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THE TAITA TAVETA COUNTY PLANNING BILL, 2016

AN ACT of County Assembly of Taita Taveta to make provisions for county planning and provide a legal framework for the preparation of county plans, to establish the county planning unit and for connected purposes

ENACTED by the County Assembly of Taita Taveta, as follows—

PART I - PRELIMINARY

Short title.

1. This Act may be cited as the Taita Taveta County Planning Act, 2016.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Board” means a Board of a city or a Board of a municipality appointed under sections 13 and 14, respectively, of the Urban Areas and Cities Act;

“county executive committee member” means the county executive committee member for the time being responsible for matters relating to planning;

“manager” means a city or municipal manager appointed under section 28 of the Urban Areas and Cities Act;

“spatial plan” means a plan prepared in accordance with section 12 of this Act;

“development” means—

- (a) the making of any material change in the use or density of any buildings or land or the subdivision of any land which for the purpose of this Act is classified by the county executive member as development; and
- (b) the erection of such buildings or works and the carrying out of such building

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operations, as the county executive member may for the purposes from time to time determine, as development;

“density” means the maximum amount of development permitted or the maximum number of persons permitted to reside, as the case may be, on any area of land;

Objects and purpose of the Act.

3. The objects and purpose of this Act is to provide for a legal framework to provide for county planning and to—

- (a) ensure harmony between national, county and sub-county spatial planning requirements;
- (b) 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;
- (c) maintain a viable system of green and open spaces for a functioning ecosystem;
- (d) harmonize the development of county communication systems, infrastructure and related services;
- (e) develop urban and rural areas as integrated areas of economic and social activity;
- (f) provide the preconditions for integrating under-developed and marginalized areas to bring them to the level generally enjoyed by the rest of the county;
- (g) protect the historical and cultural heritage, artefacts and sites within the county;

- (h) make reservations for public security and other critical national infrastructure and other utilities and services; and
- (i) work towards the achievement and maintenance of a tree cover of at least ten per cent of the land area of Kenya as provided in Article 69 of the Constitution.

Principles of county
planning and
development.

4. The principles of county planning and development in the county shall—

- (a) integrate national values in all processes and concepts;
- (b) protect the right to self-fulfilment of the communities within the county and bearing of responsibility to future generations;
- (c) protect and integrate the rights and interests of minorities and marginalized groups and communities;
- (d) protect and develop natural resources in a manner that aligns with national government policies;
- (e) align the county financial and institutional resources to agreed policy objectives and programmes;
- (f) engender effective resource mobilization for sustainable development;
- (g) promote the pursuit of equity in resource allocation within the county;
- (h) provide a platform for unifying planning, budgeting, financing, programme implementation and performance review; and
- (i) serve as a basis for engagement between county government and the citizenry, other

stakeholders and interest groups.

PART II – COUNTY PLANNING UNIT

Establishment of the county planning unit.

5. There shall be a county planning unit which shall comprise of the following directorates—

- (a) directorate of county physical planning;
- (b) directorate of economic planning; and
- (c) such other directorate as the county executive committee member may in consultation with the County Public Service Board determine.

Functions of a county planning unit.

6. (1) In addition to the functions set out under section 105 of the County Governments Act, a county planning unit shall be responsible for—

- (a) coordinating integrated development planning within the county;
- (b) ensuring integrated planning within the county;
- (c) ensuring linkages between county plans and the national planning framework; and
- (d) ensuring meaningful engagement of citizens in the planning process.

(2) The county planning unit shall be responsible for the effective implementation of the planning function within the county.

Types of county plans.

7. (1) There shall be the following county plans within the county—

- (a) county integrated development plan;
- (b) county sectoral plans;
- (c) county spatial plan; and

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(d) cities and urban areas plans as provided for under the Urban Areas and Cities Act.

(2) The County plans shall be for at least five years and shall form the basis for county budgeting and spending.

Approval of county plans.

8. Every plan prepared in accordance with section 7 shall be approved by the county assembly pursuant to Article 185 of the Constitution.

Integration of national and county planning.

9. (1) Cooperation in planning shall be undertaken in the context of the law governing inter-governmental relations.

(2) County plans shall be based on relevant national policies.

(3) County plans shall take due cognizance of the financial viability of development programmes.

(4) County planning shall provide for citizen participation.

County integrated development plan.

10. (1) There shall be a five year county integrated development plan for the county which shall have—

- (a) clear goals and objectives;
- (b) an implementation plan with clear outcomes;
- (c) provisions for monitoring and evaluation; and
- (d) clear reporting mechanisms.

