viability calculations for the development.

Where external infrastructure services are provided instead of development fees by the developer per any development fees regulations, the County Government may agree to delayed payment of a development fee, provided that an Infrastructure Services Agreement between the County Government and the developer is signed, and a written guarantee from a registered financial services provider is provided by the developer to cover any risk to the County Government that this arrangement may entail. The detailed roles and responsibilities for the provision of infrastructure instead of development fees must be set out in a separate Services Agreement, but the key aspects related to the timing of payments, as well as the amount(s) to be paid, must be reflected clearly in the conditions of approval.

It should be within the County Government's right to withhold any development permission, approval, or clearance in terms of planning or building control legislation, where a developer has not complied with his or her development fee liability and demonstrated payment in full or following the options for phased payments.

The County Government may use various checkpoints /milestones to ensure that a developer complies with the conditions of approval regarding the payment of development fees or the provision of infrastructure services. The conditions of approval imposed should stipulate clearly which further approvals or clearances should be used to ensure compliance.

6.15 Rights & Obligations of The County Government and Developers

An application for development permission, as well as the approval or rejection of the application by the County Government, is an administrative process underpinned by an appeal mechanism in the event of a dispute arising between the County Government and an applicant, or in the event of the County Government and an applicant failing to agree. There is no need for political or other interventions into the administrative process and the County Government should not countenance actions by an applicant to circumvent the administrative process through political or other influences.

The same applies to an application for an increase in the allocation of capacity of an infrastructure service to premises, or where the County Government requires development fees from an owner or occupier of premises as a result of the use of an infrastructure service, on the premises of exceeding the capacity for which the County Government has been paid a development contribution. There is no need for political or other interventions into the administrative process and the County Government shall not countenance actions by an applicant, owner of premises, or occupier of any premises to circumvent the administrative process through political or other influences.

As discussed earlier in this chapter, the County Government is obliged to ensure the provision of services to communities within its jurisdiction in a sustainable manner. While providing these services, the County Government is required to inform users of the costs, the reasons for the costs, and the basis upon which the costs are determined. This obligation also extends to the provision of an accessible mechanism for queries and complaints by residents of the County.

The County Government should also have the right to access information that it may request from a developer provided that, the requested information is not withheld in terms of any ground for refusal contemplated in any Act of the National or County Government. To this end, the County Government should have access to an internal appeal process in the event of a developer not making information available, underpinned by recourse to the courts in the event of the internal appeal process being unsuccessful.

The County's residents and developers on the other hand have the right to equitable treatment in the application of charges in proportion to the use of an infrastructure service. Developers will want other developers and the locality to share in the expense of off-site improvements that benefit more than one development and will therefore be entitled to information relating to the costs, the reasons for the costs, and the basis upon which the costs are determined.

Developers are also likely to demand control over improvements constructed with their money, particularly where the improvements funded are borne entirely by the developer due to the large-scale nature of the development in question. In this case, the developer would want to assume responsibility for constructing the off-site improvements so that they have more control over the cost and the timing of the completion date, and assurance that the improvements will indeed be constructed.

Where the developer undertakes to construct the infrastructure, then the County Government should ensure that it (developer) maintains the right to access the construction site and to have an independent third party verify the quality of the work being undertaken by the developer in respect of such off-site infrastructure. The County Government should also ensure that there is sufficient defects liability period before the final handover of the infrastructure asset by the developer, to allow for any construction deficiencies to show up before assuming responsibility for the infrastructure.

Developers are also entitled to have access to a mechanism for queries and complaints, and appropriate recourse, if they are aggrieved by decisions of the County Government relating to the costs of the development fees imposed by the County Government, or the County Government not making information available in accordance with National or County legislation. This right is also underpinned by recourse to the courts in the event of the internal appeal process being unsuccessful.

Although the developer pays the development fees to the County Government, an important issue is who ultimately bears the cost. Does the developer pass the cost on to the consumer or, where they are purchasing the land, do they lower their offer for vacant land in anticipation of the additional development costs associated with the development fees? In this case, the seller of the property bears the fee. Or, does the developer pay the development fees and then pass these on to the purchasers of the units in the development, in which case the purchasers will be the persons ultimately paying the development fees. Whichever route is taken by the developer, the County Government must avail the necessary information on how these development fees are computed, to any person requesting such information as an affected or interested party, who challenges the reasonableness of such fees.[69]

6.16 Public Disclosure and Consultation

Regulation 65 of the Public Finance Management (County Governments) Regulations 2015 allows County Governments to review all fees, charges or rates, scales or tariffs of fees that are not fixed by any law that relate to revenue accruing to the County. Information on the tariff structure is required to be disclosed in annual reporting including information on exemptions, discounts, free services, and any other aspect of material influence on the County's revenue yield.

As stated earlier in this Chapter, developers will want to know what fees or improvements the County Government will expect of the developer, and it will not be in the interests of either the County Government or the developer, not to have certainty where the fees are concerned. It is therefore important for the County

[69]Robert W. Draper, "A Closer Look at Impact Fees", Transportation Research Record 1107 at p.70

Government to set realistic fees from the outset, which are reflective of the proportionate cost of improvements associated with development in a specified location, and based on the various County Government plans including the Spatial Plans, the Infrastructure Plans, etc.

If the fees are too low, the developers will receive a windfall and if they are too high, the County Government will face resistance from its residents as potential purchasers in the development, as the costs will be passed on to them by the developer. In the latter case, where such fees are not substantiated, they are likely to be overturned in court. The principles guiding the County Government in the establishment of the fees should also guide the County Government in determining amendments to the rates, formula, units of measure, etc.

The County Government will need to ensure that the principles of public participation envisaged in Section 207 of the Public Finance Management Act are adhered to when establishing or reviewing development fees within their respective jurisdictions. They should therefore ensure that they have the structures, mechanisms, processes, and procedures for participation, as well as clear guidelines for the receipt, processing, and consideration of petitions and complaints lodged by members of the community. Further, public participation guidelines should be clear about the notification and public comment procedures, requirements for public meetings and hearings, and should have due regard to special needs of people who cannot read or write, people with disabilities, women, and other disadvantaged groups.

This is in addition to the obligations under the Public Finance Management Act.

Without these, the introduction of the development fees will likely face resistance from developers and consumers alike and will become the subject of much litigation. However, proper communication, effective consultative processes with appropriate timelines for public review and comment, evidence of infrastructure implementation associated with the development fee, and transparency that allows the fees to be scrutinized, will contribute towards the widespread acceptability of their introduction and continued use as an effective mechanism for the sustainable financing of infrastructure necessary to service the ever-increasing development in Kenya's urban areas.

6.17 Key Recommendations

As the County Governments navigate their way through the implementation of Section 63 of the Physical and Land Use Planning Act, it is recommended that the matters addressed in this chapter be given due consideration if development fees are to receive the widespread acceptance necessary to enable the county governments successfully utilize them as an infrastructure financing mechanism. These include, in summary:

i. Development of long-term land-use plans including Spatial Plans, that will guide where infrastructure assets will be located within the County.

ii. Development of regulations governing the implementation of development fees under Section 63 of the Physical and Land Use Planning Act, having due regard to the requirements for public consultation.

iii. Adopt a formula that enables developers pre-estimate the development fees that will apply to their site and plan accordingly for these fees.

iv. Ensure the fees are reasonable to avoid allegations of extortion, and be ready to substantiate the costs and components of the development fees, as aligned to the specific infrastructure envisaged to be implemented with the development fees; and

v. Tailor developer contributions to specific sites as the fees should be based on the expected impact of developments on surrounding facilities, and these may vary from one part of the County to the next.

Chapter Seven

7. FINANCIAL MANAGEMENT OF DEVELOPMENT FEES

7.1 Introduction

Ensuring Infrastructure development as an integral part of urban management is not only an essential part of planning but, as delineated in the previous chapters, County Governments have the clear authority to charge development fees aimed at generating the revenues necessary to cover the costs of providing the necessary infrastructure components. This requires the right type of investment financing, at the right time, to be feasible both economically and socially.

As described in Chapter Six, the scope of investment needed for new homes in Kenya is a gargantuan challenge currently facing County Governments. An urban population increase of 100,000 in any given County over the next 5 years would translate to approximately 4,000 new urban dwellings (at five people per household) per annum. The cost of infrastructure per housing unit in a multi-story building (water, sewage, drainage, and access road) in general ranges from KES 400,000 to KES 800,000 depending upon geography and density of housing. Using an average cost of KES 600,000 (USD 6,000) per housing unit for the infrastructure necessary to service such dwellings, translates into a KES 2,4 Billion infrastructure deficit per annum. This is equivalent to KES 6.5 million/day (USD65,000/day) for only 4,000 homes per annum.

County Governments need well-defined financing strategies and optimal institutional mechanisms to successfully implement these. There are many examples of successful municipal governments around the world using sophisticated financing tools such as municipal bonds, betterment taxes, and tax increment financing to fund infrastructure. Development fees are additional and supplemental to, and not in substitution of any other requirements imposed by the County Government on the development of land or issuance of building permits and should therefore be restricted to the development of infrastructure services that are specifically and uniquely attributable to the proposed development or building.

They are also a one-off fee collected during the approval of land development to support public facilities to serve the proposed development. Payments by developers are to be deployed exclusively for financing the infrastructure improvements that will be used by them and by the future residents and should be ring-fenced into a special fund to ensure they are utilized for the purpose for which they were collected. Thus, the “fee” is a direct function of the “benefit”. However, it is important to point out that this often includes payments based upon the added “burden/load” on existing infrastructure that is provided due to growth.

In this Chapter, we shall delve into the rationale for ring-fencing development fees into a specialized fund, the financial management and reporting requirements for the fund, as well as the various infrastructure financing mechanisms that can leverage on the establishment and existence of the development fees fund.

7.2 Ring-Fencing Monies in the Development Fees Fund

It is imperative that development fees levied by a County Government are ring-fenced and protected from utilization towards general purposes. County Governments should also be able to separate administrative fees associated with the application for development permission, from the development fees imposed on such proposed development. The administrative fees should therefore be deposited into the County Government’s general revenue fund while the development fees must be deposited into a separate County fund designated for this purpose and utilized solely for the purposes for which they were charged.

A Development Fees Fund should be established by the County Executive Committee Member responsible for Finance in the County with approval from the County Executive Committee and the County Assembly, under section 116 of the Public Finance Management Act and the Regulations promulgated thereunder.

All payments for development fees must be recognized as revenue by the County Government including the following minimum requirements:

(i) be separately accounted for and transferred to the Development Fee Fund.

(ii) ensure that the earnings of, or accruals to the fund, are retained in the fund unless the County Executive Committee Member for Finance directs otherwise.

(iii) the fund administrator shall ensure that money held in the fund, including any earnings or accruals referred to in subsection, is spent only for the purposes for which the fund is established.

(iv) if capital infrastructure assets installed by the developer become the property of the County Government, these should be accounted for as an asset gain in accordance with the generally recognized accounting principles established under the Public Finance Management Act.

To ensure that each distribution of development fees from the Fund shall be used solely and exclusively for the provision of infrastructure services specified in each needs assessment, before the Fund Administrator authorizing disbursement of any funds, such Fund Administrator should ensure that they receive the following:

a) a fully executed Services Agreement between the County Government and the developer or third party receiving such funds for the implementation of the infrastructure.
b) a fully executed disbursement statement for the specific development for which the funds are applied.

7.3 Procedural Matters in Establishing the Development Fees Fund

In establishing the Development Fees Fund, the County Government will need to have due regard to the minimum requirements outlined in Regulation 197 of the Public Finance Management (County Governments) Regulations. In particular, the establishment of the Fund should be initiated through a proposal by the County Executive Committee Member responsible for the Lands, Housing and Physical Planning to the County Executive Committee Member for Finance and Economic Development and shall:

(i) set out the justifications for the establishment of the Fund and submit it to the County Executive Committee Member responsible for finance and economic planning.
(ii) certify that the functions and the public services to be delivered through the Fund cannot be delivered through the structure of budget appropriations.
(iii) provide a clear justification as to why the Fund structure is deemed appropriate for improved service delivery, considering the legislative and policy mandate of the County Government.
(iv) confirm in writing that the establishment of the Fund and its continued existence will not depend on annual financing from the County Exchequer and that the Fund will be self-sustaining; and
(v) demonstrate how the activities of the Fund will fit in the overall Medium-Term Plan and County Fiscal Strategy Paper.
(vi) the administration costs of the Fund shall be a maximum of three (3%) percent of the approved budgets of the Fund.
(vii) the term of the Fund should be more than 2 (two) years and the initial approval of the fund should be for a maximum period of 10 (ten) years, beyond which the approvals of the County Executive Committee and the County Assembly shall be sought; and
(viii) the County Executive Committee Member shall grant approval in writing before the establishment of the Fund.

The County Executive Committee Member responsible for Finance may issue further guidelines for establishing the Development Fee Fund per the Public Finance Management Act and regulations.

Given the purposes of the Development Fees Fund, and the nature of development fees as one-off fees, all monies in the Fund may only be used for capital works and should therefore include the full and actual costs of the designated infrastructure services. Importantly, the monies in the Fund should not be used to reduce or eliminate existing infrastructure backlogs, for operations or maintenance costs, or as a general revenue source for the County Government.

Subject to the provisions governing phased developments, once a developer has paid in full for a specific piece of infrastructure, the County Government must include that infrastructure development project on the capital budget in the subsequent budget cycle. Where the subsequent budget cycle will delay the implementation of the development, the County Government may prepare a supplementary budget to prioritize implementation of a specific piece of infrastructure that has been fully paid for and monies deposited in the Development Fees Fund.

7.4 Administrative Matters in Management of The Development Fees Fund

For purposes of administering the Development Fee Fund, the County Executive Committee Member responsible for Finance and Economic Development should appoint a fund administrator under Section 116(2) of the Public Finance Management Act. The roles and responsibilities of the Fund Administrator shall be as designated in the said Act and shall include, but not be limited to:

i. supervision and control of the administration of the Fund.
ii. preparation of a budget and such plans for better administration of the Fund to be approved by the County Executive Committee.
iii. causing proper books of account and other books and records about the Fund to be kept as well as to all the various activities and undertakings of the Fund.
iv. preparation, signing, and transmission to the Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund in accordance with the Public Audit Act, No. 34 of 2015 and in such details as the County Treasury may from time to time direct.
v. furnishing such additional information as may be required for examination and audit by the Auditor-General or under any law; and
vi. designation such staff as may be necessary to assist in the management of the Fund.

The County Executive Committee Member for Finance and the Fund Administrator should adhere to the principles for revenue management outlined in the Public Finance Management Act in general, and Regulation 63 of the Public Finance Management (County Governments) Regulations 2015. These include ensuring that:

i. Adequate safeguards exist and are applied for the prompt collection and proper accounting for all development fees collected under section 63 of the Physical and Land-use Planning Act.
ii. Adequate measures, including legal action where appropriate, are taken to obtain payment of all development fees due to the County Government by a developer; and
iii. Official receipts are issued for all monies paid to the County Government as development fees.

7.5 The Problem of Interim Financing

As presented in previous chapters, the process of devolution has increased the powers and responsibilities of County Governments as sub-national entities, but these responsibilities have not been matched with adequate revenue-generating mechanisms at the local level, and a deficit is experienced on an annual basis as the increased expenditures remain greatly dependent on intergovernmental transfers. In the period between 2013 to 2019, Counties did not attain a 15% threshold of financing their budgets thus implying over-dependence on the National Government (Equitable Share) to finance their budgets. Most County's own source revenue

(OSR) to Gross County Product (GCP) has been below 2%, which is far below the best practice for Sub – Saharan African Countries on Country Revenue to Gross Domestic Product which is about 25%.[70]

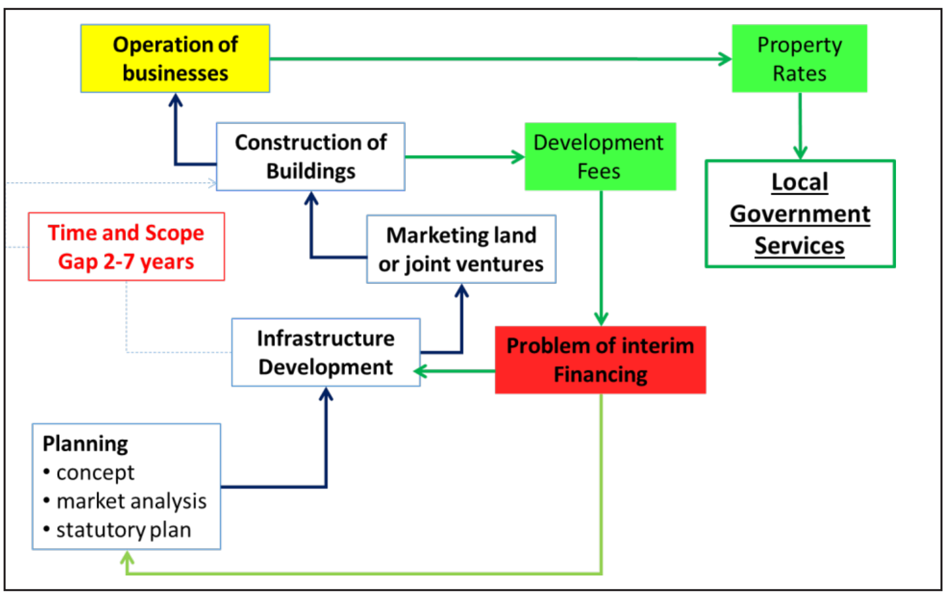
The problem of overreliance on National transfers is demonstrated in the delayed remittances for the FY 2020/2021 that resulted in several Counties scaling down their operations. Despite the FY 2020/2021 commencing on July 1, 2020, it was not until October 2020 when the County Revenue Allocation Act came into effect, thus enabling County Governments to receive their equitable share of the revenue for July and August.[71] With the release of funds, the Cabinet Secretary responsible for Finance urged County Governments to give priority to the settlement of pending bills.

As earlier stated in previous chapters, the problem is further exacerbated by the County Governments' failure to meet their revenue targets. While these have been increasing with time, the aggregate annual own source revenue target for the 47 County Governments in FY 2018/19 amounted to KES 53.9 billion compared to the actual collection of KES 40.7 billion which was 75.5% of the target. This was however an increase compared to KES32.2 billion generated in FY 2017/18 which was 65.4% of the annual revenue target for KES49.2 billion.[72] Hospital fees and public health facilities, single business permits, property rates, receipts from administrative fees and parking fees, game park fees, and others accounted for 82% of the total revenues collected in FY 2018/19, which was similar to the FY 2017/18.,

Further analysis by UN-Habitat on County revenue generation points to a gap of infrastructure needs that are far beyond the 30% requirement that is earmarked for development from the annual budget and own-source revenues which are primarily used for operational expenditures and have not included mechanisms for significant capital investments and infrastructure development.[73]

The first critical challenge for creating new mechanisms for own-source revenues aimed at capital investment and specifically instituting development fees is the big-time gap between the outlay of expenditures for planning and constructing infrastructure, that needs to be provided in keeping pace with private venture projects, and the collection of development fees as the source of revenue. Given that there can be a 2-7-year time gap, especially in the case of central water and sewerage facilities, the County Government is faced with a significant deficit that would need to be addressed through interim financing.

Figure 7.1: The Problem of Interim Financing



Source: Yoel Siegel

[70]Fiscal Effort, Commission on Revenue Allocation https://cra.go.ke/2020/07/30/over-70-of-the-counties-collect-revenue-below-half-of-the-estimated-potential/

[71]The County Allocation of Revenue Bill, 2020 published on April 17th 2020 under Gazette Supplement No. 45 was finally published as the County Allocation of Revenue Act, 2020 on October 16th, 2020 under Gazette Vol. CXXII - No. 187

[72]Counties Miss Own Source Revenue Target for FY 2018/2019, Commission on Revenue Allocation https://cra.go.ke/2020/08/04/counties-miss-own-source-revenue-target-for-fy-2018-2019/

[73]Primary Source Guide to Municipal Finance – UN HABITAT 2009 [insert full citation/reference]

The first wave of residents will enter homes, before there are sufficient funds from development fees to cover the full cost of major external bulk infrastructure. Thus, there needs to be public investment in infrastructure, often over a period of 20 years before costs can be recovered as additional housing or business units are constructed. In part, this can be mitigated by a policy of interconnected decentralized units, a strategy that is best suited for water, energy, sewage, and organic waste treatment.

Instituting infrastructure development into the planning and urban management procedures therefore requires long-term interim financing mechanisms with appropriated county level legislation, procedures, and enforcement mechanisms.

The second challenge is the relationship between the developers and the County Government. Using public financing (loans, bonds, or development budgets) is well-accepted practice in developed nations around the world and it is predicated upon the understanding, acceptance, and de-facto payment of development fees by the private sector as an integral part of projects. In jurisdictions where development fees have been successfully implemented, the political culture of payment of these fees is strong as are the sanctions for non-payment. By comparison, in Kenya, the collection of property rates in general is very low across all counties and development fees, if not properly structured, may suffer the same fate. Without proper implementation mechanisms, private sector developers would remain reluctant to pay the county government's development fees for infrastructure construction, being fearful that the fees will be paid, but the funds will be "absorbed" into the regular budgets and the necessary infrastructure will not be constructed.

