

PETITION TO THE NAIROBI COUNTY EXECUTIVE UNDER ARTICLE 37 OF THE CONSTITUTION, SECTION 15 OF THE COUNTY GOVERNMENT ACT ON THE MOTION BY HON. ANTHONY KARANJA KIRAGU (MCA) URGING COUNTY EXECUTIVE TO AMEND THE ZONING POLICY TO ALLOW MULTI-DWELLING DEVELOPMENT IN AREAS THAT HAVE DEVELOPED PUBLIC INFRASTRUCTURE

To:

Arch. Peter Wachira Maina
County Executive Committee Member,
Urban Planning and Lands and,
Urban Renewal, Housing and Building Services,
Nairobi County Government,
City Hall,
P. O Box 30075 – 00100,
Nairobi.



Cc: Hon. Beatrice Elachi,
Speaker,
Nairobi City County Assembly,
P. O. Box 45844 – 00100,
Nairobi.



18th December 2017,

We, the undersigned,

Are citizens of Kenya representing Kileleshwa, Kilimani and Nairobi residents in general, and in the interest of the public, lodge this petition to Nairobi County Executive concerning the motion by Hon. Anthony Karanja Kiragu (MCA) urging the County Executive to amend the zoning policy to allow for multi-dwelling developments in areas with developed public infrastructure.

WE humbly draw the attention of the House to the following:

THAT

1. The *Constitution 2010 Article 1* reposes all sovereign authority in the People of Kenya;
2. The *Constitution 2010 Article 10 (1)* states that the national values and principles of governance bind all State organs, State officers, public officers and all persons whenever any of them enacts, applies or interprets any law. The national values and principles of governance include participation of the people (*Article 10 (2)*);

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3. The *Constitution 2010 Article 196(1)* provides that the County Assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees.
4. The *Constitution 2010 Fourth Schedule Part 2 (8)(d)* places the responsibility of county planning and development including housing on the County government.
5. The *County Government Act section 102* provides the principles of planning and development facilitation in county shall promote the pursuit of equity in resource allocation within the county;
6. The *County Government Act section 103(b)(d)(f)* provides for the objectives of county planning to: facilitate the development of a well-balanced system of settlements; harmonize the development of infrastructure and related services; provide the preconditions for integrating underdeveloped and marginalised areas to bring them to the level generally enjoyed by the rest of the county.
7. The *National Land Use Policy 2016* provides that zoning should consider the re-conceptualization of zoning and sub-division control, not as exclusionary mechanisms within and across residential areas, but as tools for creation of integrated viable urban communities sharing common services.
8. The *County Government Act section 87 (a) and (b)* partly states that citizen participation shall be based on the principles of timely access to information relevant or related to policy formulation and implementation and reasonable access to the process of formulating and implementing policies, laws and regulations including the approval of development proposals.

THAT

1. According to the Nairobi County Assembly Order Paper dated 5th December 2017, Hon. Anthony Karanja Kirgau (MCA) moved the motion that:
 - a. Nairobi has over the years metamorphosed with an ever increasing population and great demand for housing and consequently for physical planning services;
 - b. Physical planning throughout the city has not kept pace with the ever changing City landscape and demand for housing, especially as regards the city's zoning policy, with areas that initially had no proper public infrastructure such as sewage system were not allowed to have multi-dwelling developments;

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- c. Currently many parts of Nairobi city are experiencing immense development pressure, which population growth rate is particularly exerting pressure on the low residential neighbourhoods;
- d. Nairobi City has not had a comprehensive plan since the Metropolitan Growth Strategy of 1973 which expired in the year 2000; Underscoring that its expiry points to the urgency for a review of the zoning policy formulated in the 1970 when Nairobi had a small population which has tripled tenfold;
- e. If the zoning policy is not reviewed to allow the development of affordable multi-dwelling housing to meet demand in low density neighbourhood, the housing crisis will continue to grow, for instance the rezoning of **Zones 4, including Spring Valley, Riverside Drive, Kileleshwa, Kilimani, Thompson and Woodley and Zone 5, which includes Upper Spring Valley, Kyuna, Loresho and Lavington/Bernard Estate and Zone 15 which includes Dagoretti;**
- f. Since both the National and County government have already heavily invested in infrastructure development in the said zones it is prudent that the zoning policy be reviewed to reflect existing circumstance and allow the County benefit from the development of more housing in the said areas.
- g. This assembly urges the County Executive to amend the zoning policy to allow for multi dwelling development in areas where the public infrastructure as developed by the County and National government allows.”