(2) The county integrated development plan shall identify—

- (a) the institutional framework, which shall include an organization chart required for—
 - (i) the implementation of the integrated

development plan; and

- (ii) addressing the county's internal transformation needs;

(b) as informed by the strategies and programmes set out in the plan—

- (i) any investment initiatives in the county;
- (ii) any development initiatives in the county, including infrastructure, physical, social, economic and institutional development;
- (iii) all known projects, plans and programs to be implemented within the county by any organ of state; and
- (iv) the key performance indicators set by the county.

(3) An integrated development plan shall—

- (a) have attached to it maps, statistics and other appropriate documents; or
- (b) refer to maps, statistics and other appropriate documents that are not attached:

Provided that the plans under paragraphs (a) and (b) shall be open for public inspection at the offices of the county.

(4) A resource mobilization and management framework shall be reflected in a county's integrated development plan and shall at least—

- (a) include the budget projection required under the law governing county government financial management;
- (b) indicate the financial resources that are available for capital project developments and operational expenditure; and

(c) include a financial strategy that defines sound financial management and expenditure control, as well as ways and means of increasing revenues and external funding for the county and its development priorities and objectives, which strategy may address the following—

- (i) revenue raising strategies
- (ii) asset management strategies;
- (iii) financial management strategies;
- (iv) capital financing strategies;
- (v) operational financing strategies; and
- (vi) strategies that would enhance cost-effectiveness.

County plans.

sectoral

11. (1) The county government shall develop a ten year county sectoral plan as component parts of the county integrated development plan.

(2) The county sectoral plans shall be—

- (a) programme based;
- (b) the basis for budgeting and performance management; and
- (c) reviewed every five years by the county executive and approved by the county assembly, but updated annually.

County spatial plans.

12. (1) There shall be a ten year county spatial plan for each county, which shall be a component part of the county integrated development plan providing—

- (a) a spatial depiction of the social and economic development programme of the county as articulated in the integrated county development plan;

- (b) clear statements of how the spatial plan is linked to the regional, national and other county plans; and
- (c) clear clarifications on the anticipated sustainable development outcomes of the spatial plan.

(2) The spatial plan, which shall be spatial development framework for the county, shall—

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- (a) give effect to the principles and objects contained in sections 102 and 103 of the County Governments Act;
- (b) set out objectives that reflect the desired spatial form of the county taking into account the development programme of the county as articulated in its county integrated development plan;
- (c) contain strategies and policies regarding the objectives referred to in paragraph (b), which strategies and policies shall—
 - (i) indicate desired patterns of land use within the county;
 - (ii) address the spatial construction or reconstruction of the county;
 - (iii) provide strategic guidance in respect of the location and nature of development within the county;
 - (iv) set out basic guidelines for a land use planning system in the county taking into account any guidelines, regulations or laws as provided for under Article 67(2) (h) of the Constitution;

- (v) set out a capital investment framework for the county's development programs;
 - (vi) contain a strategic assessment of the environmental impact of the spatial development framework;
 - (vii) identify programs and projects for the development of land within the county; and
 - (viii) be aligned with the spatial frameworks reflected in development and the integrated development plans of neighbouring counties.
- (d) indicate where public and private land development and infrastructure investment should take place;
 - (e) indicate desired or undesired utilisation of space in a particular area;
 - (f) delineate the urban edges of the municipalities within its jurisdiction and mechanisms of dealing with the rural and urban interfaces;
 - (g) identify areas where strategic intervention is required;
 - (h) indicate areas where priority spending is required; and
 - (i) contain clear clarifications on the anticipated sustainable development outcomes of the spatial plan.

(3) Each county spatial plan shall be developed by the county executive committee member and approved by the county assembly in accordance with approved procedures.

(4) Each county spatial plan shall be reviewed every ten years and such revision shall be approved by the county assembly.

City or municipal plans.

13. (1) For each city and municipality there shall be the following plans—

- (a) city or municipal land use plans;
- (b) city or municipal building and zoning plans; and
- (c) city or urban area building and zoning plans.

(2) A city or municipal plan shall be the instrument for development facilitation and development control within the respective city or municipality.

(3) A city or municipal plan shall, within a particular city or municipality, provide for—

- (a) functions and principles of land use and building plans;
- (b) location of various types of infrastructure within the city or municipality; and
- (c) development control in the city or municipality within the national housing and building code framework.

(4) City or municipal land use and building plans shall be binding on all public entities and private citizens operating within the particular city or municipality.

(5) City or municipal land use and building plans shall be the regulatory instruments for guiding and facilitating development within the particular city or municipality.

(6) Each city or municipal land use and building plan

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shall be reviewed every five years and the revisions approved by the county assembly.

PART III – REQUIREMENTS FOR COUNTY PLANS

Obligation to plan by the county.

14. (1) The county government shall plan for the county and no public funds shall be appropriated outside a planning framework developed by the county executive committee and approved by the county assembly.

(2) The county planning framework shall integrate economic, physical, social, environmental and spatial planning.