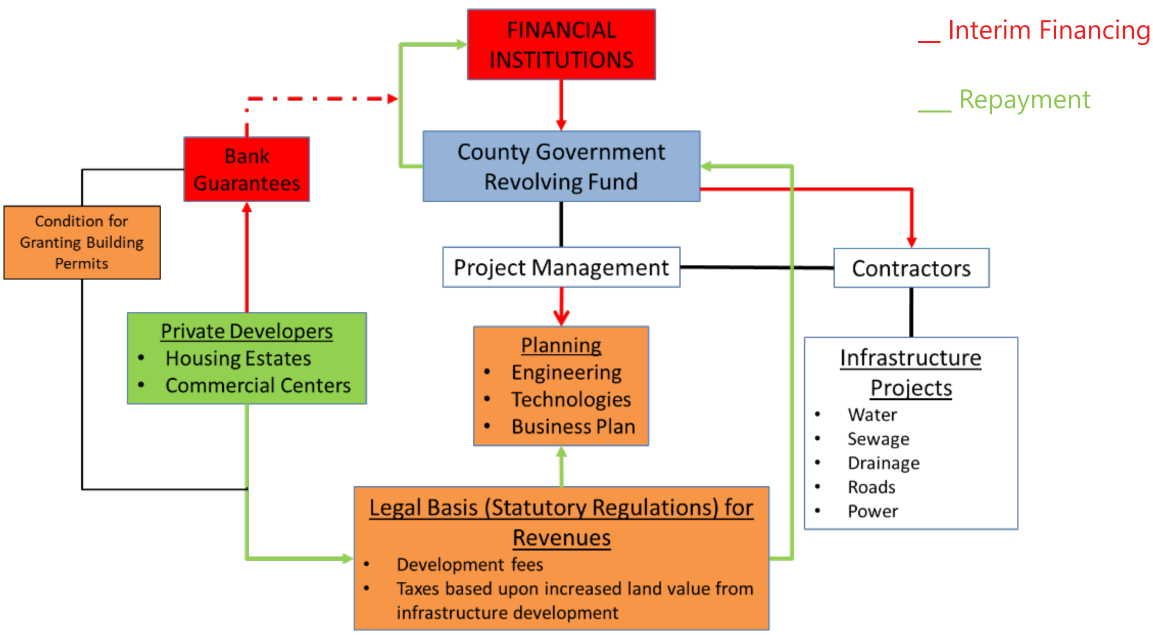
7.6 Creating an Institutional and Financial Structure for Interim Financing

In addition to safeguarding, that the monies are utilized exclusively in targeted infrastructure, there remains the issue of the time frames for implementation of the infrastructure. The developers' construction and occupancy target dates are not necessarily adequately synchronized with the pace of infrastructure construction by the County Government.

In combination with the Development Fee Fund, County Revenue Bonds or other deficit financing tools could be a potential mechanism for interim financing. To issue bonds, County Governments need a system to measure if they are creditworthy and require technical expertise to structure the bonds. Who pays for the unfinished works? Who assumes the losses? These questions must be answered to convince the private sector to invest in local governments projects. In addition, some form of credit enhancement mechanism, including guarantees, is needed to assure investors that the bond will be repaid.

Overcoming the vicious cycle of public payment and non-repayment by the private sector, or private sector payment and non-delivery of infrastructure services by the County Government is possible through the institutionalization of bank guarantees as a condition for a building permit. They would ensure full payment of development fees once the infrastructure is completed. This procedure can provide County governments with a secure source of funding which is a prerequisite for undertaking deficit financing of infrastructure projects. Similarly, it will provide the private sector with a mechanism to ensure that infrastructure fees are used exclusively for that purpose. With this mechanism, the County has no incentive to delay the use of the funds. Although this does not completely guarantee synchronization of public and private initiatives, it creates a financing mechanism that on one hand enables County Governments to initiate infrastructure development proactively and on the other hand, serves to control unmanaged urban sprawl because occupation certificates would not be issued until adequate infrastructure is in place. Figure 7.2 summarizes the proposed structure for addressing the interim financing:

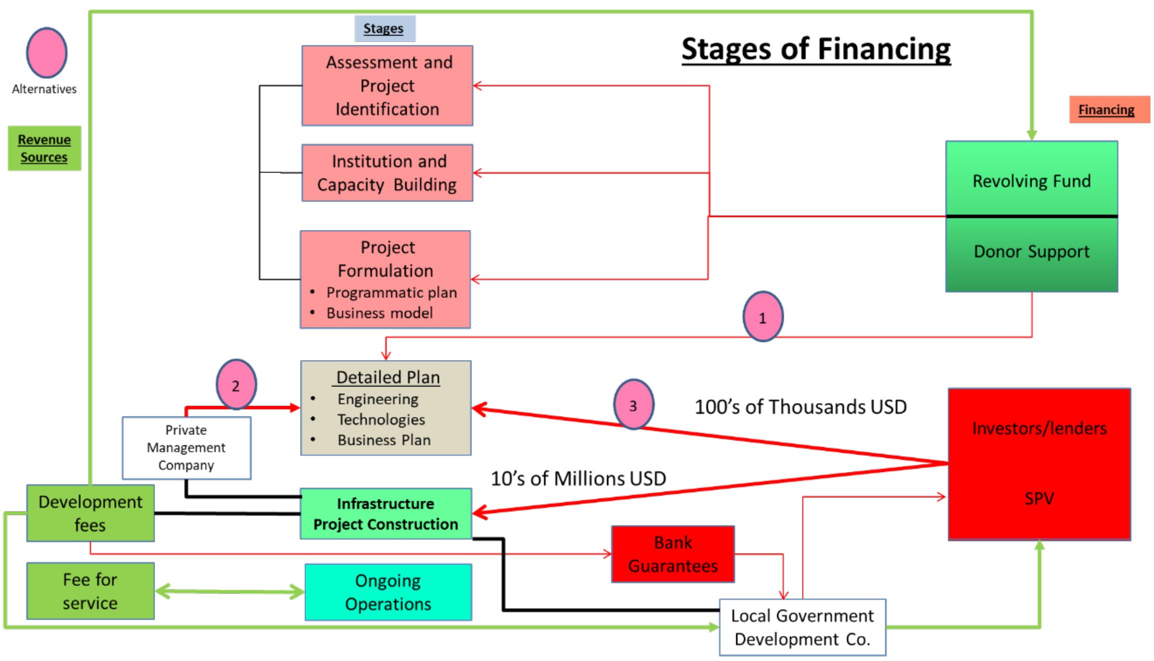
Figure 7-2: The Financing Mechanism Components



Source: Yoel Siegel

This type of financing mechanism for infrastructure and urban development requires having the engineering and financial management mechanisms in place (legally and organizationally). By using statutory authority not only to set regulatory standards but also to establish a financing mechanism, County Governments can charge developers the actual cost for construction of these critical infrastructure components and have control over their actual construction. Figure 7.3 describes the detailed financing stages envisaged for consideration by County Governments:

Figure 7-3: The Financing Stages



Source: Yoel Siegel

Based on Figure 7.3, there are three primary financing strategies.

(i) the County Government pays for the infrastructure development plans from its sources/donors and then uses bank guarantees from private developers (a condition for their building permits) as collateral for deficit financing, investors/bank loans/bonds. This enables the County to undertake infrastructure projects and repay loans as the project progresses and development fees are collected.

(ii) a financial institution covers the costs of planning in return for providing the multiyear financing of infrastructure projects against developers' bank guarantees and future revenues from payment of development fees, and in some cases, the increased revenues from higher property taxes stemming from the added value of land with proper infrastructure; and

(iii) a project management company undertakes the planning in return for the contract to manage the undertaking of the infrastructure development projects on behalf of the County Government under the direction of a County Development Corporation.

This type of organizational platform, with a clear mandate and operational procedures, will increase transparency and public trust, which are critical factors in the viability of a multi-year infrastructure development process.

7.7 Role of Infrastructure Master Plans in Interim Financing

It should be reiterated, that determining the actual development fees requires an analysis of the real costs for the provision of the specific infrastructure components. The imposition of development fees needs to be guided by the provisions of, inter alia, section 120(3) of the County Governments Act which requires that the amounts that individual users pay for a service should generally be in proportion to their use of that service and its costs. Planning for the implementation of such infrastructure, therefore, requires that taxpayers are not unduly burdened, for example, by sewerage plants that are not associated with their needs.

The issue of interim finance is usually most acute at the planning stage. A primary task for the County is therefore to undertake a full infrastructure planning and feasibility analysis. As discussed briefly in Chapter 6, the comprehensive infrastructure plan should be based upon a County spatial plan and on a city/municipal development plan. The Masterplan will therefore identify needs, strategies, policies, and priorities for infrastructure at the County and sub-County level (roads, energy, water supply, sanitation and drainage, solid waste management, and telecommunications and ICT) for the next 5-10 years and prioritize the needs for capital investments based on "whole-life" costs with linkages to the County's Integrated Development Plan and National Government Investment Program. Prioritization is influenced by several factors including the condition and age of existing infrastructure as well as the projected need and future growth.

At the minimum, the infrastructure master plan should:

i. Assess existing Infrastructure: condition, usage, payments, leakage, technologies – mapping.
ii. Analyse the infrastructure gap: Need/demand vs current level of service/supply.
iii. Assess the impact of missing/quality of infrastructure: health, time costs, over economic costs, and potential benefits of specific infrastructure improvements.
iv. Develop alternative logistical, technical, spatial, organizational solutions and integration of components locally and with citywide facilities.
v. Provide cost estimates for the proposed infrastructure.
vi. Formulate alternative financing strategies: linkage to increased land values, reduction of collateral costs (e.g., health, lost workdays, etc.), municipal/utility payments, leveraging private developer investments, deficit financing (bonds, loans, etc.); and
vii. Assessment of existing or missing institutional mechanisms for undertaking infrastructure improvement projects; financing, project management, ongoing maintenance

A good master plan would identify how and where each such project fits in the planning cycle by looking at the priority assigned to each project. The costs of each project would of course be fine-tuned as the County Integrated Development Plans and Spatial Plans are developed and updated. The master plan should also consider the economic realities of the relevant County and should therefore note available funding sources or timelines for grants or loan applications for each phase to help make County budgets more accurate in terms of the percentage of infrastructure work that can be completed in any given financial year.

County Governments would also be obliged to engage in community engagement to ensure that the proposed solutions are designed in a manner that addresses the critical issues accurately, are doable, and is sustainable. Public consultations will also boost the developers' confidence that the development fees collected by the County Government are aligned to clear infrastructure plans and would encourage developers to plan their projects accordingly, thereby *"following the infrastructure"* as opposed to the present scenario where the infrastructure follows the project.

Once the master plan is complete, the second stage is project implementation/construction. Based upon the infrastructure plan and full feasibility analysis, the costs of putting inappropriate and sustainable infrastructure can be used to set the development levies for the different projects by location, scope, and technology over time. The master plan would need to be implemented consistently and logically with each project having its life cycle and bearing in mind that there may be more than one project in the implementation phase at a time.

The outcome is a master plan for infrastructure development that provides both a comprehensive plan, staging, integration with countywide infrastructure, and specific stand-alone projects with maximum impact. The infrastructure planning process requires input from specialists in the different fields of infrastructure - water, sewage, waste management, power, drainage, transportation/roads, ICT along with legal and financing. [74] Draft terms of reference are annexed as a template available for county governments to adapt to their own needs and circumstances (annex 4)).

7.8 Additional Financing Tools Available to County Governments

There are many ways to finance infrastructure development that County Governments can explore for generating the necessary revenues. These include, inter alia, borrowing from the capital market by issuing County bonds, private sector investment e.g., Public-Private Partnerships, land value capture (or sharing), and bank loans.

Financing in general, and specifically financing infrastructure development, has three components: the intended use of the funds, provision of the funds, and the source of repayment. There is a clear linage between all three. In the case of fees, as explained earlier, the beneficiary/user of the service is also the source of payment or return of "investment". Development fees are subject to the same regulations. However, infrastructure development is quite complex. The scope of the projects, the timeframes, the diversity of beneficiaries, and the entities responsible (private sector, National Government, County Government) for the many elements of infrastructure require multiple levels of continuous coordination over many years.

The focus of this section of the guidebook will be on mechanisms for mobilizing the funds and the different types of financing that can be accessed based upon the existence of Development Fees already ringfenced in the Development Fees Fund. The choice of financing tools depends primarily on the type of infrastructure (for example, roads, sewers, drainage, water, etc.) investment. Here, as throughout the guidebook, the focus is on those infrastructure components under the responsibility of the County Governments.

[74]The development of such a comprehensive plan can cost upwards of US$ 500 - 900,000 depending on the geographical size covered (area, population), the availability of data (and the format - digital or not, maps or not).

i. Deficit Financing Through Loans

As already discussed above, the County Governments over-reliance on National Government transfers, coupled with the insufficient own-source revenues, means that there is a financing deficit in any financial year. Further, the time lapse between when the development fees are collected and when the infrastructure is implemented vis-à-vis the property development construction increases the delays in delivery of the much-needed infrastructure.

Deficit financing enables local governments to synchronize the timeframes of development with the need to provide infrastructure before all costs can be covered by the immediate beneficiaries, through the payment of development fees for a specific project at a given time. Borrowing would enable Counties to make capital improvements i.e., construct infrastructure, which would not be possible by relying on current revenues streams. Operational budgets are not sufficient to finance large infrastructure expenditures. Therefore, deficit funding is used, when the benefits of an infrastructure project, sewage, roads, water treatment are spread over time. Repayment of the funds will be over many years which means that future beneficiaries will be returning the cost of investment as they make use of the infrastructure.

However, the smaller the time gap between construction, payment, and use, the lower the capital costs and the lower the risks. In addition, the level of debt must be in proportion to the fiscal strength of the County Government and the robustness of the local economy.

As public entities, County Governments would have to adhere to the provisions governing borrowings in both the Constitution of Kenya and the Public Finance Management Act. These include Article 212 of the Constitution which requires County Governments to obtain a National Government guarantee and County Assembly approval.[75] County Governments may, under Section 140 of the Public Finance Management Act, raise a loan either within or outside Kenya. Section 58 of the Public Finance Management Act empowers the Cabinet Secretary responsible for Finance to guarantee a loan of a County Government, and such loan is required to be approved by Parliament. However, the guarantee cannot be issued unless the loan is for a capital project, the County can repay the loan and any interest associated with it, and the County's financial position over the medium term is likely to be satisfactory.

Further, the terms of any guarantee should comply with the fiscal responsibility principles and financial objectives of the National Government as encapsulated in the Constitution. Other requirements before guaranteeing a loan include the requirement that the guarantee is made only if it is in the public interest and, the loan is geared towards stimulating economic growth in a County Government. Of importance to note is that the Cabinet Secretary responsible for Finance must also consider the equity between the National and County Government's interests to ensure fairness.

With regards to specific fiscal responsibility obligations, Section 107 of the Public Finance Management Act requires that County Government borrowings over the medium term should only be for financing development expenditure and not recurrent expenditure. Further, every County Government is obliged to ensure that its level of debt at any time does not exceed a percentage of its annual revenue specified in respect of each financial year by a resolution of the County Assembly.

With the establishment of the Development Fees Fund, County Governments would be able to raise additional revenue to fast track the implementation of necessary infrastructure. Section 141 of the Public Finance Management Act requires that a County Executive Committee Member for Finance pay the proceeds of any loans raised into the County Revenue Fund or into *"…any other public fund established by the County Governments….".* The County Executive Committee Member may establish such a sinking fund(s)for the redemption of loans raised. Further, County Governments are empowered to appoint advisors and underwriters for raising the loan and enter into such agreements as may be necessary to enable them to perform their roles.

[75]Article 260 of the Constitution defines "loan" to include any form of borrowing, lending or deferred payment in respect of which money from a public fund may be used, or is required to be used, for payment or repayment.

ii. County Securities

Local government bonds are generally issued as an obligation to pay those who purchase the bond both the principle and interest within a given period. These can be in the form of general obligation bonds which are used to fund non-revenue generating projects like schools or public buildings. But they are predicated upon the expectation and economic foundation of future increase of local government revenues. This type of financing enables local governments to undertake large capital investment projects that are beyond the budgetary constraints of a single year. The disadvantage of general bonds is locking in future revenues to pay for past expenditures. This reduces the flexibility of the local/County Governments to direct the use of their operational budget.

In the case of infrastructure construction through development fees, revenue bonds would be appropriate as these have a secure source for repayment from the revenues to be generated by the payment of the development fees. These bonds would enable County Governments to immediately finance investments needed to construct infrastructure before the fees are completely paid, often by many different users over time. The risks can be mitigated by some level of prepayment by developers (e.g., as a condition for receiving building permits), project progression in stages linked to a repayment schedule, and/or some form of bank guarantees.

The Public Finance Management Act envisages that County Governments will issue securities as a financing mechanism. Section 2 defined "County public debt" to include all financial obligations attendant to loans raised and securities issued by the County Government. Under section 144, a County Government may issue securities, whether for money that it has borrowed or for any other purpose, only in one or more series and this provision further clarifies that the authority of the County Executive Committee member for finance to borrow money includes the authority to borrow money by issuing County Government securities following the Public Finance Management Regulations. The County Executive Committee Member for Finance is required to develop regulations governing the issuance of County Government securities for approval by the County Assembly.

A key issue to be addressed by County Governments is the need to obtain a credit rating to be able to issue securities. Several Counties have undergone, or have commenced, the process of undergoing a credit rating assessment through a collaborative effort of the Capital Markets Authority, the County Governments, the Commission on Revenue Allocation, and the World Bank, under the County Credit Worthiness Initiative. Some Counties that have already received credit ratings include Kisumu and Makueni Counties. As part of the initiative, the County Governments had to undergo training dealing with the full range of factors affecting counties' creditworthiness, revenue management and enhancement, expenditure control, and asset maintenance, capital investment planning, debt management, the use of special purpose vehicles to "ring-fence" specific revenues and scoping out options for financing.

iii) Mobilising Private Sector Capital

County Governments are empowered to enter public-private partnerships for purposes of implementing key projects under the framework of the Public-Private Partnerships Act (PPP Act), 2013, and the various Regulations promulgated thereunder. The PPP Act applies to every contract for the financing, construction, operation, equipping, or maintenance of a project or for provision of public services undertaken as a Public-Private Partnership (PPP), and there are several structures PPPs can take including the full scope of design, build, finance, operate and maintenance of projects to simple concessions.

The PPP Unit domiciled in the National Treasury has listed several infrastructure projects to be implemented by County Governments which are at various stages of procurement. These include bulk water supply projects in Laikipia and Murang'a Counties, solid waste management projects in Nairobi, Mombasa, and Nakuru Counties as well as various health care projects in Mombasa and other Counties. Studies have indicated that there is a good opportunity for the private sector to engage profitably in the city and benefit low-income households through innovative products that are specifically designed to meet their needs, at prices they can afford and delivered in ways that fit their lifestyles.

To date, however, no County Government has completed the implementation of a PPP and it is hoped that some of the ones in the pipeline will come to fruition soon. Like with the development fees and county securities, County Governments will need to boost their internal capacity to set up their PPP Nodes and have sufficient personnel for the project appraisal teams, proposal evaluation teams, negotiation teams, and contract management teams through the life cycle of these long-term projects to hand-back. In the absence of this internal capacity, County Governments can seek support from the Project Facilitation Facility to hire transaction advisors who should be obliged to ensure that they build the County Government's team during the entire transaction process from feasibility stage to financial close. [76]

iv) Land Value Capture

Provision of infrastructure is one of the factors that contribute to land value. Thus, there is a mutually reinforcing dynamic of investment in infrastructure and the benefit to private developers. The increase in land value creates an important new source of revenue that can be captured to cover the costs of infrastructure development. It also is a clear justification for the levying of development fees. Although taxes or charges may reduce property values, the provision of municipal services tends to raise them. Good local services make a city a more desirable place to live. Thus, better services increase the demand for properties in that city, pushing up property values. The increase from the services counteracts the decrease resulting from the tax or charge. (Slack, 2002).

v. Betterment taxes

Betterment taxes are imposed on landowners based upon the increased value of the property that results from a change of use/zoning regulations or other "windfall profits" from infrastructure development (not paid for through development fees). This type of tax is usually set when there is a major public infrastructure investment that increases the value of adjacent land (such as a new subway, public institution, or roadway upgrade).

Sometimes this type of tax needs to be paid only when the property owner undertakes some form of transaction and benefits from the increased land value e.g., additional building on the land or selling the property. In such cases, the timing of the public investment is not linked to the payment of the betterment tax and therefore needs to be combined with other financing mechanisms. Calculation of the tax is often a fixed percentage of the increased land value.

Similarly, special assessments are used to pay for paving or repaving streets, installing, or replacing water mains or sewers, constructing sidewalks, and providing streetlights. The tax is designed so that the costs incurred in the current period are shared among future beneficiaries from increased land value (Slack, 2005).

- ***Tax Increment Financing - TIF***

A TIF mechanism is often used to cover public development expenses such as upgrading infrastructure and renovating public buildings in existing neighborhoods. Financing is usually done through some form borrowing to be repaid from expected incremental tax increases.

Tax increment financing first developed as a tool in the 1970s. Recognizing the difficulties to spur economic development in areas, local government legislatures authorized this financing tool in areas deemed physically blighted and/or in need of economic development that would not otherwise be developed without this financing mechanism. Once a district is created, property taxes paid the general budget are frozen at a base year for a designated time period. As directed efforts from the public and private sector to redevelop the district increase the property values, this incremental increase in tax revenue from the base level flows to a TIF designated fund to repay any initial revenue bonds and to finance any continuing projects within the district.

Once the term of the TIF district expires, all tax revenues revert back to the city's general tax fund. Although it is argued that an increase in property values would not occur without the assistance of TIF, entities that rely on general funds might suffer during the term of the TIF. Depending on local regulations, school districts – a major benefactor from property taxes – may or may not be excluded from the terms of the TIF district (Johnson and Man 2001).

- ***Increased building rights***

An additional mechanism for funding development costs is through the increase in building rights. Although this is inherently a type of change that would lead to a betterment tax, it can be used to require developers to undertake public facility improvements instead of tax payment. Developers are granted higher densities in return for preserving a historic building or upgrading sanitation facilities.

7.9 Conclusion

The use of planning as a mechanism for managing urban development has been well articulated throughout this Guidebook. The use of County financing and specifically infrastructure financing through development fees is only recently being recognized. Increasing revenue generation is not only necessary for providing ongoing services but an essential new task for capital investments by County Governments.

The control over the use of funds for infrastructure from both public and private sources gives County Governments new powers to direct the pace, location, and form of urbanization. It can reduce urban sprawl and lead to a higher level of densification.