THAT

2. The motion states that Nairobi City County (NCC) does not have an updated growth strategy beyond the metropolitan growth strategy (1973) which expired in 2000. This is manifestly untrue given that the Nairobi Integrated Urban PLAN is the operational master plan for NCC. The Nairobi Integrated Urban Development Master Plan (NIUPLAN) makes reference to a reviewed the Nairobi City Development Ordinances and Zones in 2004 which resulted in the subdivision of 20 zones into smaller zones and prescribed ground coverage ratios (GC) and plot ratios (PR) and definition of minimum plot for each zone.
3. NIUPLAN also notes that the revision allowed developers a maximum of four floors for apartments in Westlands, Parklands, Woodley, Kilimani and Kileleshwa. However, it just followed the situation in those areas and the current development activities did not seem to follow the revised regulation much. There can be observed incidents of high-rise building of more than 5 floors and land use mixture in residential areas.

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4. NIUPLAN also notes that zoning policies are revised in an adhoc manner as opposed to responding to a pre-planned scheme. It further notes that zoning itself lacks discipline and strength to control the day to day development activities appropriately.
5. The motion refers to specific areas as the target for new housing, due to among other considerations adequacy of county infrastructure investment in these areas implying water, sewerage, roads, and other utilities. This claim needs to be substantiated prior to considering the proposal.
6. The motion has not addressed the status of the implementation of the current zoning policy, status of occupancy of houses in Nairobi County, as it is understood there is a housing glut in the County.¹

THAT

7. To the best of our knowledge, the issues in respect of which this petition is made are not pending before any court of law, or constitutional or legal body.

THEREFORE, your humble petitioners Pray that the Nairobi County Executive:

- a. Deals with this Petition immediately in view of the urgency of the matter and the seriousness of the issues presented herein;
- b. Provide a status on the implementation of the Nairobi City Development Ordinances and Zones 2004 and table a report to the County Assembly.
- c. Accompany the above report with a new bill on Nairobi City County Development Ordinances and Zones developed with the participation of residents of Nairobi County and ensure its compliance with the Constitution and all other relevant laws and policies including the NIUPLAN.
- d. Provide relevant information to enable informed decisions on the issues raised above;
- e. Clearly state its position on NIUPLAN
- f. Conduct a study prior to starting discussion on readiness of Nairobi County to do accelerated private investment
- g. Conduct population census to know the exact population in Nairobi County
- h. Distinguish the cost of low housing. This is because the value of land in the proposed areas does not allow low cost housing and the houses have high appreciating housing value.

¹Daily Nation 31 July 2016, Glut fears mount as housing units outstrip demand

<http://www.nation.co.ke/business/Experts-caution-on-housing-glut-as-prices-fall/996-3323544-ns7h49/index.html>

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- i. Clarify whether the rezoning of the identified areas was gazetted
- j. Review the status of development of public infrastructure in the identified areas
- k. Distinguish where there is housing gap and declare where there is a housing glut due to increase in construction of apartments of high market value in the target areas whose main focus is on high income earners
- l. Revisit the urban renewal program especially in low and middle income areas
- m. Develop form-based code² as the proposed development is disruptive and will transform the identified neighbourhoods.
- n. Conduct a study on the status and capacity of infrastructure, utilities, transport, roads in Nairobi County and listed areas
- o. Avail the investment plans in infrastructure, utilities, roads in Nairobi County and whether they are adequate to meet the proposed increased development density

AND your Petitioners will ever Pray

² A form-based code (FBC) is a way to regulate development that controls building form first and building use second, with the purpose of achieving a particular type of "place" or built environment based on a community vision. <http://plannersweb.com/2014/12/fbc1/>