(3) The county government shall designate county departments, cities and urban areas, sub-counties and wards as planning authorities of the county.

(4) To promote public participation, non-state actors shall be incorporated in the planning processes by all authorities.

(5) County plans shall be binding on all sub-county units for developmental activities within the county.

Amendment of county integrated development plans.

15. (1) The county executive committee may by resolution introduce a proposal to amend the county's integrated development plan.

(2) A proposed amendment to a county's integrated development plan under subsection (1) shall be considered and approved or rejected by the county assembly in accordance with its standing orders.

(3) A proposal for amending the county's integrated development plan shall be—

(a) accompanied by a memorandum setting out the reasons for the proposal; and

(b) aligned with the framework adopted in terms of section 112 of the County Governments Act.

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(4) If the amendment impacts on neighbouring counties, the county making the amendment to its integrated development plan shall—

- (a) consult all the county governments affected by the proposed amendment; and
- (b) take all comments submitted to it into account before it reaches a final decision on the proposed amendment.

(5) A county that considers an amendment to its integrated development plan shall—

- (a) consult the cities and urban areas within the county on the proposed amendment; and
- (b) take all comments submitted to it by the cities and municipalities into account before it takes a final decision on the proposed amendment.

(6) No amendment to a county's integrated development plan may be considered by the county assembly unless—

- (a) all the members of the county assembly have been given reasonable notice; and
- (b) the proposed amendment has been published for public comment for a period of at least twenty one days in a manner that allows the public an opportunity to make representations with regard to the proposed amendment.

(7) Subject to this section, nothing may be construed as precluding a person ordinarily resident in a county from proposing an amendment to the county integrated development plan.

Basis of county
integrated
development plan.

16. (1) A county's integrated development plan shall—

- (a) inform the county's budget which shall be based on the annual development priorities and

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objectives referred to in section 103 of the County Governments Act and the performance targets set by the county; and

- (b) be used to prepare action plans for the implementation of strategies identified by the county.

(2) Each county integrated development plan shall provide clear input, output and outcome performance indicators, including—

- (a) the percentage of households with access to the economic and social rights contemplated under Article 43 of the Constitution;
- (b) the percentage of a county's capital budget actually spent on capital projects identified for a particular financial year in terms of the county's integrated development plan;
- (c) the number of jobs created through any local economic development initiatives including capital projects; and
- (d) financial viability of the integrated development plan in accordance with nationally applicable ratios.

(3) Notwithstanding the provisions of subsection (2), the performance management system shall conform to nationally applicable guidelines.

Planning for nationally significant projects in a county.

17. (1) Development of nationally significant development projects within the county shall be preceded by mandatory public hearings in the county.

(2) Projects under subsection (1) shall, subsequent to the mandatory public hearings, be considered and approved or rejected by the county assembly.

Public participation in county planning.

18. Public participation in the county planning processes shall be mandatory and be facilitated through—

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- (a) mechanisms provided for in Part VIII of the County Governments Act; and
- (b) provision to the public of clear and unambiguous information on any matter under consideration in the planning process, including—
 - (i) clear strategic environmental assessments;
 - (ii) clear environmental impact assessment reports;
 - (iii) expected development outcomes; and
 - (iv) development options and their cost implications.

PART V – INTEGRATED DEVELOPMENT PLANNING

Objectives of integrated urban areas and city development planning.
Cap. 275.

19. (1) Every city and municipality established under the Urban Areas and Cities Act shall operate within the framework of integrated development planning which shall—

- (a) give effect to the development of urban areas and cities as required by this Act and any other written law;
- (b) strive to achieve the objects of devolved government as set out in Article 174 of the Constitution;
- (c) contribute to the protection and promotion of the fundamental rights and freedoms contained in Chapter Four of the Constitution and the progressive realization of the socio-economic rights;
- (d) be the basis for—
 - (i) the preparation of economic and

environmental management plans;

(ii) the preparation of valuation rolls for property taxation;

(iii) provision of physical and social infrastructure and transportation;

(iv) preparation of annual strategic plans for a city or municipality;

(v) disaster preparedness and response;

(vi) overall delivery of service including provision of water, electricity, health, telecommunications and solid waste management; and

(vii) the preparation of a geographic information system for a city or municipality;

(e) nurture and promote development of informal commercial activities in an orderly and sustainable manner;

(f) provide a framework for regulated urban agriculture; and

(g) be the basis for development control.

(2) In addition to the objectives set out in subsection (1), an integrated urban or city development plan shall bind, guide and inform all planning development and decisions within the county and ensure comprehensive inclusion of all functions.

(3) The county government shall initiate an urban planning process for every settlement with a population of at least two thousand residents.

City or urban area plan to align with county government plans.