Although analysts generally recognize that planning tools have an impact on the nature, type, and location of development within a municipality, the effect of municipal financial tools is less well understood. Yet their impact on urban growth patterns is significant and should not be ignored. If a municipality is interested in pursuing a compact urban form, it must design its revenue-raising tools so that, at the very least, they do not discourage this form of development. (Slack, 2002)

> ***Mechanisms for levying development charges that vary by location already exist. What is needed is for cities to recognize the advantages of area-specific over uniform development charges and to apply them. (Slack 2002)***

Chapter Eight

8. ROLE OF COUNTY DEVELOPMENT CORPORATIONS IN THE EFFECTIVE MANAGEMENT OF DEVELOPMENT FEES

8.1 Overview

The County Governments Act entrenches the constitutional mandate of County Governments to act developmentally in the prioritization of the basic needs of the local population within the geographical boundaries of the respective Counties.

While all County Governments adopted their CIDPs for the second period 2017 – 2022, the execution of the inaugural CIPDs was often fragmented and the implementation of the various projects, including those flagship projects by which the public would measure the performance of the County Governments, was hamstrung by the insufficiency of the resources to implement these projects for the greater good of the residents of the Counties. As far back as 2017, the Commission for Revenue Allocation identified that several County Governments were experiencing challenges with the classification of budget line items between recurrent and development expenditure.[77] Further, the shortfalls in meeting their source revenues targets, posed, and continue to pose, a financial risk to County Governments as evidenced by huge pending bills.

A special audit by the Office of the Auditor General (OAG) as of 30th June 2018, indicated that out of a total Kshs. 88.98 billion pending bills presented for audit to the OAG by County Governments, bills amounting to KES 51.2 billion (58%) were reported as payable, while KES 37.7 billion (42%) lacked sufficient documentation to support services rendered or work done and were therefore not recommended for payment. The amount of eligible pending bills paid as of 18th December 2019 was KES 28.57 billion leaving an outstanding balance of KES 22.71 billion.[78]

Presented with these shortfalls and delayed transfers (of their equitable transfers) from the National Government, the likelihood of County Governments tapping into the resources in a development fees Fund to bridge their budgetary shortfalls for recurrent expenditure is very high.

It is against this backdrop that the recommendation is made that, in addition to establishing a Development Fees Fund under Section 116 of the Public Finance Management Act as recommended in Chapter Six, County Governments should also establish a separate infrastructure development corporation whose special and exclusive mandate would be to manage and coordinate the implementation of the infrastructure associated with the development fees.

The County Governments Act makes provision for County Governments to choose to deliver a range of services through their Agencies or a shared services framework. Section 116 of the County Governments Act in particular states that a County Government and its Agencies shall have an obligation to deliver services within its designated area of jurisdiction. These services can range from the provision of electricity or water to local economic development, provided that the service delivery is limited to those functions that fall within the mandate of County Governments under the Fourth Schedule of the Constitution. The County Governments Act further requires that these services are to be delivered while observing the principles of equity, efficiency,

[77]Commission on Revenue Allocation, *Recommendation On The Basis For Equitable Sharing Of Revenue Between National And County Governments For The Financial Year 2018/2019,* December 18, 2017

[78]Press Release by the National Treasury and Planning on Status of Payment of Pending Bills by National Government Ministries, Departments and Agencies (MDAs) and County Governments (December 23rd, 2019)

accessibility, non-discrimination, transparency, accountability, and sharing of data and information.

In delivering public services, Counties are further obliged, under Section 117 of the County Governments Act to, amongst other things, give priority to the basic needs of the public and to equitably deliver these in a manner that accords to:

i. prudent, economic, efficient, effective, and sustainable use of available resources.
ii. continual improvement of standards and quality.
iii. appropriate incorporation of the use of information technology; and
iv. financial and environmental sustainability.

8.2 Procedural Matters in Establishing a County Corporation

If a decision is made by the County Government to establish a development corporation, it must do so only if the decision is well informed, and following the framework stipulated in the Public Finance Management Act (the PFMA) and the Public Finance Management (County Government) Regulations (the PFM County Regulations).

Under Section 182 of the PFMA, a County corporation may be established or dissolved only with the prior approval of the County Executive Committee, which may be given only after considering any recommendations of the County Treasury regarding the financial implications of establishing or dissolving the County corporation.

Regulation 202 of the Public Finance Management (County Governments) Regulations enumerates five key guiding principles to be applied when determining whether to establish a County corporation:

i. There must be a role for a County Government entity to fill a vacuum created by market forces through:
   - ***social inclusion:*** where the county government addresses social inequity by redistributing resources in ways that improve opportunity for the general populace and, allowing them to participate in the economy and society consistent with the county government's social inclusion agenda; or

   - ***correction of market failure:*** where the County Government entity's activity shall address market failures by improving social and economic welfare through improved resource allocation and where the benefits of the County Government intervention outweigh its cost.

ii. Activities promoted by the County corporation must have clear and consistent objectives and be effective in achieving their County objectives and represent value for money for the expenditure of public funds.
iii. A County Government-owned enterprise must operate on commercial principles and with a defined commercial income stream that substantially supports the associated commercial activities.
iv. Where activities involving tax expenditures demonstrate that public expenditure is less effective in achieving the County Government objective, then they ought to be effectively undertaken on a commercial basis.
v. There is no overlap or duplication of functions when establishing a County corporation within the County Government.

8.3 Determining the Type of County Corporation to Be Established

The Public Finance Management Act categorizes different types of entities that may be established by a County Government:

i. County Corporation:

Section 2(1) of the Public Finance Management Act defines a County corporation as *"...a public corporation within a County established by an Act of Parliament or County legislation"*. This definition is mirrored in the PFM Regulations, which provide that a County corporation *"... has the same meaning assigned to it under section 2 of the [PFM] Act"*.

By way of comparison as to what type of entities would, or would not, constitute County corporations, reference is made to the provisions of the State Corporations Act, CAP 446 which defines a state corporation as:

(a) a state corporation established under section 3. These are corporations established by order of the President as a body corporate to perform the functions specified in that order. A state corporation established under S.3 shall have perpetual succession, be capable of suing and being sued in its corporate name and subject to the State Corporations Act, be capable of holding and alienating movable and immovable property.

(b) a body corporate established before or after the commencement of the State Corporations Act by or under an Act of Parliament or other written law but not –

- the Secretary to the Treasury incorporated under the Permanent Secretary to the Treasury (Incorporation) Act (Cap. 101);[79]
- a local authority established under the Local Government Act (Cap. 265) [now repealed].
- a cooperative society established under the Co-operative Societies Act (Cap. 490).
- a building society established under the Building Societies Act (Cap. 489).
- a company incorporated under the Companies Act (Cap. 486)[80] which is not wholly owned or controlled by the Government or by a state corporation.
- the Central Bank of Kenya established under the Central Bank of Kenya Act (Cap. 491).
- a bank or a financial institution licensed under the Banking Act (Cap. 488) or other company incorporated under the Companies Act, the whole or the controlling majority of the shares of stock of which is owned by the Government or by another state corporation; or
- a subsidiary of a state corporation.

ii. County Government Entity:

Section 2(1) of the Public Finance Management Act defines a County Government entity as "...any department or agency of a County Government, and any authority, body or other entity declared to be a County Government Entity under section 5(1) of the [PFM] Act".

Section 5(1) of the Public Finance Management Act describes the procedure for the declaration of entities as County Government entities. Under this section *[Declaration of entities as County Government entities]:*

a. A County Executive Committee Member for Finance may, with the approval of the County Executive Committee and County Assembly, by order in the Gazette, declare a County corporation, an authority, or any other body whose functions fall under that County Government to be a County Government entity for the purposes of the Act.

b. A declaration made under subsection (1) shall be based on criteria prescribed by regulations.

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[79]While the state Corporations Act refers to the Permanent Secretary, the applicable legislation has been amended to be cited as the Cabinet Secretary to the Treasury (Incorporation) Act ride the Public Finance Management Act, No. 18 of 2012
[80]Replaced by Act No. 17 of 2015

c. A County Executive Committee member for finance shall, from time to time, and not less than once each year, publish in the Gazette a list of the County entities declared under subsection (1).

d. A County Executive Committee member for finance may, from time to time with the approval of the County Assembly, and by notice in the Gazette, declare that a County Government entity declared under subsection (1) shall with effect from the date of the order cease to be a County Government entity for the purposes of this Act.

Drawing from the classification of state corporations under section 4 of the Public Finance Management Act which governs the declaration of National Government Entities, Regulation 201 of the Public Finance Management (County Government) Regulations provides that the County Committee Member responsible for Finance may by notice in the Gazette declare and classify County Government Entities in accordance with the schedules as indicated in the Public Finance Management (County Government) Regulations. The schedules under the Public Finance Management for state corporations include 304 corporations under five classifications, which are also mirrored in the County Government Regulations.

Regulations 201(2) to (5) therefore classify County Government entities as follows:

- Schedule 2 County Government entities - County Government-owned enterprises operating based on commercial principles: [81]
- Schedule 3 County Government entities - Regulatory agencies; [82]
- Schedule 4 County Government entities - Executive agencies, and County referral health institutions, boards and commissions fully or partially funded through the County Government budget:[83] and
- Schedule 5 County Government entities - County Public Funds established under the County legislation or subsidiary County legislation.[84]

iii. County Government-Linked Corporation

Section 186 of the Public Finance Management Act defines a County Government-linked corporation as “a County corporation in which the County Government is a shareholder with less than fifty percent of the share capital of the corporation.”

iv. Government-Owned Enterprise

Regulation 200(1) of the PFM Regulations defines a government-owned enterprise as an organization which:

- is a legal person under the ownership and control of a County Government.
- has been assigned financial and operational powers to carry on a business activity.
- as its main business, supplies goods or services by ordinary commercial principles; and
- is financed wholly or substantially from sources that do not require annual appropriation by the County Assembly, or imposition of a tax, levy, or another charge under the legislation. Examples of such entities at the national level include Kengen and Kenya Reinsurance Corporation Ltd which the Government of Kenya owns 74% and 60% respectively of issued share capital.

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[81] Comparative entities at the national government level include the Agricultural Finance Corporation established under the Agricultural Finance Corporation Act, CAP 323, the Industrial and Commercial Development Corporation established under the Industrial and Commercial Development Corporation Act, CAP 445, The National Bank of Kenya established under the Companies Act, CAP 486 (repealed by the Companies Act No. 17 of 2015), the Kenya Investment Authority established under the Investment Promotion Act, No. 6 of 2004, amongst others.

[82] Comparative entities at national government level include the Central Bank of Kenya established by the Constitution and the Central Bank of Kenya Act, CAP 491, Energy Regulatory Commission established under the Energy Act, No. 12 of 2006; the Competition Authority established under the Competition Act, No. 12 of 2010, amongst others.

[83] Comparative entities at the national government level include the Agricultural Development Corporation established under the Agricultural Development Corporation Act CAP 445, Brand Kenya Board established under the State Corporations Act CAP 446 Brand Kenya Board Order 2008 [L.N.38/2008], the Athi Water Services Board established under the Water Act, No. 8 of 2002 (now Water Act, No. 43 of 2016) amongst others.

[84] Comparative entities at the national level include the Youth Enterprises Development Fund established under the State Corporations Act CAP 446 Youth Enterprise Development Fund Order 2007 [L.N.63/2007], the Constituency Development Fund established under the Constituencies Development Fund Act, No. 30 of 2013; the Micro and Small Development Fund established under the Micro and Small Enterprises Act, No. 55 of 2015 amongst others.

Based on the above analysis and definitions, County corporations include all legal entities established by a County Government either via an act of Parliament or County legislation. These will take the form of companies, funds, authorities, regulatory agencies, boards, commissions, agencies, and referral health institutions.

8.4 Scope of The County Corporation's Mandate

Every jurisdiction across the globe has one form or another of corporations at a sub-national or municipal level and as a result, there is considerable diversity in the range of names that are given to these entities. Among others, these names include economic development company, city development company, development agency, local development agency, regional development agency, economic development agency, economic development corporation, development authority, city development agency, urban development corporation, or city development corporation.

Development corporations are usually responsible for enhancing the competitiveness of a place primarily by, facilitating and often undertaking or managing investment, in "hard" or physical factors such as transport infrastructure, real estate, and urban realm.[85] These agencies usually also tend to:

i. exhibit a corporate structure and outlook.
ii. operate at arm's length from the local government but have it as the key stakeholder and funder.
iii. be accountable to the local government.
iv. be relatively autonomous, nimble, responsive, and action oriented.
v. display strong leadership.
vi. exhibit a skilled and specialized workforce; and be focused on sustainable development.

As wholly-owned entities of a municipal government or local authority, the development corporation's business plans are informed by the planning processes of their shareholder and various development plans envisioned for the short, medium, and long term.[86] It is therefore imperative that the budgets and annual reports of any development corporation established at the County level to implement the infrastructure required through the development fees are all part of the broader reporting and budgets of the County Government as the shareholder.

The notion of specialized County-owned corporations is not novel as this would be similar to the water service providers that are owned by the County Governments and whose mandate is limited to the planning, implementation, and management of the water and sewerage infrastructure within the Counties.

In the present circumstances, the County Government would establish a County corporation that would be charged specifically to:

i. co-ordinate the development and implementation of infrastructure assets and infrastructure services within the County in accordance with approved infrastructure service masterplans and other statutory planning instruments of the County Government; and
ii. provide project management services for the development and management of infrastructure assets and infrastructure services within the County.

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[85] Organizing Local Economic Development: The Role of Development Agencies and Companies, G Clark et al, OECD, 2010

[86] The Johannesburg Development Authority is wholly owned by the City of Johannesburg. Its Annual Business Plan is informed by the City of Johannesburg's planning processes including the State of the City Address, the Integrated Development Plan (IDP) and the Service Delivery and Budget Implementation Plan (SDBIP). Interactions with the City of Johannesburg include bilateral engagements with the Executive Mayor, Budget Panel hearings, workshops with the Sustainable Human Settlements and Economic Growth Clusters and the Department of Development Planning. The JDA's strategic objectives are aligned with the Joburg 2040 growth and development strategy for the City of Joburg and in particular with the cluster plan for Economic Growth and Sustainable Services Clusters in the integrated development plan. Giving effect to resilient city strategies by restructuring spatial logic is the primary objective towards which the JDA will work in the medium term.

iii. ensure the efficient and effective utilization of the development fees levied and collected by the County in respect of development permissions issued under the Physical and Land Use Planning Act; and
iv. promote productive partnerships and co-operation between all relevant stakeholders in the provision and implementation of the County's infrastructure assets and infrastructure services.

The County Government and the development corporation established for these purposes would be required to execute a service level agreement that would govern the terms, conditions, and service levels to be achieved by the corporation in the implementation of the infrastructure assets and infrastructure services utilizing monies allocated to the corporation from the Development Fees Fund.

8.5 Administrative Matters in Management of The County Corporation

Regulation 203 of the Public Finance Management (County Governments) Regulations require that the County Executive Committee Member responsible for the proposed County corporation undertake certain tasks in determining whether to establish a County Corporation and if so, the nature of the corporation.

The County Executive Committee Member responsible for the relevant department seeking to establish the County corporation is required to prepare a feasibility assessment of the proposed County Corporation or the subsidiary to ascertain:

- the economic and financial viability of establishing a County corporation.
- whether the proposed activity cannot be conducted through an existing corporation or the parent department.
- whether or not there is a need to establish a new corporation.
- the functions and objectives that its establishment is supposed to attain.
- how the activities of the proposed corporation will fit in the County department's legislative mandate and medium-term strategy and aid the realization of the objectives of the programs associated with that department.
- how the activities of the proposed County corporation will fit in the overall medium-term plan of the County Government.
- how they impact the fiscal position of the County Government; and
- the amount of County Government share.

i. Business Case:

The County Executive Committee Member responsible for the relevant department seeking to establish the County corporation is required to submit a written business case, based on the findings of the feasibility study, to the County Executive Committee Member responsible for matters related to Finance, with detailed justification for establishing the County corporation or the subsidiary.

ii. Approvals and Enabling Legislation

Once the business case is submitted, the County Executive Committee Member – Finance, undertakes a further business case and viability assessment under Regulation 203(3)(b) which is then submitted to the County Executive Committee for approval.

Upon approval of the business case by the County Executive Committee, the necessary establishment processes can then be undertaken by the relevant department through legislation on the formation, management, and dissolution of the County corporation to allow it to perform the functions stipulated in the instruments for incorporation.

To give effect to the County corporation, the County Assembly would need to pass the necessary legislation for assent by the Governor, under the provisions of section 21 of the County Governments Act. The Bill and ensuing legislation once assented to by the Governor in accordance with section 24 of the County Governments Act, would thereafter be published as a supplement in the County *Gazette* and the Kenya *Gazette*.

iii. Stakeholder Consultation

The County Government is obliged to engage in public consultations with several stakeholders within the County. The purpose of the consultations would broadly be to:

- Identify the interests of different stakeholders and the implications of their involvement or non-involvement in the process.
- verify the understanding of the local economy as it is presented in the County corporation business case vis-à-vis the County Integrated Development Plan; and
- create an opportunity for stakeholders to understand their role and relationship to the proposed County corporation.

iv. Transfer of Assets, Liabilities, and Staff

The establishment of the County corporation will likely necessitate a transfer of assets, liabilities, and staff necessary for the corporation to perform its functions as designated in the enabling legislation. The County Government intending to establish the corporation will therefore need to undertake a comprehensive assessment of those assets, liabilities, and staff that would be affected by the establishment of the corporation. These would include *(list not exhaustive):*

- The number of County Government staff members to be transferred to the entity, if any, and the difference between County Government staff and the development corporation's staff.
- The number of County Government staff members that would become redundant as a result of moving a function or service to the corporation.
- The cost to the County Government of any staff retrenchments or the retention of redundant staff.
- Any assets of the County Government to be transferred to the corporation (not a transfer of ownership).
- Any assets of the County Government that would become obsolete.
- Any liabilities of the County Government to be ceded to the corporation; and
- Any debt of the County Government attributed to the function or service provided by the corporation that the County Government will retain.

v. Human Resources and Administration

The Corporation will need to develop its administration, human resource, and finance policies, applicable to its operations and in compliance with other applicable laws governing public corporations including but not limited to the Public Finance Management Act. All the corporation's policies must be adopted by the Board that will be established by the enabling legislation.

It is envisaged that the operational structure will consist of a Chief Executive Officer and technical and administrative staff. The types of skills needed by staff must be appropriate for the corporation and will be determined by the services that the corporation will offer.

Some services, such as human resources, could be provided by the County Government's public service board. The enabling legislation should provide for the corporation's Board to be responsible for the recruitment of the Chief Executive Officer, Chief Financial Officer, and other senior executives, but the Board may also rely on the expertise and availability of the County Public Service Board to manage the recruitment process and nominate shortlisted candidates for approval and appointment by the Board. The Chief Executive Officer would then lead the process of appointing the corporation's other staff.

It is expected that the remuneration of the staff of the corporation would be guided by the thresholds published by the Salaries and Remuneration Commission established under the Salaries and Remuneration Commission Act, No. 10 of 2011.

vi. Composition of the Board

Following good corporate governance principles, the County corporation would be led by a Board of Directors to be established per the enabling legislation. It is recommended that, in compliance with the *Mwongozo Code of Governance for State Corporations*, and to maintain the efficiency and independence of the Board, it is proposed that the Board be comprised of a mix of independent and public officials.

It is recommended that the Board shall competitively recruit a suitably qualified person, in terms of the law governing the practice of public secretaries in Kenya, to serve as the Secretary of the Corporation and the Board, and who shall serve as an *ex-officio* member of the Board with no voting rights.

Regarding the independent directors, it is proposed that they meet the same criteria as is required of independent members under the State Corporations Act and the Mwongozo Code. Further additional criteria would exclude former employees of the County Government, present vendors or suppliers of the County Government as well as relatives and persons related to persons employed within the County Government.

The independent directors shall hold office for three years from the date of appointment and shall be eligible for re-appointment for a single further term of three years, or as determined in the Mwongozo Code from time to time.

vii. Committees of the Board

Section 73(5) Public Finance Management Act, 2012 and Public Finance Management Regulations, 2015 require that each public entity shall establish an Audit Committee. The Audit Committee forms a key element in the governance process by providing an independent expert assessment of the activities of top management, the quality of the risk management, financial reporting, financial management, and internal audit, to the Board of Directors or a supervisory board or executive management.

Further, the Mwongozo Code requires that all State Corporations should have an Audit Committee and then several others to address issues related to amongst others, strategy, finance, human resource, procurement, administration, etc.

The *Audit Committee Guidelines for County Governments under Gazette Notice No. 2690 of April 15th, 2016,* under the Public Finance Management Regulations, 2015 provide clear direction on the function of Audit Committees for County Governments and County corporations.

The Audit Committee Guidelines recognize that the existence of an Independent Audit Committee can benefit an entity by:

- Acting as a forum for dialogue between the accounting officer or governing body, executive management, and the internal and external auditors. The communication helps facilitate a better awareness of each party ‘s responsibilities and provides a more efficient and coordinated audit process.
- Promoting the integrity and quality of internal and external reports by providing a high level of assurance and checks.
- Fostering and promoting a more effective and efficient audit process by providing an independent review of the internal audit annual work plan and reports.
- Providing a “no surprises” environment in an entity, particularly regarding the prompt identification of risks and threats to the entity; and
- Providing a depth of knowledge that assists management discharge its responsibilities in the most effective and efficient manner.

viii. Reporting Mechanisms

The Public Finance Management Act provides elaborate reporting mechanisms for public entities, and these are captured in the draft enabling legislation. Under Regulation 203 of the Public Finance Management (County Government) Regulations, the County Government Entity responsible for investment portfolio management in the County Treasury is to be constantly updated on the progress of a County corporation.

Further, the County Executive Committee Member responsible for investment portfolio management in the County Treasury shall conduct regular reviews of the County corporation to assess the relevance of the mandate and the justification for their continued existence and where necessary, make recommendations to the County Executive Committee for the dissolution or merger of corporations.

The County corporation will be required to prepare quarterly reports under Regulation 207. The reports are to be prepared by the accounting officer, in this case, the Chief Executive Officer of the corporation, and submitted within 15 days after the end of each quarter to the County Executive Committee Member responsible for the County corporation, with a copy to the County Treasury and the Auditor-General.

The quarterly reports prepared under paragraph (1) of Regulation 207 are required to include information on:

- revenue, including funding from grants.
- expenditure.
- borrowing, including any outstanding loan arrears; and
- amount of profit or loss of the County corporation for the quarter.

Further, the County corporation will be required, under section 165(5) of the Public Finance Management Act and Regulation 207, to prepare and submit annual financial and non-financial statements in the format gazetted by the Cabinet Secretary responsible for Finance within three months after the end of the financial year to the Auditor-General, with copies to the responsible County Executive Committee Member and the County Treasury.

These reporting mechanisms will be captured in the enabling legislation to ensure compliance with the Public Finance Management Act.

ix. Preparation of Annual Estimates

Under Regulation 205 of the Public Finance Management (County Government) Regulations, the Corporation shall be required to prepare annual estimates for the financial year at least three months before the commencement of each financial year. The annual estimates shall make provision for all estimated expenditure of the corporation for the financial year and in particular, the estimates shall provide for the:

- Payment of the salaries, allowances, and other charges in respect of members of the Board and staff of the corporation.
- Payment of pensions, gratuities, and other charges in respect of members of the Board and staff of the corporation.
- Proper maintenance of the building and grounds of the corporation.
- Maintenance, repair, and replacement of the equipment and other property of the corporation; and
- Creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

The annual estimates shall require the approval of the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the County Executive Committee Member responsible for the corporation for approval.

It is expected that no expenditure shall be incurred for purposes of the corporation except in accordance with the approved annual estimates, or in pursuance of an authorization of the Board given with prior written approval of the County Executive Committee Member responsible for the corporation.

x. Dividends

Regulation 206 of the Public Finance Management (County Governments) Regulations requires the County Treasury to prepare and issue dividend policy guidelines on how County Government Entities shall declare and remit dividends and surplus funds to the County Treasury.

For Schedule 2 County corporations, the Regulations require that the Board formulate an appropriate dividend policy in line with the policy guidelines issued by the County Treasury and submit to the National Treasury and the respective County Treasury.

xi. Accounts and Audits of the Corporation

The County corporation's Board shall be required to submit to the Auditor General the accounts of the corporation within three months after the end of each financial year. The accounts should be submitted together with:

- a statement of income and expenditure of the corporation during that year, and financial position as the thirtieth day of June; and
- a statement of the assets and liabilities of the corporation on the last day of that year.

As a public corporation, the accounts of the corporation shall be audited and reported upon in accordance with the provisions of the Public Audit Act, No. 12 of 2003.

xii. Dissolution of the Corporation

The dissolution of the County corporation will be governed by Regulation 204 of the Public Finance Management (County Governments) Regulations. The corporation may be dissolved only with the prior approval of the County Executive Committee, concerning legislation enacted to govern the establishment, management, and dissolution of the County corporation.

In the event of winding up of the corporation:

- all the corporation's funds corresponding to the County Government's equity in the County corporation shall be transferred to the County Revenue Fund.
- all assets and liabilities of the corporation corresponding to the County Government shall be transferred to the responsible County Government Entity.
- The final report after the dissolution of the corporation shall be submitted to the Auditor-General for audit and the County Assembly; and
- The chief executive officer, as the accounting officer of the corporation, shall be required to follow up implementation of the findings and eventual recommendations for dissolution to ensure compliance.

8.6 Management Framework for Infrastructure Projects

A key challenge in undertaking complex infrastructure projects at the County and neighborhood level by County Governments is the lack, "in-house", of the many professional specialists needed to manage these endeavors. Although outsourcing is certainly not new, the structure of infrastructure management through a County Development Management Company (CDMC) requires a more comprehensive and integrated process of work. Therefore, it will be necessary to engage the services of private project management companies that have proven track records. They will serve as project managers using teams of professionals in keeping with the scope and nature of the infrastructure project or frequently, a combination of interrelated projects. Under this arrangement, a private project management company would have five areas of professional responsibility. (Annex5)

- Work coordination during the design and pre-construction of the actual project
- Coordination and consultation at the tender stage
- Management, coordination, and supervision during and/or for construction of the project by the contractors in practice
- Review and supervision of the warranty period
- Guidance and assistance to holders of the complex planning process and at the end of the detailed design engineering

It is critical to make explicit that the CDMC is the legal and public oversight body that has full responsibility for the infrastructure projects. Using the materials prepared by the Private Project Management Company, it will put out the tenders, review the bids (in keeping with procurement regulations), contract for the construction of projects, and enter other financial arrangements with investment institutions.

8.7 Key Recommendations

This Chapter presents a management framework for the implementation of the necessary infrastructure assets and infrastructure services that are required to be provided and installed with the development fees levied and collected by the County Government. In summary, County Governments should consider:

i. The establishment of a dedicated corporation per section 182 of the Public Finance and Management Act that would be responsible for ensuring the provision and installation of necessary infrastructure assets and infrastructure services through the development fees.
ii. Enactment of enabling legislation that establishes the corporation recommended in this Chapter; and
iii. Where such a corporation is established, the County Government and the corporation should execute a service level agreement outlining the key terms, conditions, service levels, and key performance indicators to be met by the corporation in the performance of its obligations.

ANNEXTURES

ANNEX 1: DEVELOPMENT CONTROL PROCEDURES CHARTS (TEMPLATE 1)

Chart 1: Types of Development Applications

1

COUNTY PLANNING SERVICES
DEVELOPMENT CONTROL PROCESS

Types of Development Applications		Ref Documents
	Tier 1 Development Applications namely: > change of use, extension of use, sub-divisions and amalgamations, processing of easements and wayleaves; > renewal/extension of lease term; > Siting of education institutions, base transmission stations, petrol stations, eco lodges, camp sites, power generation plants and factories > Construction/building permits; and > High- and low-impact advertisement and signage applications; **Tier 2 Development Applications that give rise to:** > development charges components contribution (Structural, civil, electrical, mechanical and ICT engineering services); > performance conditions discharged through interim, partial and incremental certification; > environmental and social impact; (environmental reports, traffic management reports, urban design drawing schemes); > final discharge of land development completion or building pre-occupation certification; > planning gain in lieu of infrastructural services contribution; and > being of national strategic or inter-county projects. **Tier 3 Development Applications:** Those in fulfilment of pre-commencement and performance condition(s) granted in Tier 1 and Tier 2 permits. These include, but not limited to; > construction site board; > hoarding of construction sites; and > site safety and utility services during construction.	**Physical & Land Use Planning Act (PLUPA)** > Third Schedule > Development Control Regulations > Grey Book (set of Devolution Laws) > National/Sub-county/County/ Municipal/ Local Plans > Building and zoning plans > Building/Engineering Codes > Development Ordinance Orders > Design Reference manuals > Cadastre Information

System Access (Where Applicable)	Actors		Purpose	
	Members of the Public (Read only access)		> Awareness > Public Communication > Access To Information	**County Government Act** > Part VIII -Citizen Participation > Part IX - Public Communication And Access To Information > Part X - Civic Education > Part XII - Delivery Of County Public Services
	Accredited Professionals	Non-submitting Consultants	> Resource platform for dynamic planning information a) Associated Professional Reports b) Institutional Reports c) Research Purposes	
		Submitting Consultants a) Licenced Planner b) Licenced Architect c) Licenced Engineer	> Downloading of relevant materials by Subscription > Purchase of Cadastral andLand Registry Records (through controlled Access to links) > Submissiosn of applications	

Source: David Gatimu

Chart 2: Pre-Application Phase – Preparation of Development Application

2

COUNTY PLANNING SERVICES
DEVELOPMENT CONTROL PROCESS

Preparation of Development Application

Qualified Person	Category of Application	Documents	Statute Ref
Licenced Planner	Preparation of Planning Application that include: Subdivision; Amalgamation; Change/extension of Use; Renewal/Extension of Lease; processing of easements & wayleaves, siting of education institutions, base transmission station, petrol stations, eco lodges, camp sites; power generation Plants, factories;	> Form PLUPA (under formulation) > Annexures + Survey maps +Title/lease + Briefs + Scheme drawings	PLUPA > 59(2) > 58(2) > 58(5)
Licenced Architect	Preparation of buildings plans and structures that include: Residential, Commercial, Industrial, Institutional	> Form PLUPA……. > Annexures + Survey maps + Title/lease + Building plans	
Licenced Engineer	Preparation of civil and structural engineering designs for approved developments	> Form PLUPA…….. > Annexures relating to approved planning or building plans + Engineering Drawings + Engineering Calculations	

Type of Application	Activity	
Tier 1	START > Log In (where applicable) + Fill Relevant application Form + Attach requisited documents/files Licenced Physical Planner Prepares Development Proposal 1. Site specific Planning Brief 2. Site specific Scheme Drawings Licenced Architect Submits Building Plans (Site Specific Architectural Drawings)	PLUPA third schedule s.1(a)(b)(c)(d)(e)(f)(g)&(h)
	APPROVAL CONDITIONS	PLUPA >61(2)(a)
Tier 2	TIER 2 SUBMISSION Licenced Engineer Prepares Civil or Structural Engineering Drawings base on Approved Tier 1 Application 1. Site specific Planning Brief 2. Site specific Scheme Drawings	(PLUPA third schedule s.11(c)(d)(e) S.12 (a)(b)(c)(f)(g)

Source: David Gatimu

Chart 3: Receiving of Development Applications

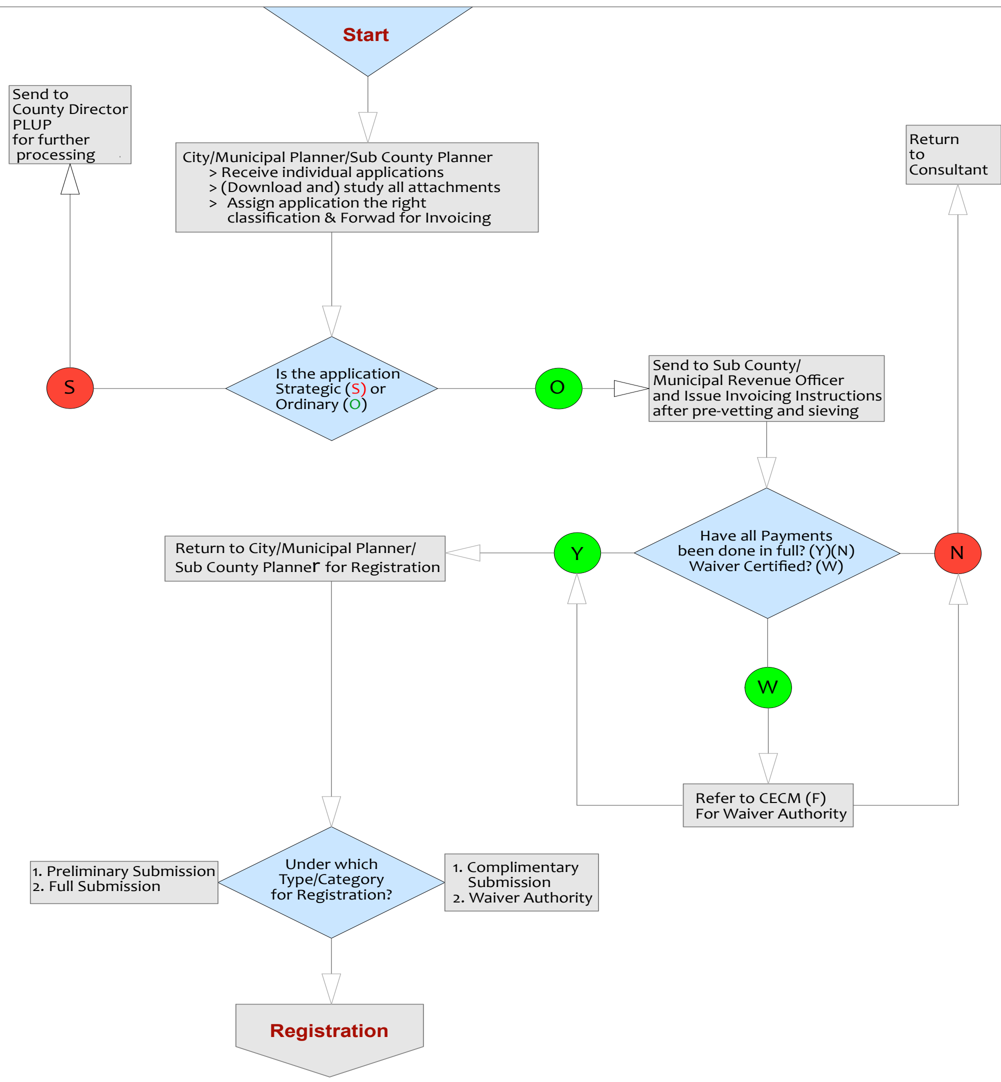
3

COUNTY PLANNING SERVICES
DEVELOPMENT CONTROL PROCESS

RECEIVING, INVOICING & REGISTRATION OF DEVELOPMENT PROPOSAL

	Actors	Category of Application	Documents	Statute Ref
Receiving	Cabinet Secretary	Strategic/inter-county development projects	> Form PLUPA (under formulation) > Annexures + Survey maps +Title/lease + Briefs + Scheme drawings + Building plans	PLUPA > 69(4) > 58(2)
	County Director of Physical & Land Use Planning (Delegated authority to City/Municipal Planner/Sub County Planner)	Ordinary development projects		
		Details		
Invoicing	Sub County/City/Municipal Revenue Officer	> Invoice based on type, category > Waiver - complimentary & partial waivers Notices		**PLUPA** > 58(1) > PLUPA draft > Regulations (part II pg. 283) **UACA** > 20(1)(m) **CGA** > 120(2), (3)&(4) **PFM** > 159(1)
Registration	County Director of Physical & Land Use Planning (Delegated authority to Municipal Planner/Sub County Planner)	> permanent reference number - for identification, tracking, cross-referencing and archiving > Ideally the Prescribed Certificate should show: + County ID + Sub County ID + App type + App category + Serial number		> CGA + 116(1) & (2) PLUPA >62

Activity



Source: David Gatimu

Chart 4: Circulation and Evaluation

4 COUNTY PLANNING SERVICES
DEVELOPMENT CONTROL PROCESS

CIRCULATION AND REVIEWING

Circulation

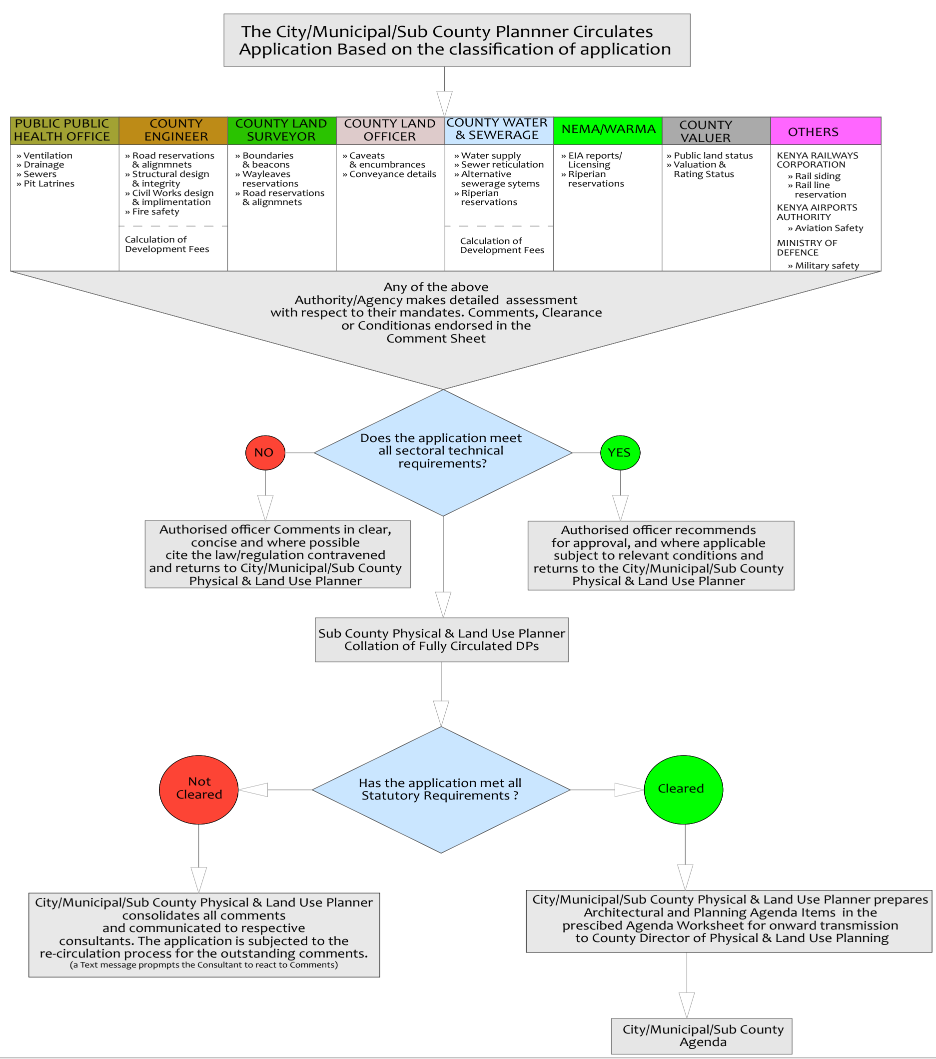
Actors	Category of Application	Documents	Statute Ref
Cabinet Secretary	Strategic/Inter-county development projects	> Form PLUPA (under formulation) > Annexures + Survey maps +Title/lease + Briefs + Scheme drawings + Building plans	**PLUPA** > 60(1) > 68 > 69 > Third Schedule **Applicable sectoral regulations** > PLUPA (Development Control) Regulations > Building Code > County Finance Act > NEMA/WaRMa Guidelines > Engineering Codes > Public Health Bylaws > Green Buildings Guidelines
County Director of Physical & Land Use Planning (Delegated authority to Municipal Planner/Sub County Planner)	Ordinary development projects		

Circulatin Stations	Forms
Consultation with relevant authorities (a) land survey; (b) roads and transport; (c) agriculture and livestock; (d) health; (e) public works and utilities; (f) environment and natural resources; (g) urban development; (h) national security in respect of land adjoining safeguarding areas	> Comment Circulation Forms > Development conditions applicable Forms

Review

Review Grounds	Personnel	Statute Ref
> Design compliance on all applicable fields > Applicable development conditions + Conformance + Performance	Authorised Review Sector Professional 1. County/ sub county Planners 2. Public Health Officers 3. Engineers 4. Revenue Officers 5. Environment officers 6. Land Registrars 7. Land Valuers	**PLUPA** > 61(1)(a-e) > 61(2) > CGA 95 & 96 > 64, 65 and 66 > draft regulations pg. 160, 167
+ Consolidation of infrastructural components + Calculation of Development Fees Applicable	1. Engineers 2. Revenue Officers	**PLUPA** + 63 + 63(2)(regulations to be developed at county level)