20. A city or urban area integrated development plan shall be aligned to the development plans and strategies of the county government.

Preparation of integrated city or urban development plans.

21. A city or urban area shall prepare an integrated city or urban area municipal development plan in accordance with the Third Schedule to the Urban Areas and Cities Act.

Adoption of an integrated development plan.

22. (1) A Board of a city or a municipality shall, within the first year of its election, adopt a single, inclusive strategic plan for the development of the city or urban area for which it is responsible.

(2) An integrated development plan adopted by a Board or town committee under subsection (1) may be reviewed and amended during the term of the Board and shall remain in force until a new integrated urban area or city development plan is adopted by the succeeding Board, but the incoming Board shall ensure that the viable projects are continued or completed.

(3) A city or urban area shall, within fourteen days of the adoption of its integrated development plan—

- (a) give notice of the adoption of the plan to the public in such manner as the Board may determine;
- (b) inform the public that copies of or extracts from the plan are available for public inspection at specified places; and
- (c) provide a summary of the plan.

Contents of integrated city and urban area development plan.

23. An integrated urban area or city development plan shall reflect—

- (a) the vision for the long term development of the city or urban area with special emphasis on the most critical development needs;
- (b) an assessment of the existing level of development in the city or urban area, including an identification of communities

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which do not have access to basic services;

- (c) the determination of any affirmative action measures to be applied for inclusion of communities referred to under paragraph (b) to access funds from the equalization funds;
- (d) the development priorities and objectives, including economic development objectives, community needs and its determination on the affirmative action in relation to the marginalized groups' access to services;
- (e) development strategies which shall be aligned with any national or county sectoral plans and planning requirements binding the city or municipality;
- (f) a spatial development framework which shall include the provision of basic guidelines for land use management system for the city or municipality;
- (g) operational strategies;
- (h) applicable disaster management plans;
- (i) a regulated city and municipal agricultural plan;
- (j) a financial plan, which shall include budget projection for at least the next three years; and
- (k) the key performance indicators and performance targets.

Submission of integrated development plan to the county executive committee.

24. (1) The manager shall submit to the county executive committee, a copy of the integrated development plan as adopted by the Board within twenty one days of the adoption or amendment.

(2) The copy of the integrated development plan

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submitted to the county executive committee shall be accompanied by—

- (a) a summary of the process of its formulation plan provided under this Part; and
- (b) a statement that the process has been complied with, together with any explanations that may be necessary to clarify the statement.

(3) The county executive committee shall, within thirty days of receipt of a copy of the plan—

- (a) consider the integrated development plan and make recommendations; and
- (b) submit the plan to the county assembly for its approval.

Annual review of integrated development plan.

25. A city or municipal Board shall review its integrated development plan annually to assess its performance in accordance with performance management tools set by it under this Part, and may amend the plan where it considers it necessary.

Regulations.

26. (1) The county executive committee member may make regulations prescribing for any matter necessary for the carrying into effect the provisions of this Act.

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

- (a) the forms to be used and fees to be charged under this Act;
- (b) the procedure for making applications for development and housing permits;
- (c) coordination of national and county planning initiatives;

- (d) making appeals to the county executive member; and
- (e) any matter that is necessary for the implementation of this Act.

MEMORANDUM OF OBJECTS AND REASONS

Statements of the Objects and Reasons for the Bill

The principal object of this Bill is to make provisions for County planning. Part XI of the County Governments Act provides for the broad principles to guide planning at the county level. This Bill seeks to establish the county planning unit and to give the county executive committee member the necessary powers to coordinate planning matters as well as developing regulations as may be required from time to time.

Part I (Clauses 1-3) of the Bill contains preliminary provisions. These include the title of the proposed Bill, interpretation of terms and the objects of the Bill, which is to provide a legal framework to facilitate county planning.

Part II (Clauses 5-13) of the Bill establishes the County Planning Unit, provides for its administrative framework and prescribes the functions of the unit. The unit shall comprise of directorates of physical planning, economic planning and such other directorate as the county executive committee member may establish. This Part also provides for the various types of county plans, the procedures for their development and approval by the county executive committee and the County Assembly.

Part III (Clauses 14-18) of the Bill lays down the basic requirements for county plans and provides for their contents, manner of amendment and involvement of the public in the county planning process.

Part IV (Clauses 19-26) of the Bill makes provisions relating to the Integrated Development Planning and provides for the procedure for the

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development of and the form of the county Integrated Development Plan. This Part also provides for approval of the Plan by the County Assembly, provides for its regular review and gives the county executive committee member powers to make regulations as may be required for the implementation of the Act.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill delegates legislative powers to the County Executive Committee member but it does not limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill concerns county governments in terms of Article 109(3) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 22nd March, 2016.

Hon Francis R. Terere
Member of County Assembly