Activity



Source: David Gatimu

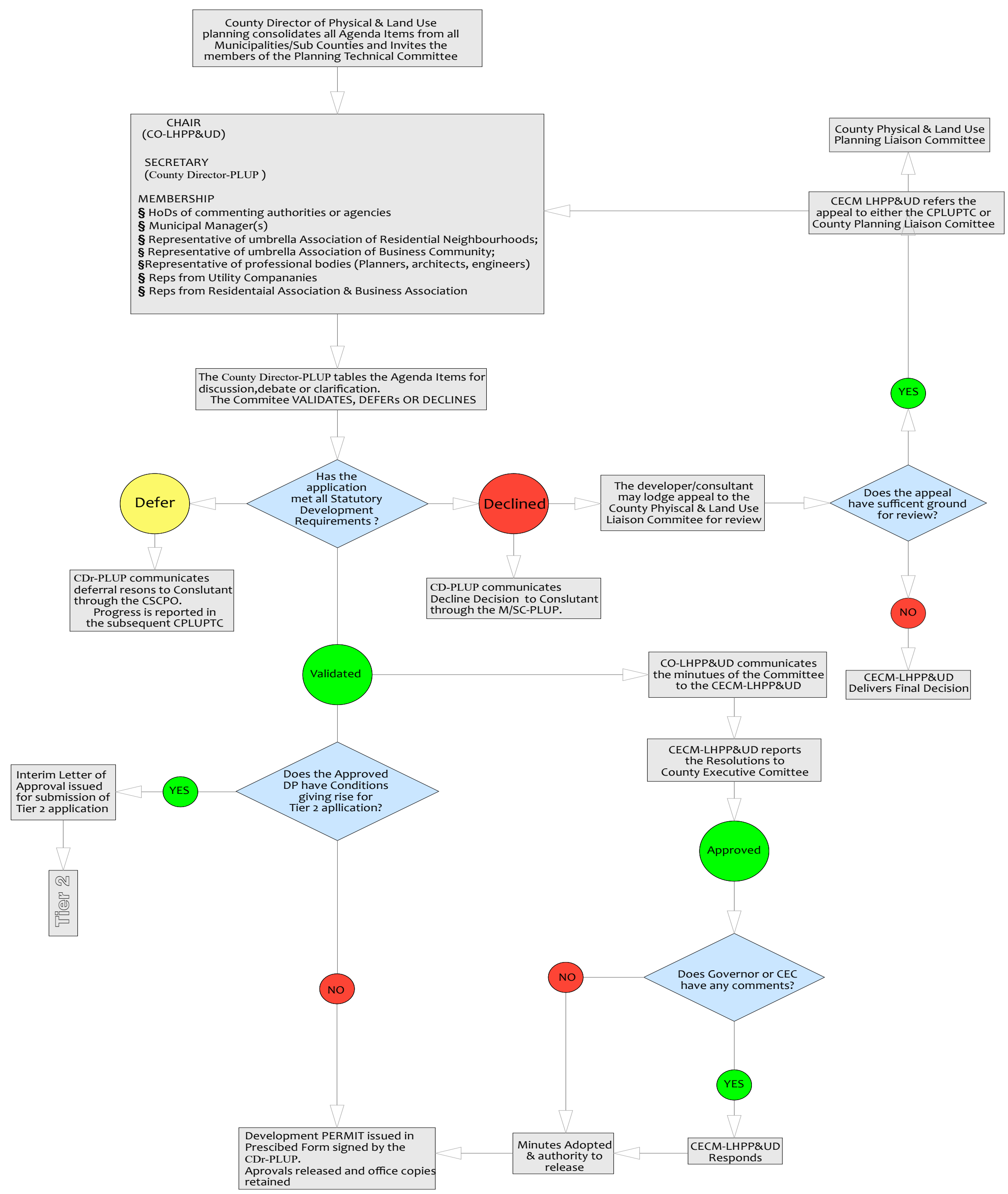
Chart 5: Validation, Approval & Appeals

5

COUNTY PLANNING SERVICES
DEVELOPMENT CONTROL PROCESS

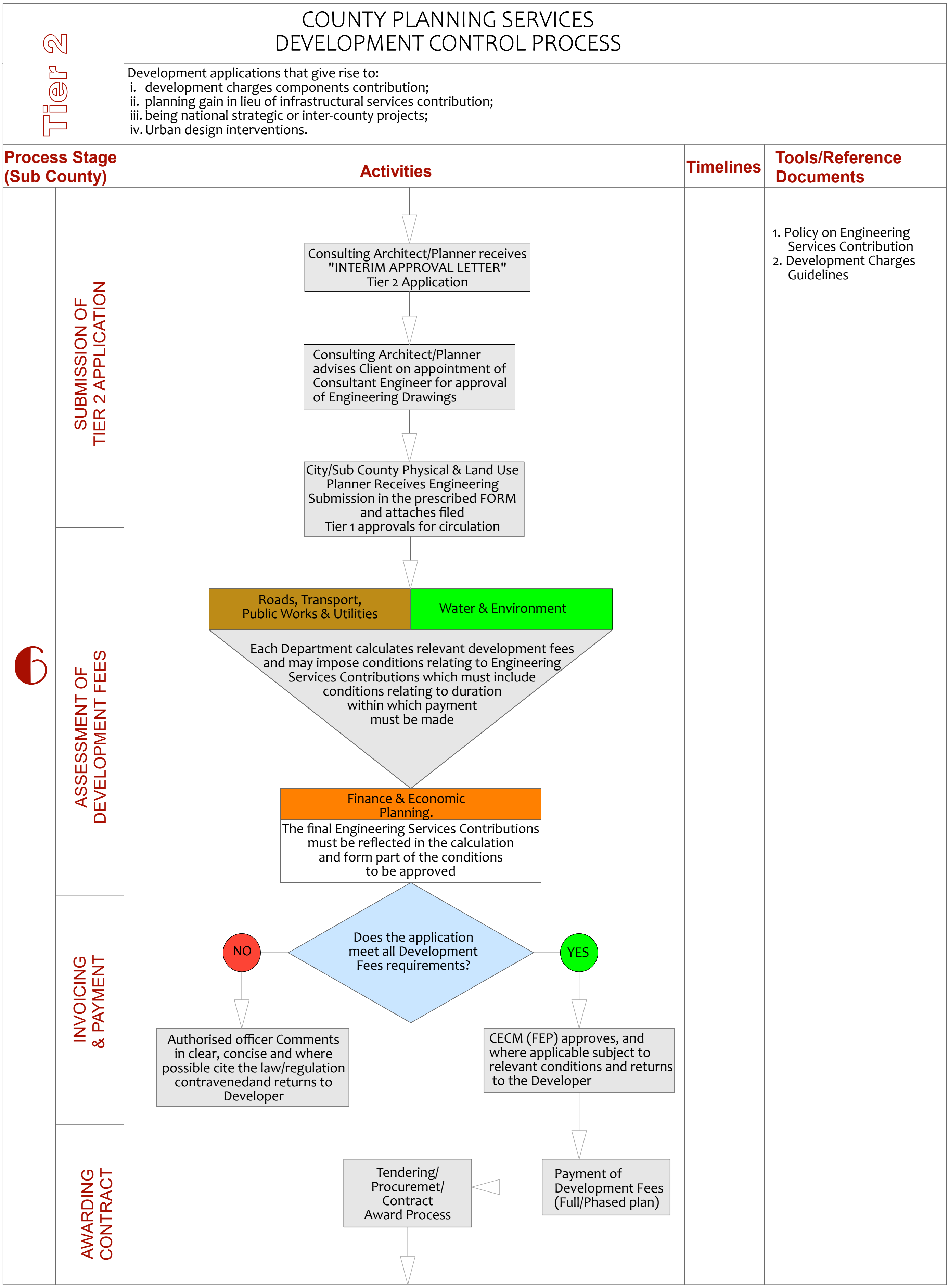
VALIDATION, APPROVAL AND APPEALS

	Actors	Activities	Documents	Statute Ref
Validation Meeting	County Director of Physical & Land Use Planning (Delegated authority to Municipal Planner/Sub County Planner)	> In liaison with Sub- Counties/Municipal Planners sending fully circulated applications > Director Consolidates all circulated applications from sub-counties/municipalities	Prescribed Agenda Listing Template > Composition and induction of members guidelines > Meeting Proceedings Guidelines > Minutes of Resolution	PLUPA Part VII 90(b)(e), Third Schedule
	Planning Technical Validation Committee (PTCV) comprising of 1. HoDs (Line Directors/Reps of Other Commenting Authorities) 2. Private Sector Reps	Collective Decision - Making > Determination of development applications + Approval - compliant applications + Deferments - further evaluation + Declined - non-compliant or special refusal		
Approval	CEC Member Responsible for Physical & Land Use Planning	Statutory Approval	> Printing of the minutes/resolutions > Signing off Approval Form with summary of Resolutions > Initialling/Signing on Every Resolutions page	PLUPA + 61(2)(a & b)
Notification of Determination	County Director of Physical & Land Use Planning	Communication of Decision (SMS, Email, post)	> Appeal Meeting Proceedings > Determination of Appeals	PLUPA + 20(i)
Appeals	Liaison Committees (National for Startegic Projects County for ordinary projetcs)	Hearing and Determination of Appeals		PLUPA + 61(3) + 90(2)(d) + PLUPA draft regulations pg. 232



Source: David Gatimu

Chart 6: Tier 2 Applications



Source: David Gatimu

Table 0 1: Specific Applications Workflow

<table>
<tr><th colspan="3">Preparation (Pre-Application)</th><th></th><th colspan="3">Reviewing and Approval (Pre-Approval)</th><th></th><th colspan="4">Inspection and Compliance (Post-Approval)</th></tr>
<tr><th>Submitting Professional</th><th>Tier 1 Application</th><th>Application Details</th><td rowspan="26">SUBMISSION (SUB COUNTY CITY or MUNICIPALITY)</td><th>Fees Payable & Circulation (CGA 120 & 118)</th><td rowspan="26">VALIDATION & APPROVAL (COUNTY HEADQUARTERS)</td><th>Tier 2 Application (Conformance Condition)</th><td rowspan="26">DEVELOPMENT PERMIT</td><th>Tier 3 Application (Performance Condition)</th><td rowspan="26">INSPECTIONS</td><th>Compliance or Occupation Certificate</th><th>Outcome</th></tr>
<tr><td rowspan="9">Planner</td><td rowspan="3">Land Use Change</td><td>Full Change</td><td rowspan="9">Planning, NLC, Roads & Infrastructure; environment, land survey, national security</td><td rowspan="3">(re-survey)</td><td rowspan="3">(re-valuation for stamp duty and Valuation Roll Entry)</td><td rowspan="3">Compliance Certificate</td><td rowspan="3">(re-registration)</td></tr>
<tr><td>Mixed-Use (with Masterplan)</td></tr>
<tr><td>Extension [(20/80%)] ratio of principal use)</td></tr>
<tr><td rowspan="3">Lease Tenure</td><td>Renewal (Expired)</td><td rowspan="3">(re-survey)</td><td rowspan="3">(re-valuation for stamp duty and Valuation Roll Entry)</td><td rowspan="3">Compliance Certificate</td><td rowspan="3">(re-registration)</td></tr>
<tr><td>Extension</td></tr>
<tr><td>Re-allocation</td></tr>
<tr><td rowspan="3">Subdivision & Amalgamation</td><td>Master Plan</td><td rowspan="3">(New-survey) (Development Fees for Infrastructure)</td><td rowspan="3">(Construction of Roads & Drainage, Water Supply, Sewerage/sanitation, Street lighting, Fiber optic cables</td><td rowspan="3">Subdivision Compliance Certificate</td><td rowspan="3">(New registration)</td></tr>
<tr><td>Comprehensive</td></tr>
<tr><td>Parcellation</td></tr>
<tr><td>Planner & Engineer</td><td>Easement and wayleaves</td><td>Trunk services, Power, oil, water sewerage, riparian</td><td rowspan="2">Planning, NLC, Roads & Infrastructure; environment, land survey, NEMA, WRA, national security</td><td>(New-survey) (surrender) (compulsory Acquisition)</td><td>Taking Possession</td><td></td><td>(New registration) (Public Land)</td></tr>
<tr><td>Planner, Engineer & Environmental Expert</td><td>Siting of education institutions, base transmission station, petrol stations, eco-lodges, campsites, power generation plants, factories</td><td>Outline Submission</td><td>(Building Plans; Engineering Designs; EIA Reports; Urban design and Landscape schemes)</td><td>(Construction of Roads & Drainage, Water Supply, Sewerage/sanitation, street lighting, Fibre optic cables</td><td>Compliance Certificate</td><td>(new registration)</td></tr>
<tr><td rowspan="2">Planner & Urban Designer</td><td rowspan="2">Advertisement</td><td>Signage</td><td rowspan="14">Planning, NLC, NCA, Roads & Infrastructure; environment, land survey, NEMA, WRA, national security</td><td rowspan="2">(Structural Designs)</td><td rowspan="2">Construction of Girders or hoisting structures</td><td rowspan="2">Compliance Certificate</td><td rowspan="2">Advertising License</td></tr>
<tr><td>Outdoor Advertisement</td></tr>
<tr><td rowspan="6">Architect</td><td rowspan="6">Building Plans (Architectural)</td><td>Residential</td><td rowspan="6">(Engineering Designs; Transportation Analysis Reports, EIA Reports; Urban design and Landscape schemes)</td><td rowspan="12">(Construction of Buildings Roads & Drainage, Water Supply, Sewerage/sanitation, street lighting, Solar Installation, Fibre optic cables</td><td rowspan="12">Occupation Certificate</td><td rowspan="12">Sectional Lease, Tenancy Agreements</td></tr>
<tr><td>Commercial/Offices</td></tr>
<tr><td>Industrial</td></tr>
<tr><td>Public Purpose</td></tr>
<tr><td>Religious</td></tr>
<tr><td>Institutional</td></tr>
<tr><td rowspan="6">Engineer</td><td rowspan="6">Building Plans (Structural)</td><td>Civil</td><td rowspan="6"></td></tr>
<tr><td>Structural</td></tr>
<tr><td>Electrical</td></tr>
<tr><td>Mechanical</td></tr>
<tr><td>Telecommunications</td></tr>
<tr><td>Transportation</td></tr>
</table>

Source: David Gatimu

ANNEX 2: MODEL PHYSICAL AND LAND USE PLANNING (DEVELOPMENT FEES) REGULATIONS, 20__ (TEMPLATE 2)

LEGAL NOTICE NO. ____________

THE PHYSICAL AND LAND USE PLANNING ACT (No. 13 of 2019)

THE PHYSICAL AND LAND USE PLANNING (DEVELOPMENT FEES) REGULATIONS, 20__

IN EXERCISE of powers conferred by Section 63(2) of the Physical and Land Use Planning Act, 2019, the County Executive Committee Member responsible for matters relating to physical and land use planning makes the following Regulations.

PART I – PRELIMINARIES

Short title

1. These Regulations may be cited as the [insert County name] County Physical and Land Use Planning (Development Fees) Regulations, 20___.

2. (1) In these Regulations, unless the context otherwise requires-

"**Act"** means the Physical and Land Use Planning Act, No. 13 of 2019;

"applicant" means the person who makes an application for development permission pursuant to section 58 of the Act;

"application" means an application for development permission under pursuant to section 58 of the Act;

"body" means any organisation whether a juristic person or not and may include a duly constituted neighbourhood association or residents' as sociation or other such community entity;

"building" means any structure or erection and any part of any structure or erection of any kind whatsoever whether permanent, temporary or movable, and whether completed or uncompleted;

"bulk infrastructure" means infrastructure located outside the boundaries of a development site required to provide service to multiple users in the county including the development site;

"condition of approval" means a condition imposed by the county government on the development permission where circumstances require it or for any justifiable cause;

"Constitution" means the Constitution of Kenya, 2010;

"ounty assembly" means the county assembly of [insert county name] established under Article 176 of the Constitution;
"county executive committee member" means the county executive committee member responsible for matters relating to physical and land use planning;

"county government" means the county government of [insert county name] established under Article 176 of the Constitution;

"county service" means any function assigned the county government in accordance with the Fourth Schedule of the Constitution;

"department" means a department of the county government and includes any agency or organisation established or appointed by the county government to perform a function for which the county government is responsible and such public officers who serve in that department;

"development" means carrying out any works on land or making any material change in the use of any structures on the land and **"development of land"** and "develop land" shall have corresponding meanings;

"development control" means the process of managing or regulating the carrying out of any works on land or making of any material change in the use of any land or structures and ensuring that operations on land conform to spatial development plans as well as policy guidelines, regulations and standards issued by the planning authority from time to time in order to achieve a purposeful utilization of land in the interest of the general welfare of the public;

"development fee" means a once-off charge imposed by the County Government on an applicant as a condition for development permission pursuant to Section 63 of the Act, in order to cover the costs of capital infrastructure assets necessary to meet the increased demand for existing or planned external infrastructure associated by a new development;

"development site" means the site, portion of land or part of land which is the subject of a development permission and includes any improvement or building on the land;

"early childhood development centre" means any building or premises used for the care of more than six (6) children and includes a playgroup, aftercare, pre-school, nursery school, educare or similar facility;

"existing use" means in relation to any building or land the use of that building or land for any purpose of the same character as that for which it was used before the date the Act becomes applicable to the area in which the building or land is situated: Provided that where an existing use of land is, after such date, extended onto, under or over adjoining land, whether such adjoining land is held under the same title or not, such extension shall not be an existing use for the purposes of the Act;

"external infrastructure" means infrastructure situated outside the boundaries of a development site required to service the use and development of the development site and is either a bulk infrastructure or a link infrastructure;

"Fund" means the [insert county name] County development fees fund established under Regulation 46;

"fund administrator" means any person, appointed by the county executive committee member responsible for finance under Regulation 49;

"gazette" means the Kenya Gazette published by authority of the national government, or a supplement to the Kenya Gazette;

"infrastructure asset" means land, property, building or any other immovable asset including plant and equipment that accede therefore and which are required for the provision of an infrastructure service;

"infrastructure implementation agreement" means a written agreement concluded between the county government and the applicant for development permission recording their detailed and respective rights for the provision and installation of external infrastructure services or internal infrastructure required for an approved development and matters ancillary thereto;

"infrastructure service" means a system for the provision of water, sewerage, electricity, county roads, storm water drainage, gas, and solid waste collection and removal and the performance of such other services by a county government;

"infrastructure service masterplan" means a high-level infrastructure plan prepared by the county government to cater for future development and includes an integrated transport plan, electricity plan, bulk water and sanitation master plan, storm water master plan and integrated waste management plan for the county;

"inspector" means a person designated or appointed as an inspector under Regulation 38(6);

"intensification of land use" means the development of land that requires the provision of additional external infrastructure whether or not that infrastructure asset is already installed;

"internal infrastructure" means infrastructure situated within the boundaries of a development site required for the use and development of the development site;

"link infrastructure" means infrastructure required to connect internal infrastructure within the boundaries of a development site to the bulk infrastructure;

"person" means any natural or juristic person including an organ of state;

"the public" when used in relation to these Regulations, means–

(a) the residents of *[insert county name]* county;

(b) the rate payers of *[insert county name]* county;

(c) non-resident persons who because of their temporary presence in *[insert county name]* county make use of services or facilities provided by the county;

"public purposes" means the purposes of –

(a) transportation including roads, canals, highways, railways, bridges, wharves and airports;
(b) public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;
(c) public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;
(d) public parks, playgrounds, gardens, sports facilities and cemeteries;
(e) security and defence installations;
(f) settlement of squatters, the poor and landless, and the internally displaced persons; and
(g) any other analogous public purpose.

"public officer" has the meaning assigned to it in Article 260 of the Constitution;

"publish" means the publication of a general notice in the Gazette; and

"social infrastructure" means infrastructure serving social housing and low-cost housing as designated under the Housing Fund Regulations, 2018 as amended from time to time.

Legal Notice No. 238
Cap 117

Object of the Act

3. The objects of these Regulations are to–

(a) provide a framework for the uniform, effective and comprehensive imposition of development fees within the County;

(b) provide for the establishment and administration of the [insert County Name] County Development Fees Fund.

PART II – DEVELOPMENT FEES

Power to levy development fees
58 of the Act.

4. (1) The county government may levy a development fee in respect of an application for a development permission submitted to it in terms of section.

(2) The development fee shall be levied by the county executive committee member as a condition of granting the development permission.

Treatment of development Fees

5. The development fees collected by the county government shall –

(a) not be a general source of revenue for the county government;

(b) be paid into the Fund;

(c) be utilised for the exclusive purpose of funding or acquiring infrastructure assets and installing infrastructure services in a timely and efficient manner to support current and projected land development within the county; and

(d) be recorded as a liability in the county government's financial statements until such time as the county government utilizes the funds for the purposes set out in paragraph (b) above, at which point the development fee shall be recognised as revenue.

Proportionality of Development Charges

6. The amount of development fees levied shall be –

(1) proportional to the extent of the demand that the applicant's development is projected to create for existing or planned bulk infrastructure; and

(2) calculated on the basis of a reasonable assessment of the costs of providing existing or planned bulk infrastructure.

Payment of development Fees

7. (1) Unless otherwise provided in these Regulations, an applicant for development permission shall pay the full amount of the development fees levied as a condition of the development permission prior to commencing with the proposed development to which such development permission applies.

(2) The conditions of approval appended to a development permission shall set out the payment requirements for development fees and must specifically prescribe–

(a) the amount to be paid, including provisions for escalation over time; and

(b) the date when the development fee payment is due and payable by the applicant, which may include more than one payment date for more than one payment in the case of phased land developments.

(3) Subject to paragraph (2)(b) above, the applicant will make one payment in response to a detailed invoice, provided by the county government to the applicant and no payments by instalments will be permitted unless the balance is secured by such financial security instruments as may be approved, and published, by the county government from time to time.

4) The development fee will be payable by the applicant into a designated account of the development fees fund.

(5) The county development committee member may revoke a development permission that is subject to development fees if the applicant has commenced with the construction of the proposed development without making payment of the development fees in full or securing the payment of the development fees in accordance with the provisions of paragraph (3) above.

Development fees for phased projects

8. (1) In large or complex development projects, the county government may approve a development in phases thereby allowing development fees to be paid by the applicant on commencement of each approved phase.

(2) The development fees for phased developments shall be computed for the entire development prior to obtaining approval to provide certainty to the applicant on his full development fees liability and thereby enabling the applicant to incorporate these costs into their viability calculations for the development.

Limitation on imposition of development fees

9. The county government shall not impose a development fee–

(1) to pay for capital costs required because of increased needs for an infrastructure service that the county government does not have a mandate to provide in accordance with the Fourth Schedule of the Constitution; and

(2) to pay for capital costs required for infrastructure within the county but that shall not be necessary for the provision of infrastructure services to the specific development site.

PART III – PROVISION AND INSTALLATION OF INFRASTRUCTURE SERVICES

Scope of infrastructure services

10. (1) These Regulations shall be applicable to the external infrastructure more particularly described in the First Schedule.

Responsibility for infrastructure provision

11. (1) The county government shall be responsible for the provision and installation of bulk infrastructure according to the county government's service masterplans and capital budget unless such bulk infrastructure is provided by another service provider.

(2) The applicant shall be responsible for the provision and installation of -

(a) internal infrastructure;

(b) link infrastructure, where applicable; and

(c) bulk infrastructure if the development requires the installation of specific bulk infra structure other than in accordance with the applicable service master plan or capital budget of the county government and if the county executive committee member requires the applicant to perform the installation as part of the conditions of the development permission.

Installation of internal infrastructure by applicant

12. The construction and installation of internal infrastructure and link infrastructure by an applicant shall be in accordance with such plans and specifications which the applicant submitted to the county government when applying for development permission for the development.

Installation of internal infrastructure by county government

13. (1) The county government may, at the request of the applicant, install internal infrastructure.

(2) If the applicant requires the county government to install internal infrastructure, the County Government shall install such internal infrastructure in accordance with the provisions of an infrastructure implementation agreement between the county government and the applicant as prescribed in Regulation 23.

Installation of link infrastructure by the applicant

14. The construction and installation of any link infrastructure by an applicant shall be in accordance with plans and specifications which the applicant submitted to the county government when applying for development permission for the development.

Installation of bulk infrastructure by applicant

15. (1) The applicant may install any bulk infrastructure in lieu of payment of the applicable development fees, and the fair and reasonable cost of such bulk infrastructure may be set off against the development fees payable by the applicant.

(2) If the county government requires the applicant to install a bulk infrastructure, then the applicant shall install such service in accordance with the provisions of an infrastructure implementation agreement between the county government and the applicant as prescribed in Regulation 23.

Installation of excess capacity

16. If it is deemed necessary by the county executive committee member and in order to maintain the functionality of the county government's long-term service master plans, the county government may require an applicant, when installing any bulk infrastructure or any link infrastructure, to install infrastructure in excess of the capacity of service required to service the applicant's development.

Set off on excess capacity installations

17. (1) Subject to Regulation 16, the county government shall set off from the applicant's development fee liability, the fair and reasonable costs to the applicant of installing the following when required by the county government to do so–

(a) the portion of any link infrastructure in excess of the capacity of service required for the applicant's development;

(b) the portion of any bulk infrastructure in excess of the capacity of service required for the applicant's development.

Mandatory external infrastructure provision by applicant

18. An applicant shall be liable for the full costs of installing all bulk infrastructure and link infrastructure to meet the capacity of service required for the proposed development for all phases of such development.

Services outside the mandate of county

19. Where the county government is not the provider a bulk or link infrastructure, the applicant shall satisfy the county government that adequate arrangements have been made with the relevant service provider or public body for the provision of that infrastructure service.

20. An applicant shall ensure that the design of a bulk engineering or a link infrastructure to be installed by the applicant–

(1) accords with the county government's guidelines, design manuals, engineering practices and approved policies for any infrastructure;

(2) accords with the national government's guidelines, design manuals, engineering practices and approved policies for any infrastructure, where the county government does not have its own such guidelines, design manuals, engineering practices and approved policies; and

(3) is approved in writing by the county government before the infrastructure is installed.

Installation of internal infrastructure in phases

21. An applicant may install internal infrastructure and external infrastructure in phases provided that–

(1) such phasing is made a condition of approval under the development permission; and

(2) the installation of the infrastructure is done in accordance with a phasing plan approved by the county government.

Exemptions from installations

22. The county government may grant an exemption from the installation of an infrastructure in accordance with these Regulations or other written law.

Infrastructure implementation agreement

23. (1) Where the county government requires the applicant to install any external infrastructure, then the applicant shall not commence with such installation until the applicant and the county government have executed an infrastructure implementation agreement.

(2) Where the applicant requests the county government to install any internal infrastructure within the development, then the county government shall not commence with such installation until the applicant and the county government have executed an infrastructure implementation agreement.

PART IV – APPLICATIONS THAT GIVE RISE TO A DEVELOPMENT FEE

Affected applications

24. (1) The county government shall levy a development fee in respect of each external infrastructure on the following development permission types–

(a) Rezoning, change of user, extension of user and extension of lease applications which shall include the following applications–

(i) rezoning and simultaneous subdivision of the land and which is typically required for new land development or urban infill development;

(ii) rezoning of land from one zone to another in order to change the permitted land uses on the site;

(iii) rezoning from one subzone to another in order to increase the permitted floor space: and

(iv) any other change in land use which is specified in any notice, regulation or other subsidiary legislation of the county government which is likely to result in additional utilisation of infrastructure within the county;

(b) Subdivision and amalgamation applications which shall include the following applications–

(i) subdivision and amalgamation applications where the number of dwelling units increases as a result of the subdivision or amalgamation; or

(ii) where the subdivision and amalgamation application results in an increase of floor space or gross leasable area;

(c) In any of the following applications–

(i) applications for approval of building plans for residential, commercial, retail, educational or hospitality, including hotels, eco-lodges and campsites, use where there will be an intensification of the land use and need for additional infrastructure to service the building or buildings;

(ii) applications to increase the permitted floor space, gross leasable area, number of occupants or number of rooms;

(iii) applications to increase permitted coverage;

(iv) any application for the amendment of conditions of a previous approval where the condition limited the land use, floor space, gross leasable area or coverage; and

(v) other applications as the county executive committee member may prescribe from time to time.

Applications not affected by these Regulations

25. Development fees shall not be applicable to applications where the impact on infrastructure utilization is similar to or less than the current use and do not result in additional loading onto external infrastructure.

Frequency of development fees

26. The county government shall impose the development fee only once in respect of a development permission.

PART V – CALCULATION OF DEVELOPMENT FEES

27. (1) The applicant shall pay the proportionate share of capacity or increase in the external infrastructure as specified in the Second Schedule or such other legislation or notice issued by the county government or national government.

Proportion of external infrastructure costs to be borne by applicant

(2) The county government shall calculate the development fee to approximate as closely as possible the pro rata share of the actual costs of related county infrastructure needed to service a particular development.

(3) In calculating the estimated unit of costs for each service, the county government shall have regard to the following guidelines–

(a) the county spatial plan or county physical and land use plan;

(b) a service master plan or framework plan for each infrastructure sector that identifies future infrastructure requirements on the basis of identifiable impact zones (or sub-areas) of the county, provided that such plans only need exist for the impact zones in which a development fee is to be levied;

(c) a comprehensive infrastructure plan that establishes the levels and standards of service, current replacement costs of facilities, depreciation and renewal requirements for each service sector for which a development fee will be calculated. For purposes of this requirement–

(i) current replacement costs include all land costs, professional fees, materials, labour, preliminary and general items; and

(ii) the capital cost to address infrastructure backlogs are excluded from the total cost.

(d) the engineering standards for infrastructure to be installed should meet the county government's requirements as set out in any national government or county government guidelines for human settlement and planning and minimum standards stipulated for the civil infrastructure in respect of such human settlements, various design manuals and engineering practice in the industry as amended from time to time;

(e) the average fixed cost per unit, where fixed cost is equal to the current replacement cost of installing or constructing the existing service provided that:

(iii) unit costs shall be re-calculated every five years using current replacement costs to accurately reflect the infrastructure cost;

(iv) the applicant shall be required to pay the unit cost rate applicable on the date at which the development fee becomes payable;

(v) where the payments of the development fee are scheduled in accordance with phased approvals of a development, then the applicable unit cost payable for each phase shall be applicable on the date at which the development fees becomes payable for that phase; and

(vi) in the case of a phased development where the application is made prior to a full re-calculation of the unit costs but the approval is granted thereafter, the last unit cost including annual inflation prior to the full re-calculation shall apply.

Contributions to be proportionate to impact

28. (1) The development fees for which an applicant shall be liable shall be limited to the estimated impact of the proposed development on external infrastructure.

(2) The county executive committee member shall publish the applicable formula used for computation of the external infrastructure, the components of such formula for each external infrastructure and the unit cost estimates for each such external infrastructure.

(3) The county government shall update its unit cost estimates based on a cost inflation index on a three-year basis and with the approval of the county assembly as part of the county government's medium-term budget process.

Computing impact on external infrastructure

29. In determining the standard units for measurement of impact for each external infrastructure that will be included in the development fee, the county government shall use the guidelines specified in the Second Schedule or such other legislation or notice issued by the county government or national government.

Greenfields developments

30. (1) In the case of a development where no external infrastructure are available and all such services need to be constructed, then the applicant shall pay a development fee for his portion of the capacity of the new external infrastructure to be installed based on the units of measurement outlined in the Third Schedule.

(2) Where the development is self-contained and all new external infrastructure are for purposes of servicing the proposed development to the exclusion of other developments, then in this case, the actual costs of such infrastructure assets and infrastructure services shall be calculated and charged to the applicant.

Brownfields developments

31. In the case of a proposed development where there is sufficient external infrastructure available and the construction of new external infrastructure is not required, the applicant shall pay a development fee for his portion of the capacity of the existing infrastructure based on the units of measurement outlined in the Second Schedule.

Combined approach

32. In the case of a proposed development where there is space capacity in some external infrastructure, but additional external infrastructure may need to be constructed, then the applicant shall be pay a development fee–

(1) for his portion of the capacity of the existing infrastructure based on the units of measurement outlined in the Second Schedule; and

(2) his portion of the of the capacity of the new external infrastructure to be installed based on the units of measurement outlined in the Second Schedule.

PART VI – ADMINISTRATIVE PROCESS

Liability for development fees

33. (1) An applicant shall be liable for the payment of development fees once these have been specified by the county government as a condition for the approval of a development permission lodged under the Act and no further agreement between the county government and the applicant shall be necessary except as otherwise provided in these Regulations.

(2) The county government shall not impose a development fee prior to the formal submission of an application for development permission by an applicant under the Act.

Information required from applicant

34. (1) The county government may require from the applicant such information as may be necessary to enable the county government to calculate the required development fee to be imposed to a development application lodged under the Act.

(2) The county executive committee member shall prescribe such information as may be required by the county government for purposes of evaluating the applicable development fee under these Regulations.

Application procedure

35. (1) The county government shall review the application for development permission and in so doing –

(a) review the adequacy and quality of the internal infrastructure and their related costs proposed to be installed within the proposed development;

(b) determine–

(i) whether adequate external infrastructure is available to serve the proposed development;

(ii) whether the existing external infrastructure will require to be upgraded to serve the proposed development;

(iii) whether new external infrastructure will have to be installed to serve the proposed development.

(2) In making the determination referred to in subsection (1) above, the county executive committee member shall within seven days of receiving the application for development permission, give a copy of the application to the relevant authorities or agencies including those enumerated in section 60 of the Act to review and submit comments to the application for development permission.

(3) Each of the departments referred to in subsection (2) above may impose conditions relating to the application for development permission and in particular, conditions relating to infrastructure that may be impacted by the proposed development.

(4) All comments required to be provided under this Regulation shall be submitted to the county executive committee member within fourteen days of receiving a copy of the application for development permission from the county executive committee member.

Notification to applicant

36. (1) The department responsible for land, housing and physical planning shall notify the applicant in writing whether development fees shall be applicable to the proposed development.

(2) Where an applicant is liable for payment of development fees, then the notice referred to in subsection (1) shall stipulate–

(a) what would constitute bulk infrastructure and link infrastructure in the context of the proposed development.

(b) the external infrastructure that will be subject to the development fee for the proposed development;

(c) the amount to be paid as a development fee for each applicable infrastructure service affected by the proposed development; and

(d) the formula which was used to calculate the development fees.

(3) The final development fees shall be reflected in the calculation and form part of the conditions appended to an approval to an application for development permission.

Representations by the applicant

37. (1) The county government shall afford the applicant an opportunity to make written representations within fourteen days in respect of a notice issued under Regulation 36.

(2) Where an applicant and county government are unable to reach agreement on the infrastructure services to which a development fee will be applicable for purposes of the proposed development, then the applicant or the county may initiate the appeal mechanisms in accordance with Part X of these Regulations.

Withholding approvals and clearance

38 (1) The county government may withhold any approval or clearance as provided for in the Act where an applicant has not complied with his development fee liability in accordance with these Regulations.

(2) Where the proposed development entails subdivision of land, no transfer or registration of any portion of the subdivided land may be concluded for any portion of land until the development fees have been paid in full.

(3) Where there is no transfer from the applicant to third parties, the county government shall withhold both building plan approvals and the certificate of occupation until the development fees have been paid in full.

(4) In the event that an applicant proceeds with the proposed development without paying the development fee in accordance with the applicable conditions of approval, no subsequent transfer of that land or registration of a subdivided portion of that land may be processed or approved until the applicable development fees have been paid in full.

(5) In all cases where a development fee arises, the county government shall impose a condition that confirms that the land use becomes unlawful on account of non-payment of the development fee, thereby enabling the county government to invoke available enforcement measures appropriate to an unlawful land use.

(6) The county government may appoint inspectors to check on the development site on an ad hoc basis to ensure that an applicant complies with the conditions of approval regarding the payment of development fees or the provision of infrastructure and the county government shall not be required to provide any prior notification to the applicant of the intended ad hoc inspection.

Additional development rights

39. Where an applicant wishes to acquire additional development rights over and above those already approved under any application for development permission, a new application will be required in terms of the Act and the development fees liability shall be recalculated in the manner prescribed in these Regulations.

PART VII – PROVISION OF INFRASTRUCTURE IN LIEU OF ENGINEERING SERVICES CONTRIBUTIONS

General conditions for provision of infrastructure in lieu of development fees

40. (1) The county government may waive the payment of development fees provided that the county executive committee member may require that the applicant provides and installs the infrastructure in relation to the development site in question for general use by the residents of the area where the development site is located and –

(a) the infrastructure assets so installed are formally transferred to the county government;

(b) an external infrastructure implementation agreement is signed between the county government and the applicant prior to the commencement of any works to be provided in lieu of development fees which shall–

(i) specify the extent, norms and standards, value, monitoring arrangements, asset transfer mechanism; and

(ii) specify the actual implementation programme and anticipated transfer date.

(2) Where the county government accepts an infrastructure asset contribution in lieu of a development fee liability, the county government may require an applicant to install infrastructure of a value greater than his liability, provided that the county government certifies in writing–

(a) that the additional contribution is necessary to ensure the integrated and efficient development of infrastructure networks related to the area serving the development site;

(b) the amount and basis of the determination of the additional cost estimate; and

(c) that it will reimburse the applicant for the additional costs incurred in installation of the excess capacity on the basis of actual costs.

(3) The county government shall refund the applicant for the actual additional costs incurred in installation of the excess capacity under paragraph (2) (c) above subject to the following conditions–

(a) the refund shall be no later than ____months after the infrastructure asset is formally transferred to the county government; or

(b) in the case of infrastructure assets installed in advance of planned requirements, no later than the date by which the county government had initially planned to install it in accordance with its relevant infrastructure master plan.

Transfer of infrastructure to the county government

41. (1) Any infrastructure asset for the provision of an external infrastructure service installed by an applicant pursuant to Regulation 40 and the land on which it is situated, shall be–

(a) either formally transferred to and received by the county government; or

(b) accessible to the county government pursuant to an infrastructure implementation agreement entered between the county government and the applicant where such infrastructure does not fall on county land and such access may include the registration of a servitude in favour of the county government.

(2) The final value of the infrastructure assets transferred, as reflected in payment certificates, must be reconciled with the original development fees liability and any balance due by the applicant shall be treated as a rebate and shall not be payable by the applicant provided that the quality of the infrastructure assets shall of the standard approved by the county government in accordance with these Regulations.

42. (1) An applicant making an infrastructure asset contribution in lieu of a development fee liability shall, in relation to the procurement of a service provider, or service providers build and install the infrastructure specified in the external infrastructure implementation agreement, subject to the following requirements–

(a) the applicant shall follow a fair, equitable, transparent and competitive process of calling for bids from infrastructure providers and appoint the bidder offering the most cost-effective bid in accordance with the Public Procurement and Asset Disposal Act as amended from time to time;

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(b) a record of the procurement process and award must be appended to the infrastructure implementation agreement;

(c) the county government shall reserve the right to participate as an observer in the deliberations on bids received by the applicant in order to check that the decision-making process is fair and a rational selection is made;

(d) the county government may require the applicant to engage with relevant county officials prior to the applicant making a decision on appointment of a particular contractor, so that the county government has an opportunity to make representations regarding the reasonableness of the costs and any other relevant consideration;

(e) the county government may appoint an appropriately qualified independent third party to assess the bid process conducted by the applicant, including whether the costs claimed are fair and reasonable, which assessment could form the basis either for further negotiation between the county government and the developer, or could be binding on both of them, at the county government's discretion;

(f) the county government may appoint an independent, registered consulting engineer to assess whether the standards of the infrastructure installed meet the county government's requirements as set out in any national or county guidelines for human settlement and planning and minimum standards stipulated for the civil infrastructure in respect of such human settlements, various design manuals and engineering practice in the industry as amended from time to time;

(g) the county government may prohibit the applicant from appointing as a contractor any person which has been black listed by the county government or national treasury or which has failed to perform under a county or national government contract within a three-year period prior to the proposed appointment;

(h) the value of the infrastructure to be installed in lieu of development fees shall be certified reasonable by an independent, registered consulting engineer appointed by the applicant;

(i) the county government may appoint an independent, registered consulting engineer to verify the report provided to the applicant in terms of paragraph (h) above;

(j) accurate records of payment are to be kept by the applicant to verify final payment certificates; and

(k) the county government shall have access to all relevant records relating to the construction process, including not only records relating to the procurement process, but also the contractual documentation, notices, invoices, progress reports and other records and such documentation shall also be subject to the provisions of Part IX of the County Governments Act.

(2) The executive committee member may impose other appropriate safeguards to those specific in paragraph (1) on a case-by-case basis depending on the circumstances.

Act No. 17 of 2012

PART VIII – EXEMPTIONS

Limitation of exemptions

43. No relief may be granted in respect of the payment of development fees to a category of properties or a geographical area other than by way of an exemption provided for in these Regulations.

General conditions for exemptions

44. (1) Applications that qualify for exemption from development fees liability are not liable for development fees provided that–

(a) the county executive committee member shall set out the reasons and identify the alternative funding source for the required external infrastructure that would have been provided and installed with the development fees; and

(b) the county executive committee member shall calculate the development fee as if it were payable;

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(c) the value of the development fees liability for that development permission as calculated under paragraph (b) above shall be appropriated by the county government and transferred to the development fees fund; and

(d) the application for exemption shall have been approved by the county executive committee member responsible for finance.

Specific conditions for exemptions

45. (1) The county government may only grant an exemption to the payment of a development fee liability in accordance with these Regulations and any other conditions imposed under the Public Finance Management Act or regulations promulgated thereunder.

Act No. 18 of 2012

(2) The county government –

(a) may establish categories of owners of properties, or categories of properties, for the purpose of granting exemptions, rebates and reductions;

(b) may exempt specified categories of land use or specified geographical areas or a combination of both;

(c) shall not specify individual natural persons or properties who shall be exempt from development fees;

(d) shall take into account the effect of development fees on the poor and include appropriate measures to alleviate the financial burden on them;

(e) may exempt social infrastructure; and

(f) shall take into account the effect of development fees on organisations conducting specified public benefit activities and registered in terms of the Income Tax Act for tax reductions because of those activities, in the case of property owned and used by such organisations for those activities.

(3) The county executive committee member shall calculate or cause to be calculated the full development fee liability applicable exempted development permissions and

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(a) make projections regarding revenue to be forgone for a financial year in relation to all exemptions, rebates and reductions and reflect these in the departmental budget; and

(b) make a budgetary provision for the realisation of the associated revenue foregone from another realistically available source of revenue.

(5) The county executive committee member shall publish the value of any exemptions authorized in accordance with the provisions of this Regulation 45.

PART IX – ESTABLISHMENT OF THE DEVELOPMENT FEES FUND

46. (1) There is established a fund to be known as the [insert County Name] County sustainable infrastructure development fund.

(2) The Fund shall consist of –

(a) all monies paid to the county government by applicants for development permission as development fees;

(b) income generated from the proceeds of the Fund;
2
(c) income from investments made by the Fund;

(d) any grants, gifts, donations, loans, or other endowments granted to the Fund; and

(e) any surplus funds realized from an accrual of interest on the capital amounts paid into the development fees fund.

(3) Any surplus funds realized from an accrual of inters on the capital amounts in the Fund shall be used for the purposes of the Fund.

(4) The Administrator may invest any of the funds of the Fund which are not immediately required for its purposes in such government securities in accordance with the provisions of the Public Finance Management Act.

(5) All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year shall be retained by the Fund for the purposes of the Fund and shall not be paid into the county revenue fund at the close of the financial year.

No. 18 of 2012

47. (1) Subject to subsection (2), the life of the Fund shall not be less than five years and not more than ten years.

(2) The life of the Fund may, with the approval of the county assembly, be extended for a further ten-year term per extension.

(3) The life of the Fund shall be extended such number of times as may be necessary to implement the objectives of these Regulations provided that the approval for such extension to the life of the Fund shall be sought at least one financial year prior to the end of the relevant term.

Utilisation of the monies of the fund

48. (1) All monies in the Fund shall only be used exclusively for capital works¬ related to the full and actual costs of construction of new county external infrastructure or the upgrading of the capacity of existing county external bulk infrastructure necessitated by the proposed development.

(2) No monies in the Fund shall be used –

(a) to reduce or eliminate existing infrastructure backlogs; or

(b) for operations or maintenance costs; or

(c) as a general revenue source for the county government.

(3) Subject to the provisions governing phased developments and provision of external infrastructure in lieu of payment of development fees, once an applicant has paid in full for a specific piece of infrastructure, the county government shall include the costs associated with that infrastructure on the development budget in the county government's subsequent budget cycle.

(4) Where the subsequent budget cycle will delay the implementation of the infrastructure development, the county government may prepare a supplementary budget to prioritise implementation of a specific piece of infrastructure that has been fully paid for by an applicant.

Fund Administrator

49. (1) There shall be a fund administrator appointed pursuant to the provisions of the Public Finance Management Act.

No. 18 of 2012

(2) The fund administrator shall–

(a) supervise and control the administration of the Fund;

(b) prepare a budget and such plans for better administration of the Fund in consultation with the board to be approved by the county executive committee;

(c) impose conditions or restrictions on the use of any expenditure arising from the Fund;

(d) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the fund;

(e) prepare, sign and transmit to the auditor-general in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund in accordance with the Public Audit Act and in such details as the county treasury may from time to time direct;

(f) furnish such additional information as may be required for examination and audit by the auditor-general or under any law; and

No. 34 of 2015

(g) designate such staff as may be necessary to assist in the management of the Fund.

Winding up of the fund

50. (1) The executive committee member for finance may wind up the Fund with the approval of the county assembly.

(2) In the event of winding up of the Fund, the cash balances shall be transferred to the county exchequer account while other assets of the Fund shall be transferred to the county government.

(3) The final report after winding up the Fund shall be submitted to the auditor-general for audit and the county assembly.

Annual Estimates

51. (1) At least three months before the commencement of each financial year the fund administrator shall prepare or cause to be prepared estimates of the revenue and expenditure of the Fund for that financial year.

(2) The financial estimates referred to under sub-section (1) shall –

(a) differentiate between recurrent and disbursement expenditure; and

(b) provide a breakdown of –

(i) the value of development fees levied;

(ii) the value of development fees received;

(iii) the value of the external infrastructure provided by applicants in lieu of payment of the development fees;

(iv) the value of exemptions approved and sources of alternative funding; and

(v) expenditure from operational and fund administration expenses provided that such expenses–

a. shall not exceed three percent of the value of the monies in the Fund; and

b. shall be payable from any interest accrued on the monies paid into the Fund or other monies transferred to the Fund other than the payments by applicants made in accordance with these Regulations;

c. shall not be payable from the payments made by applicants in accordance with these Regulations.

52. (1) The fund administrator shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the county executive committee member for finance may from time to time approve and shall, within a period of three months after the end of the financial year, cause to be prepared, signed and forwarded to the auditor-general –

(a) a financial statement of the Fund; and

(b) such other statements of accounts as the county executive committee member for finance may approve.

No. 34 of 2015

53. (1) The accounts of the Fund shall be examined, audited and reported upon annually by the auditor-general in accordance with the Public Audit Act.

(2) The county treasury shall submit to the auditor-general all books and accounts of the board, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the auditor-general shall be entitled to require from any member, officer, employee or agent of the authority such information and explanation as he may consider necessary for the performance of his duties as auditor-general.

Annual Report and Publication

54. (1) the fund administrator shall, within a period of three months after the end of the financial year, submit to the executive committee member for finance a report of the operations of the Fund, and the yearly balance sheet and such other statements of account as the executive committee member for finance shall require, together with the auditor-general's report.

(2) The executive committee member shall publish the report, balance sheet and statements submitted under paragraph (1).

(3) The executive committee member shall lay before the county assembly the reports, balance sheet and statements submitted under paragraph (1), and such statements of accounts as may be approved, within a period of fourteen days of the receipt of the reports and statements, or, if the county assembly is not sitting, within fourteen days of the commencement of its next sitting.

PART X – REVIEW AND APPEALS

Review

55. (1) An applicant may request a review by the county physical and land use planning liaison committee established under the Act.

(2) The county physical and land use planning liaison committee shall hear and determine matters referred to it for review expeditiously and in any event, not more than 60 days from the date such application for review is lodged by an applicant.

Appeals

56. Any person aggrieved by a decision of the County Physical and Land Use Planning Liaison Committee under this section may appeal to the Environment and Land Court against such decision in accordance with the rules of procedure for the time being applicable to the High Court.

PART XI – MISCELLENEOUS PROVISIONS

Protection from liability

57. Nothing done by the fund administrator or any public officer, employee or agent of the county government shall, if it is done *bona fide* for executing the functions, powers or duties of the county government, render such person acting on the directions of the county government personally liable to any action, claim or demand whatsoever.

Financial Offences

58. A person who misappropriates any funds or assets of the Fund or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine not exceeding ten million shillings or to both.

General Offence

59. Every person who violates or fails to comply with any provision of these Regulations for which no other penalty is provided, commits an offence and is liable on conviction to a fine not exceeding imprisonment of a term not exceeding one year or to a fine not exceeding one million shillings or to both.

Commencement

60. (1) These Regulations shall come into operation on the date on which these Regulations is published in the *Gazette*.

(2) The county executive committee member may, bring into operation different provisions of these Regulations on such different dates as the executive committee member may appoint by notice in the *Gazette*.

(3) Where the executive committee member brings into operation these Regulations on different dates in accordance with paragraph (2), then the county executive committee member shall bring into effect such different provisions within twelve months of the date on which the first provisions came into operation so that these Regulations are in operation within twelve months of the date on which the first provisions came into effect as published in the *Gazette*.

(4) If the county executive committee member has failed to bring all of the remaining provisions into operation within twelve months after the date on which the first provisions came into operation, the county assembly may, bring into operation such of those provisions has have not yet been commenced.

FIRST SCHEDULE (Regulation 10)

SCOPE OF EXTERNAL INFRASTRUCTURE
PART A: EXTERNAL ENGINEERING SERVICES

1) The following external bulk infrastructure: -

Service	Function under Part 2, Fourth Schedule, Constitution of Kenya
a. Water;	S. (11)(b) – water services
b. Sewerage	S. (11)(b) – sanitation services
c. County roads;	S.(5)(a) – county roads, street lighting, traffic and parking infrastructure
d. Storm water management;	S.11(a) - storm water management systems in built-up areas
e. Solid Waste management;	S.2(g) – refuse removal, refuse dumps and solid waste disposal
f. Electricity; and	S.8(e) – electricity and gas reticulation
g. Public transport.	S.5(d) – public transport

2) All link infrastructure required to connect to the external bulk infrastructure under Part A section 1 above.

PART B:

3) The following internal infrastructure within the development site -

a) Internal roads, sidewalks and pavements;
b) Water reticulation infrastructure;
c) Storm water management infrastructure;
d) Solid waste management;
e) Sanitation and sewerage infrastructure;
f) Parks and recreational public areas;
g) Last mile power connectivity; and
h) Public utilities or other works as specified as a condition of approval under the Act.

SECOND SCHEDULE (Regulation 29)

GUIDELINES FOR COMPUTING IMPACT ON EXTERNAL INFRASTRUCTURE

The following guidelines will be applicable in determining the standard units for measurement of impact for each infrastructure service that may be included in the development fee:

Service	Factor	Yardstick	Unit of Measure
Roads	Increased road capacity required - the 'width' component or 'capacity' component	Increase in vehicle trip generation	Vehicle trips/day
	Reduction in road life as a result of the development – the 'strength' component	Increase in heavy vehicle traffic	Heavy Load Vehicle trips /day
	Boundary roads	Street frontage	Kilometers required
Sanitation	Additional sewerage effluent generated	Average Annual Daily Outflow	kℓ/day
Solid Waste	Increase in landfill airspace required and transfer station capacity	Solid Waste Generation Capacity	Solid waste tonnage per day
Storm Water	Increase in the overall quantity and the peak flow rate of the runoff	Runoff coefficient	Impervious area
		Area of the development	m^2
Water	Additional consumption per distribution or reservoir zone	Average Annual Daily Demand (AADD)	kℓ/day
Electricity	Increase in peak capacity requirement per substation zone	After Diversity Maximum Demand (ADMD)	kVa/day
Transport	Increased number of passengers using public transport and requiring additional facilities	Person trip generation	Person trips per day

County Executive Committee Member,
Physical and Land Use Planning

ANNEX 3: MODEL COUNTY DEVELOPMENT AUTHORITY/COOPORATION BILL (TEMPLATE 3)

COUNTY DEVELOPMENT AUTHORITY BILL, 20__ ARRANGEMENT OF CLAUSES

COUNTY DEVELOPMENT AUTHORITY BILL, 20

AN ACT of the County Assembly to provide for a legal and institutional framework for the coordination, implementation, management and operation of infrastructure assets and infrastructure services within the county; to ensure the effective and efficient utilization of developments fees levied in respect of development permissions within the county; and for matters connected therewith

ENACTED by the County Assembly of [insert county government name] as follows-

PART I – PRELIMINARY

Short title

1. This Act may be cited as the [insert county government name] County Development Authority Act, 20____.

Interpretation

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

"Board" means the Board of the Authority established under section 7 of this Act.

"Constitution" means the Constitution of Kenya, 2010;

"Authority" means the [insert county government name] Development Authority established under section 4;

"county assembly" means the county assembly of [insert county government name] established under Article 176 of the Constitution;

"county service" means any function assigned the county government in accordance with the Fourth Schedule of the Constitution;

"county government" means the county government of [insert county government name] established under Article 176 of the Constitution;

"department" means a department of the county government and includes any agency or organisation established or appointed by the county government to perform a function for which the county government is responsible for and such public officers who serve in that department;

"development fee" means a once-off charge imposed by the County Government pursuant to Section 63 of the Physical and Land Use Planning Act, No. 13 of 2019;

"Fund" means the [insert county name] County development fees fund established under the Development Fees Regulations promulgated by the county executive committee member in accordance with Section 63 of the Physical and Land Use Planning Act;

"executive committee member" means the county executive committee member responsible for matters relating to physical planning and land use;

"gazette" means the County Gazette or the Kenya Gazette published by authority of the national government, or a supplement to the County Gazette or the Kenya Gazette;

"infrastructure service" means a system for the provision of water, sewerage, electricity, county roads, storm water drainage, gas, and solid waste collection and removal and the performance of such other services by the county government;

"infrastructure service masterplan" means a high-level infrastructure plan prepared by the county government to cater for future development and includes an integrated transport plan, electricity plan, bulk water and sanitation master plan, storm water master plan and integrated waste management plan for the county;

"person" means any natural or juristic person including an organ of state;

"public officer" has the meaning assigned to it in Article 260 of the Constitution;

"publish" means the publication of a general notice in the County Gazette and Kenya Gazette; and

"service level agreement" means a service level agreement executed between the county government and the Authority governing the terms, conditions and service levels to be achieved by the Authority in the implementation of the infrastructure assets and infrastructure services utilizing monies allocated to the Authority from the Fund.

Purpose and Object of the Authority

3. The objects of the Authority shall be to-

(c) co-ordinate the development and implementation of infrastructure assets and infrastructure services within the county in accordance with approved infrastructure service masterplans and other statutory planning instruments of the county government; and

(d) provide project management services for the development and management of infrastructure assets and infrastructure services within the County;

(e) ensure the efficient and effective utilization of the development fees levied and collected by the country in respect of development permissions issued under the Physical and Land Use Planning Act; and

(f) promote productive partnerships and co-operation between all relevant stakeholders in the provision and implementation of the county's infrastructure assets and infrastructure services.

PART II – ESTABLISHMENT OF THE AUTHORITY

Establishment of Authority

4. There is established a Authority to be known as the *[insert county government name]* County Development Authority.

Nature of the Authority

5. (1) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of –

(a) Suing and being sued;
(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of property, movable and immovable;
(c) borrowing and lending money;
(d) entering into contracts; and
(e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(2) The Authority shall be wholly owned by the County Government.

Headquarters of the Authority

6. (1) The office of the Authority shall be located within the geographical boundaries of the County at such address as the Authority may designate, from time to time, by resolution.

Board of the Authority

7. (1) The management of the Authority shall vest in the Board of Directors.

(2) The Board shall be comprised of –

(a) a non-executive chairperson who shall be appointed by the governor;
(b) the chief officer responsible for physical planning and land use or a representative designated in writing by the chief officer;
(c) the chief officer responsible for finance or a representative designated in writing by the chief officer;
(d) the county attorney or a representative designated in writing by the county attorney;
(e) three persons, not being employees or officers of the county government, who serve as independent directors and competitively appointed the by executive committee member by notice in the Gazette; and
(f) the Chief Executive Officer who shall be an ex officio member without the right to vote at the meetings of the Board.

(3) The chairperson and members of the Board appointed under paragraph (7)(2)(a) or (e) shall serve for a term of three years and shall be eligible for appointment for one further term.

(4) The office of chairperson and member of the Board appointed under paragraph (7) (2)(a) or (e) shall fall vacant if the holder of that office –

(a) dies;
(b) resigns from office in writing;
(c) is absent without reasonable excuse from three consecutive meetings of the Board; or
(d) is otherwise removed from office in accordance with this Act or any other written law.

Qualifications of chairperson and members

8. A person shall be qualified to be appointed as the chairperson or a member of the Board under paragraph (7)(2)(a) or (e) respectively if that person –

(a) is a Kenyan citizen;
(b) holds a degree from a recognized university;
(c) has at least ten years' relevant professional and academic experience their respective fields;
(d) satisfies the requirements of Chapter six of the Constitution;
(e) is not an undischarged bankrupt;
(f) is not a member of the governing organ of a political party;
(g) is not a member of Parliament or a county assembly;
(h) does not hold a public office;
(i) is not, and in the past two years has not been, a staff member of or otherwise employed by the Authority or the county government;
(j) does not have a pecuniary relationship with the Authority or the county government; or
(k) is not a relative of an executive officer or employee in an executive position of the Authority or county government.

Qualifications of chairperson and members

9. The chairperson or a member appointed under paragraph 7(2)(a) or (e) may be removed from office –

(a) is adjudged bankrupt by a court of competent jurisdiction;
(b) is convicted of an offence involving dishonesty or fraud;
(c) if found to have contravened any provision of the Constitution of Kenya;
(d) for gross misconduct;
(e) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
(f) is unable to perform the functions of the office due to incapacity occasioned by illness; or
(g) Is otherwise unwilling or unable to perform the functions of the office.

(3) Before the chairperson or a member appointed under paragraph 7(2)(a) or (e) is removed from office, he or she shall be given a reasonable opportunity to make representations, adduce evidence and call such witnesses against the decision to remove him or her from office.

10. The Board shall have all the powers necessary to manage and administer the Authority and, without prejudice to the generality of the foregoing, the Board shall have power to –

(a) open a bank account in a bank licensed by the Central Bank of Kenya for the funds of the Authority;
5
(b) enter into a service level agreement with the county government for the implementation of the infrastructure assets and the infrastructure services;
6
(c) enter into association with such other persons, bodies or organisation as may be appropriate in furtherance of the objects and purposes for which the Authority has been established; and
7
(d) in consultation with the relevant county departments and agencies, national government ministries and agencies, carry out any other activity that shall promote and facilitate the realisation of the objects and purposes for which the Authority is established.

Functions of the Board

11. The Board shall -

(a) Oversee the development, implementation and management of infrastructure assets and infrastructure services within the county in accordance with a service level agreement;
1
(b) ensure proper and efficient exercise of the power and performance of the functions of the Authority;
2
(c) consider and approve the estimates and implementation programme for the infrastructure assets and infrastructure services to be provided and installed through utilization of the development fees;
3
(d) consider and approve the estimates of the revenue and expenditure of the Authority;
4
(e) consider and approve the annual reports of the Authority;
5
(f) set goals, objectives and priorities for the Authority based on the county infrastructure service plans and other approved statutory planning instruments;
6
(g) establish a system for monitoring and evaluating the delivery and performance

of the infrastructure assets and infrastructure services to be installed within the county to ensure such delivery meets the key performance indicators established in the service level agreement;

7

(h) in consultation with the county executive committee, approve and enter into agreements or partnerships with any public sector agencies and private parties for the development and implementation of the county's infrastructure assets and infrastructure services for purposes of maximizing resource utilization;

8

(i) approve external funding and bilateral agreements in line with national financial and fiscal policies; and

9

(j) perform such other functions as provided for under this Act or any other written law as may be required to achieve the objects and purpose for which the Authority has been established.

(2) The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions of the Board under this Act or under any other written law.

Meetings of the Board

12. (1) The quorum for the meetings of the Board shall be two-thirds of the members.

(2) At each meeting of the Board, the Chairperson, or, in the absence of the Chairperson, a session chairperson chosen by a majority of the Directors present, shall preside over the meeting of the Board.

(3) The Board may co-opt, for such period as it may deem fit, not more than three persons whose assistance or advice it may require, but the persons so co-opted shall not be considered as members for the purpose of forming a quorum and shall not be entitled to vote at any meeting of the Board.

18

(4) The decisions of the Board shall be by a simple majority of the members present and voting but the chairperson or the person acting as the session chairperson shall have a deciding vote in the case of a tied vote.

19

(5) Subject to the provisions of this Act and any other written law, the Board may regulate its own proceedings.

Committees

13. The Board may establish such committees comprising members of the Board for the purposes of performing any function of the Board or for some such similar purpose.

Chief Executive Officer

14. (1) There shall be a Chief Executive Officer of the Authority appointed by the county executive committee member in consultation with the Board.

20 (2) The Chief Executive Officer shall hold office on such terms as the Board may determine with the advice of the Salaries and Remuneration Commission.regulate its own proceedings.

21

Qualifications of the chief executive officer

15. A person shall be qualified to be appointed as the Chief Executive Officer if that person —

(a) is a Kenyan citizen;
(b) has at least ten years' relevant academic, professional and senior managerial experience;
(c) is not a member of Parliament or a county assembly;
(d) is not a member of the governing body of a political party; and
(e) satisfies the requirements of Chapter Six of the Constitution.

Duties and Responsibilities of Chief Executive Officer

16. (1) The Chief Executive Officer shall report to the Board and he or she shall have general supervision and management of the Authority.

(2) The Chief Executive Officer shall be the accounting officer of the Authority.

(3) The Chief Executive Officer shall, on such general or particular directions of the Board —

(a) oversee and co-ordinate the development, review, and maintenance of the county infrastructure assets, and infrastructure services provided and installed through the utilization of the development fees to ensure compliance with the service level agreement;
23

(b) ensure the utilization of the development fees for the purpose for which they are levied and collected;
24

(c) monitor the design and execution of works in respect of infrastructure assets and infrastructure services in compliance with the county's infrastructure service plans and other approved statutory planning instruments;
25

(d) be responsible for monitoring and evaluating the performance of projects within the mandate of the Authority in order to improve performance, establish responsibility and improve planning;
26

(f) liaise with county departments and agencies, national ministries and agencies as necessary and private sector in matters relating to the implementation of the infrastructure assets and infrastructure services within the county in order to maximise resource utilization and benefits;
28

(g) oversee the management of public spaces and public spaces within the county;
29

(h) perform any other function as may be required by the Board for the purpose of achieving the objects for which the Authority is established.

Delegation

17. The Board may delegate the exercise of any of its powers or the performance of any of its functions to any of its committees or the Chief Executive Officer.

Corporation Secretary

18. (1) There shall be a Corporation Secretary who shall be appointed by the Board in consultation with the county executive committee member.

(2) The Corporation Secretary shall hold office on such terms as the Board may determine with the advice of the Salaries and Remuneration Commission.

(3) The Corporation Secretary shall—
- (a) in consultation with the chairperson of the Board, issue notices for the meetings of the Board;
- (b) keep in custody the records of the deliberations, decisions and resolutions of the Board;
- (c) transmit the decisions and resolutions of the Board to the Chief Executive Officer for execution, implementation or other relevant action; and
- (d) perform such other functions as are necessary for the purposes for which the Board was established.

Qualifications of the Corporation Secretary

19. A person shall be qualified to be appointed as the Corporation Secretary if that per son –

(a) possesses the qualifications of a member in good standing of the Institute of Certified Public Secretaries of Kenya;
(b) has at least ten years' professional experience in a similar capacity;
(c) is not a member of the governing body of a political party;
(d) is not a member of Parliament or any county assembly; and
(e) satisfies the requirements of Chapter Six of the Constitution.

Staff of the Authority

20. The Board may appoint other officers and staff for the Authority as may be necessary to achieve the objects and purposes for which the Authority is established upon such terms as may be determined by the Board on the advice of the Salaries and Remuneration Commission.

Common Seal

21. (1) The common seal of the Board shall be authenticated by the signature of the Chairperson and the Chief Executive Officer, or by either the Chairperson or the Chief Executive Officer, together with one member other than an *ex officio* member of the Board authorised in writing by the Board in that behalf.

(2) Any document, other than a document which is required by any law to be under seal, made and any decision of the Board, may be signified under the hand of the Chairperson, or the Chief Executive Officer or any other member of the Board or any other person authorised in writing by the Board in that behalf.

22. (1) A Board member or any other member or officer, employee or servant of the Authority shall not be personally liable for an act which is dune or purported to be done in good faith by such person in the exercise of any power or performance of any function under this Act.

(2) Notwithstanding subparagraph (1), nothing in this Act shall relieve the Board of the liability to pay compensation or damages to any person for an injury to him or her, his or her property or any of his or her interests caused by the exercise of the powers conferred on the Board by this Order or by any other written law or by the failure, whether wholly or partially, of any works.

PART VI – FINANCIAL PROVISIONS

Funds of the Authority

23. (1) The funds and assets of the Authority shall consist of –

(a) such monies as may be appropriated by county assembly for the purposes of the Authority;
30
(b) such monies or assets as may accrue or vest in the Authority in the course of the exercise of its powers or performance of its functions;
31
(c) such monies as may be payable to the county government as development fees into the Fund;
32
(d) such monies as may be payable to the Authority under this Act or any other written law; and
33
(e) all monies from any other source pursuant to any gift or trust, or loaned to the Authority.

(2) The Authority shall apply the money provided under this section for the furtherance of its purpose and performance of the functions of the Authority and as prescribed under this Act.

Loans

24 No loans shall be contracted on behalf of the Authority unless specifically authorized by the Board in accordance with the Public Finance Management Act.

No. 18 of 2012

Financial year

25 The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

Annual Estimates

26 (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared annual estimates of the Authority for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for the

(a) the payment of salaries, allowances and other charges in respect of members of the Board and staff of the Authority;

(b) the payment of pensions, gratuities and other charges in respect of members of the Board and staff of the Authority;

(c) the proper maintenance of the building and grounds of the Authority;

(d) the proper maintenance, repair and replacement of the equipment and other property of the Authority; and

(e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the County Executive Committee Member for approval.

(4) No expenditure shall be incurred for purposes of the Authority except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Board given with prior written approval of the Executive Committee Member.

Accounts and Audits

27. (1) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor – General, the accounts of the corporation together with –

(a) a statement of income and expenditure of the Authority during that year, and financial position as the thirtieth day of June;

(b) a statement of the assets and liabilities of the Authority on the last day of that year;

No. 34 of 2015

(2) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

Quarterly Reporting

28 (1) The accounting officer of the Authority shall prepare and submit quarterly financial and non-financial statements in the format gazetted by the county executive committee member responsible for matters relating to finance within fifteen days after the end of each quarter to the county executive committee member with a copy to the county treasury and the Auditor-General.

(2) The quarterly reports prepared under subsection (1) shall include information on –
(a) revenue, including funding from grants;
(b) expenditure;
(c) borrowing, including any outstanding loan arrears; and
(d) amount of profit or loss of the county corporation for the quarter

Transfer of Assets

29 (1) The County Executive Committee shall identify property or assets owned by the County Government that shall be transferred to the Authority for the purposes of implementing this Act.

(2) The property and assets transferred under this section shall be registered under the name of the Authority.

Dissolution of Authority

30 (1) The executive committee member may dissolve the Authority with the approval of the county assembly.

(2) In the event of winding up of the Authority, all the Authority's funds, except such monies as have been transferred to the Authority from the Fund established under the Development Fees Regulations, shall be transferred to the County Revenue Fund.

(3) In the event of winding up of the Authority, all monies transferred to the Authority from the Fund and held by the Authority for the provision and implementation of infrastructure assets and infrastructure services shall be transferred to the Fund.

(4) In the event of winding up of the Authority, the all assets and liabilities of the Authority corresponding to the county government shall be transferred to the responsible county government entity.

(5) The final report after dissolution of the Authority shall be submitted to the auditor-general for audit and the county assembly.

EXPLANATORY MEMORANDUM TO THE COUNTY DEVELOPMENT AUTHORITY BILL, 20___

1. The Purpose of the *[insert county government name] County Development Authority Bill, 20___* is to:

(a) provide for a legal and institutional framework for the coordination, management and implementation of infrastructure assets and infrastructure services to be provided and installed through the utilization of development fees levied and collected by the county government under section 63 of the Physical and Land Use Planning Act; and

(b) to provide for the establishment of the [insert county government name] County Development Authority.

2. Policy Background

(a) This Bill are consistent with sections 182 – 186 of the Public Finance Management Act, No. 18 of 2012 as read together with Part XVI of the Public Finance Management (County Governments) Regulations, 2015 which govern the establishment, dissolution and matters relating to County Authorities and County Government-linked corporations.

(b) The Bill is also consistent with section 116 of the County Governments Act, 2012 which envisions that a county government may deliver services within its designated area of jurisdiction through the county government or its agencies. Further, section 106 of the County Governments Act requires that any services delivered by a county government, or its agencies be based on the functions of the County Governments as specified in the Fourth Schedule of the Constitution and take due cognizance of the financial viability of development programmes.
34

(c) Finally, the Bill is consistent with Section 63 of the Physical and Land Use Planning Act, No. 13 of 2019 which envisages that county governments can levy development fees as a condition for development permissions and that such development fees should be utilized towards the provision of infrastructure assets and infrastructure services in relation to the property being developed for general use by the residents of the area where the property is located.

3. Salient Features of the *[insert county government name]* County Development Authority Bill, 20____

The *[insert county government name]* County Development Authority Bill, 20____ addresses the following key issues:

(a) a clear definition of the scope of functions and of the mandate of the County Development Authority;
(b) governance structures of the County Development Authority to ensure adherence to the key pillars of corporate governance for public corporations;
(c) management of the Authority's finances; and
(d) dissolution and asset and liability transfer to the county government on dissolution of the Authority.

4. County Government Contact Person

The contact person at the county government is the executive committee member or the chief officer in the department responsible for physical and land use planning.

____

County Executive Committee Member,
Physical and Land Use Planning

ANNEX 4: MODEL TOR FOR A COUNTY INFRASTRUCTURE DEVELOPMENT PLAN AND FINANCING (TEMPLATE 4)

A County Master Plan for Infrastructure Development and Financing
GUIDELINES FOR TERMS OF REFERENCE (TOR)

1. BACKGROUND INFORMATION

One of the objectives of county planning as set out the County Government Act (Section 103(d)) is to "harmonize the development of county communication system, infrastructure and related services". Like any other market, the land market is governed by the spatial pattern of infrastructure and the potential of the products or services produced on the land. The Physical and Land Use Planning Act (PLUPA) (Section 39i)) makes a bolder objective that provides "a framework to ensure that investments in property benefit local communities and their economies". Investment in property is influenced by development plans and government restrictions on use of land by means of zoning and development control. PLUPA has provided powerful platforms for both national and county governments in physical and land use plans in determining operations of land markets and the processes, which land in cities and towns, can be made available to the urban population in the appropriate places, in sufficient quantities.

The Masterplan for infrastructure development will identify needs, strategies, policies, and priorities for infrastructure at the county, sub-county and municipal level including; roads, energy, water supply, sanitation and drainage, solid waste management, and telecommunications and ICT for the next 5-10 years. It will prioritize the needs for capital investments based on whole-of-life costs with linkages to the County's Integrated Development Plan (CIDPs), City and Municipal Integrated Development Plans (IDePs) and National Government Investment Program.

It will provide the county with the tools that will: (i) strengthen the planning, financing and management capabilities of key County Government agencies. and (ii) improve coordination among stakeholders and development partners in the planning, prioritizing and delivery of infrastructure services.

2. OBJECTIVES

The objectives of this plan are to:

(i) Assist the County Government and municipalities in preparing a medium term, prioritized Infrastructure Investment Plan, which will provide a roadmap for the county's infrastructure and urban services development for the next 15-20 years; [Drafting Note: I think this period needs to be longer so that the vision is not linked to one or two political cycles. The planning and preparation of the Masterplan itself can take about 24-36 months and then the identification, screening and structuring the various projects can take another 12-18 months with roll out over a long-term period. It is important to move away from short- and medium-term plans to long terms plans with a long life cycle. Within this Masterplan, a prioritization or phased implementation plan as appropriate can be included for shorter periods of 5-10 years within the broader longer-term plan]

- Prepare an engineering assessment based upon the physical and land use plan for the county's growth over the next five to ten years with an emphasis upon water, sewage, solid waste, energy, communication, and roads
- Delineate the centralized and decentralized facilities: county regional facilities, town/city wide facilities and neighborhood/household level of facilities including locations
- Identification of technological alternatives appropriate for the different levels delineated above

(ii) Prepare a funding strategy to cover the costs of the proposed priority investments defining expected contributions from service providers, government, and development partners and the private sector and linking these to appropriate procurement mechanisms under the Public Procurement and Asset Disposal Act, 2015 and the Public Private Partnerships Act, 2013 as amended or replaced from time to time.

(iii) Incorporate the estimated costs of these investments in the medium term operational and capital budget of the County Government and prepare a multi-year financial management plan

The plan will take into account the impact of climate change and natural disasters and Kenya's obligations under various international treaties and conventions. In addition, it will identify institutional constraints and recommend areas for change.

3. SCOPE OF WORK

- Formulating the overall infrastructure plan of projects in coherence with the physical and land use plan and strategic objectives of the County Government and review which projects and complimentary initiatives have been completed or are being prepared or implemented
- Consult with stakeholders and identify new developments and gaps that have not been covered and lessons learned.
- Present a work plan for the undertaking the infrastructure master planning process
- Consult with sector agencies, collect, and study relevant data, reports to assess the status of infrastructure and service levels and establish key performance indicators for each of the sub-sectors.
- Based upon the County physical and land use plan at county and local (urban levels) level and other planned development initiatives, delineate/quantify the demand for infrastructure stemming from population growth, trends in 'urbanization', economic developments, long-term and intermediate development objectives and strategies, service standards, safety standards, climate change, natural disaster risks, environmental requirements, etc.
- Establish the "gap" between demand and current level of infrastructure including an evaluation of alternative technologies and spatial dispersion of different functions
- Assess the scope and specify the facilities needed to meet the increased demand for infrastructure and reduce the negative impacts of climate change and natural disasters.
- Prepare environmental and landscape guidelines, including environmental restrictions, in particular the radius for protection of wells, water, and groundwater drilling
- Prepare cost estimates for countywide infrastructure needs and set priority investments based on the "whole of life" costs of the projects, including the construction costs, operational costs, maintenance costs, and replacement costs.
- Assess the potential benefits of the infrastructure projects as a basis for providing an overview of the economic impact analysis and revenue generation prediction for the county.
- Review the level of cost recovery of each of the infrastructure projects related service delivery and assess to what extent they are able to recover the costs of operation, maintenance and of capital investments.
- Assess the expected level of funding from government budget over the next 10-15 years and assess the ability and willingness of the government to borrow from public and private sources for investments in economic infrastructure.
- Review development partners' county strategies and partnership agreements and estimate the tentative level of funding from external sources for economic infrastructure over the next 10-15 years.
- Carry out a high-level review of the potential institutional constraints with regard to governance, management and implementation of the proposed infrastructure program and identify ongoing studies and actions to overcome such constraints.
- Recommend policies, institutional measures, and capacity development programs to enable implementation of the infrastructure development plan and identify the different areas of responsibility of the private sector, municipal boards, the County Government, and the national government in for the provision of infrastructure services undertaking specific projects
- Where necessary, recommend legislative and regulatory amendments to applicable law that may need to be implemented to give effect to some of the recommendations made above

- Develop, in close consultation with the County Government departments, a prioritization ranking of projects, making as much as possible use of the quantified list of costs and benefits.
- Organize consultation workshops with key stakeholders regarding the infrastructure needs analysis, strategy of infrastructure development, and prioritizing of projects.
- Prepare a draft prioritized investment program and complimentary measures, an underlying funding strategy and draft implementation schedule, to be presented to and approved by the County Government.
- Prepare a Monitoring and Evaluation Framework to allow the County Government to monitor progress on the implementation of the plan on a regular basis

4. Outputs

4.1. Summary and report on all the clear, plans and coordination actions conducted with the infrastructure related bodies relevant to the county

4.1.1. Delineating the infrastructure needs:

- an assessment of the demand for infrastructure by geographical areas in keeping the expected pace of development
- an assessment of the status of existing infrastructure and the current service levels at the county and sub-county level.
- the identification of key infrastructure projects needs to meet the demands stemming from the expected growth and demand for infrastructure services, identifying critical stages
- an assessment of technological alternatives
- components:
  - i. Water and sewage
  - Pathways for water piping and water supply provision
  - Drainage channels
  - Treatment of surface runoff and its preservation
  - Sewage lines
  - Protective radius
  - Sewage treatment plants
  - ii. Traffic and transportation
  - Axes of transportation
  - Interchanges
  - Public transportation, trains, and buses
  - Private car
  - Parking areas for trucks, buses, and private cars
  - Non-Motorized Transport (including Walking and cycling accessibility)
  - iii. Energy
  - Corridors for electrical transmission
  - Power lines (transmission and distribution networks)
  - Sub-stations for transmission and distribution
  - Generation plants
  - Alternative and renewable energies
  - iv. Communication
  - Communication lines and antennas
  - Internet access
  - Optic Fiber lines (and other technologies)
  - v. Fuel and gas
  - Gas lines
  - Gas storage
  - Fuel facilities
  - vi. Solid waste
  - Household waste
  - Garbage recycling
  - Garbage disposal sites

  67 Excess dirt, evacuation, sites

- the preparation of a multi-criteria analysis tool to facilitate the preparation of a prioritized list of projects, including the timeframes and stages of infrastructure needs by geographic regions within the county in keeping with the pace of growth
- an assessment of the effects of climate change and natural disasters in the various stages mentioned above,

4.1.2. Delineating the costs and cost recovery

- To calculate the development levies/fees a delineation of quantities and costs according to the different types of infrastructure. This entails determining the cost of per meter of pipe/lines for each infrastructure so that the expected total aggregate cost can be calculated. With respect to facilities, an indication of the cost of erecting a facility and the number of such facilities required under the master plan.
- an analysis of the fiscal position of the county government, its borrowing capacity and levels of cost recovery in the different sub sectors, resulting in an overall funding strategy
- preparation of an infrastructure investment plan for the county which, after having been reviewed by stakeholders and development partners, will be submitted for final approval to council

The development of the infrastructure development plan will apply consultative and participatory processes with a focus on ensuring county ownership of the plan and broad-based support of stakeholders on the set needs, priorities, outputs, and costs.

4.1.3. The level of engineering delineation for the master plan will be guided by the following:

- Description of the lines and facilities (including recommendations of the technology to be used), with detailed sections for the purposes of understanding and illustration.
- Regarding pipelines, a critical factor to be including in the mapping is the geographical layout, which will also influence the cost of construction per meter of pipeline and the total cost.
- If new technologies are suggested (for lines/pipes or facilities), this will require more detail. However, it should always be remembered that this is the master plan, and the detail will come when preparing the detailed design for execution.

4.2. Maps of the master plan for infrastructure

- Transportation axes: (roadways, rail lines, etc.)
- Pipelines: (Water, Sewage, Drainage, Gas, Oil, etc.)
- Power lines
- Telecommunication (lines, towers, etc.)
- Infrastructure sites and facilities: (water treatment, sewage treatment, waste management, energy production, public institutions, dams, other)
- Handling of hazardous materials and safety distances
- Radius for protection of wells, water, and groundwater drilling
- The diagram will describe the geographical layout of the facilities and infrastructure lines.

4.2.1. The scale of Maps

- For large areas in an area of about 150,000 square kilometers a scale of 1:15,000.
- For medium-sized areas of about 50,000 square kilometers a scale of 1:12,500.
- For smaller areas a scale of 1:10,000

4.3. Master Plan Infrastructure Regulations For:

- Protection of transportation axes
- Safety regulations
- Environmental protect, preventing hazards
- Proximity of infrastructure and underground infrastructure as much as possible
- Detailed planning instructions for determining the final location of infrastructure lines and facilities
- Coordinating with the required bodies
- Updating the master plan on a regular or periodic basis

5 Staffing and Required Expertise

The TA will require the services of three (3) international and two (2) national specialists

5.1 Infrastructure Planner and Policy Specialist/Team Leader

The consultant will have advanced degree in infrastructure planning, policy analysis and formulation; at least 10 years' experience in infrastructure project planning and feasibility studies, relevant work experience

5.2 Economist/Financial Analyst

The specialist will have primary responsibility for preparing the prioritization methodology and the funding strategy for the Infrastructure Development Plan. He/she should have at least 7 years of experience in resource allocation, and economic and financial analysis of infrastructure programs; familiar with the key economic and infrastructure institutions and processes in Kenya.

5.3 Institutions and Monitoring and Evaluation Specialist

The institutions and M&E specialist should have: a degree in public administration or management, a good grasp or understanding of local government processes in developing countries, knowledge of the workings of local government and its various institutions in the management and delivery of infrastructure and related services, experience in preparing M&E systems, good communication skills, and planning skills.

5.4 Financial Planner and Budget Specialist

The Financial Planner and Budget Specialist should have considerable experience in Government financial and budget preparation processes as well as project costing and financial viability assessment. The Specialist should have Kenya County Government working experience and excellent communication and stakeholder consultation skills.

5.5 Infrastructure Specialist

The national Infrastructure Specialist should be an engineer with at least 5 years of knowledge and exposure to the country's various infrastructure sub-sectors (transport - maritime, aviation and land; energy/power; telecommunications and ICT; water supply and sanitation; and solid waste management).
5.6 Legal Specialist [We have Output 4.3 that needs to be undertaken by a lawyer, so we need to consider the qualifications for this role]

The national Infrastructure Specialist should be an engineer with at least 5 years of knowledge and exposure to the country's various infrastructure sub-sectors (transport - maritime, aviation and land; energy/power; telecommunications and ICT; water supply and sanitation; and solid waste management).

The preparation of this template has made use of materials from many sources in particular the Africa Development Bank, Asia Development Bank, the World Bank, the Ministry of Interior of Israel, and the city of Brisbane.

ANNEX 5: MODEL TOR FOR MANAGEMENT COMPANY (TEMPLATE 5)

Draft and Parameters for use by the County

An Infrastructure Management Company
to Plan and Manage Projects on Behalf of the Country Government.
Guidelines for Preparation of Terms of Reference - TOR

This document defines the roles of the infrastructure management company from the planning stages and throughout the entire course of the construction of an infrastructure project in the county.

The management company will operate on behalf of the county government and operate under the guidance of the county government.

Stage I - Coordination of the planning process stage of the project

This step includes:

1. Examine the linkages of physical and land use plans, sectoral plans, resource allocation processes and mandates of sectoral agencies.
2. Define the project in accordance with the county infrastructure development plan for infrastructure.
3. Visits to the site to study the special conditions of the site and its surroundings.
4. Initiating preparatory discussions and coordination related to the project, with all the bodies involved in planning and executing the project later.
5. Preparing TOR for the planning of the project including a pro forma contract that will be added to the tender for the knowledge of the applicants.
6 Publication of a tender for the planning of the project, choosing a winner, preparing agreements with the winner of the tender.
7. Coordination between the planners and consultants involved in the planning of the project to ensure proper integration between the experts, planners, and consultants, including the person in charge of the project's budget controller.
8. Providing advice, explanation, information, and assistance as needed, for planners and consultants, and representing the county in the process.
9. Determining the detailed timetable for the project planning work with the planning team and continuously monitoring the progress of the planning work.
10. Coordination and synchronization of all plans, documents and recommendations from the project's planning team, experts, and consultants, in order to approve all project-planning documents by the county staff.
11. Management and coordination between the planners and the consultants to obtain all the necessary permits for the implementation of the infrastructure project.
12. Preparation of the budget estimate of the components of the infrastructure project or examining the budget estimate prepared by the planner, in accordance with the county budget for the project.
13. Preparation of agreements with contractors and preparation of tender documents.
14. Checking accounts and approving partial and final accounts of the various planners and project consultants.

Note: Any task and action related to the implementation of this stage will be carried out in accordance with the instructions of the county's professional staff.

Stage II - Coordination and consultation in the tender stage

This step includes:

1. Accompaniment throughout the process required to publish infrastructure execution tenders, including assistance and consultation in preparing budget estimates for planners and/or consultants.

2. Publication of a tender and a contractor tender, including all the support required in the tender process.

3. Examination and comparison of the quotes received from all contractors, determined as complying with the published tender terms.

4. Analysis of the contractors participating in the tender: evaluating their proposals in a detailed comparison graph of the proposed contractors and evaluating deviations from the terms of the tender, as such were found.

5. Negotiations with contractors to clarify issues that arose under the guidance of the Tenders/Procurement Committee, as necessary.

6. A reasoned professional decision regarding the delivery of work to a contractor who wins one of the tender components or the entire tender, all in accordance with the components of the tender as published.

7. Providing additional assistance and advice as required by the Tenders/Procurement Committee.

8. Signing execution agreements, with all their appendices, with the contractor winning the tender, including ensuring the provision of guarantees and appropriate insurance **(a county examination of contractor insurance is a critical component of this review before signing agreements).**

9. Consultation and assistance in preparing the revised budget estimate regarding the cost of the infrastructure based on the results of the tender vis-à-vis the operational contractor, supervised by the planning consultants who formulated the tender.

Note: Any task and action related to the implementation of this phase will be done in accordance with the instructions of the county's professional staff.

Stage III - Management, coordination, and supervision during the execution of the project by the contractors

This step includes:

(1) Ongoing management and monitoring and regulation processes related to the public space around the development site, including fencing, sanitation, and disposal of building waste, etc.

(2) Ongoing monitoring of on-site infrastructure development work to ensure that the work meets the required standards and in accordance with the plans approved for the project.

(3) Ongoing supervision and auditing of suppliers, factories, contractors, and other subcontractors, with respect to any work or service carried out as part of the construction of the project, while maintaining the level and quality of these services or works, while ensuring that they are compliant with the plans.

(4) Continuous monitoring of the quality and type of materials used to carry out infrastructures and adapt them to standards and requirements, technical specifications and/or legal requirements.

(5) Supervising and ensuring the project is carried out as planned.

(6) Preparation and coordination of regular and periodic meetings, according to a predetermined schedule, between various professionals and contractors engaged in carrying out the project and monitoring the works and cooperation between them and the various county bodies.

(7) Providing recommendations to the county's professional staff regarding any changes that must be implemented in the manner of carrying out the project. This includes the nature and quality of the project, the timetable for implementing, and implementing various provisions in agreements between the county and the various contractors, various issues related to the construction of the project and any changes, and so on.

(8) Coordination between the various contractors and all necessary government authorities, in relation to the requests and demands for any changes in the plan.

(9) Examine and test the performance of the repairs and the required completion of the contractors to complete the execution stage or any other stage of construction. Control work in the field for the various stages of work, as defined, and the completion of construction of contracting and contracting work, to approve the completion of the work stage and determine the payments for them.

(10) Examining the various stages of execution completed by the contractor, providing instructions to the contractor in relation to the repairs required to complete the works as determined and in the agreement between the parties to carry out the project. Approval of the completion of the work permit stage after it has been completed, in accordance with the plan and the tender requirements must be done in cooperation with the county's professional staff and with its final approval.

(11) Consulting and accompaniment to contractors regarding the execution of the project in the correct interface with all those involved and those involved in the given project, as well as assistance in resolving disputes between contractors.

(12) Ensuring that "work logs" are properly filled out, updated, and not altered by contractors, ongoing documentation of comments regarding every detail relating to infrastructure construction.

(13) Budget tracking is updated regularly throughout the project regarding the cost of the project. Assess the execution status of the budget in parallel with the project's progress, every month. Transfer of updates to the county once every three months.

(14) Regular reporting to the relevant County Departments on the progress of the project and all events carried out at each stage.

(15) Control management and negotiation for setting prices and tariffs for exceptional work of contractors as part of infrastructure execution.

(16) Coordination, management, and supervision of the execution of the work by external contractors, such as the IEC, telecommunications power companies, etc. throughout the development of the project.

(17) Recommendations for returning execution guarantees to contractors.

(18) Ensure that the work is carried out by qualified contractors until the work is completed with respect to the quality of execution and time.

Note: Any task and action related to the implementation of this phase will be done in accordance with the instructions of the county's professional staff.

Stage IV - Review and supervision throughout the warranty period

This step includes:

(1) Monitoring and reviewing infrastructure after completion and delivery to the County and throughout the warranty period by the contractors.

(2) Report any need of a fee charge and order a correction during the warranty period.

(3) Assess detailed requirements for contractors to repair the infrastructure during the warranty period.

(4) Control of the repairs carried out by the contractors, with the assistance of the appropriate controller engineers chosen to do so, to meet the required repairs, at the required level, while ensuring regular reports to the county of all repairs.

(5) Continuous and ongoing reporting to the County of all events as part of this stage.

(6) Making recommendations to the county regarding the compliance of contractors with all requirements and approval to return their guarantees and guarantees to contractors.

Note: Any task and action related to the implementation of this phase will be done in accordance with the instructions of the county's professional staff.

Stage V – Review, coordinate, and aid private developers regarding the provision of infrastructure

This relates both to formulating the rate of development fees to be paid by private developers to meet the required infrastructures as a precondition for receiving approval of a building permit and to infrastructure construction undertaken by developers in lieu of payment of development fees to the county government.

The management company will recommend approval or changes in keeping with the standards set by the country government.

This step includes:

(1) Preparing engineering information for developers seeking permits to build buildings within the site for which infrastructure is planned or built.

(2) Assessing requests for a building permit to ensure that they meet the capacity and the standard of the necessary infrastructure, checking, coordinating, and making recommendations for approving requests for changes in planning and/or construction affecting the infrastructure. Make recommendations to the approval body.

(3) At the time of requesting a building permit, examination, coordinating and approving requests for changes in design and / construction that influence infrastructure.

(4) Setting the requirements for guarantees needed by private construction contractors / developers / property owners for approval of building permit to ensure payment of development fees and meeting infrastructure standards. These guarantees will be held by a special fund/entity of the County to be returned upon meeting all infrastructure requirements.

(5) Check the connection of built buildings to the necessary infrastructure for the purpose of providing a work completion form and a final connection to the electricity grid.

Prerequisites for candidates

Project Management Companies must have a proven track record of at least ten years of project management of infrastructure projects of a value greater than 10 million USD. They must be able to provide financial guarantees for the value of their work and have appropriate insurance. Likewise, they must comply with all employment law, local content, and gender mainstreaming obligations.

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Section 2.2.5 NUA -- P. 11 Foot note **Articles 37,44, 51 New Urban Agenda, (2017) issued by the Habitat III Secretariat, UN-Habitat**

Section 2.2.6 Urbanization legislation, rules and regulations -- P. 12 Foot note **Action Framework for Implementation of the New Urban Agenda, (2017) UN-Habitat**

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