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Nairobi's New Development Control Policy

AUGUST 2026

YOUR CONTACTS

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Nairobi has replaced its 2006 development rules with a detailed new Policy covering the whole city. It changes how much can be built, where, and at what cost, and it should now be part of the feasibility and due diligence baseline for every Nairobi project and land deal.

KEY POINTS

- Height and density are now set zone by zone in a fixed matrix, but published maximums are ceilings, not guarantees.
- New charges and incentives are proposed but not yet operational; detailed rules are due within 18 months.
- Re-test every current or planned project against the new matrix before pricing, financing or marketing it.

1. What has changed

Zoning, density and height. Nairobi is reorganised from 20 to 15 zones. A matrix sets land use, maximum floors, ground coverage, plot ratio and minimum plot size for each sub-zone. In the CBD and parts of Upper Hill, up to 75 floors are contemplated, but only on plots of at least 0.8 hectares.

Infrastructure-led growth. Higher density is directed to transport corridors and areas with utility capacity. Approvals may be conditional on utility clearances, road works or surrender of land for road widening.

Planning gain. Large developments may be asked to provide infrastructure, affordable housing, open space or other public benefits.

Development impact fees. A one-time charge at building-permit stage, based on floor area, use and location, is proposed to fund city infrastructure. Rates, credits and exemptions have not yet been set.

Air rights and transferable development rights. Unused development potential could be sold, donated to the County for incentives, or banked. The legal framework for valuation, registration and lender consent does not yet exist.

Sustainability and participation. Major projects may need waste plans, solar-ready roofs, EV charging, rainwater harvesting and minimum green cover. Public participation becomes impact-based, with a structured role for residents' associations.

2. What it means for you

IF YOU ARE	WHAT TO DO
A developer	Re-test yield against the exact sub-zone, plot-size tier and all cross-cutting controls. Budget for infrastructure works, sustainability measures, public engagement and contributions, and allow time for utility and agency clearances.
A landowner	Confirm development potential independently before marketing or pricing a site. Density, transit access and assemblage may add value; plot-size tiers, road surrender and environmental overlays may reduce it.
A buyer or investor	Do not rely on historic use or neighbouring buildings. Confirm the matrix entry, map boundary, title acreage, access, infrastructure capacity and approval history.
A lender	Require a current planning opinion, a complete approvals matrix and an adequate cost contingency. Keep unimplemented development rights out of base collateral value.
A tenant	Link rent start and handover to lawful occupation and utility readiness where completion risk is real.

3. Key legal issues

Policy, not yet law. The Policy guides the County's planning decisions but does not override the Constitution, national planning law or valid county legislation. A county planning by-law is proposed within 18 months.

New charges need a legal basis. A policy alone cannot impose a levy or fee. Any impact fee must have proper legislation setting the charging event, formula and challenge procedure. Courts have held that county levies without supporting legislation are unlawful.

Land surrender. Any requirement to surrender land must be proportionate and lawful, and must not side-step the protections that apply to compulsory acquisition.

Existing approvals. Valid approvals are not cancelled retrospectively, but they may lapse or need extension, and material changes may need fresh approval.

Fairness and appeals. County decisions must be lawful, reasonable and fair, with written reasons. Applicants should keep the full approval record and use the liaison committee and courts where needed.

4. Recommended actions

1 **Re-test each project**

against the sub-zone matrix, zonal map, plot-size tier, plot ratio, ground coverage, setbacks, parking, green area and height controls.

2 **Assess infrastructure readiness**

covering access, road widening, water, sewer, power, stormwater, traffic and fire access.

3 **Update feasibility models**

with conservative allowances for impact fees, planning gain, infrastructure works, land surrender and approval delay.

4 **Use conditions precedent**

tied to planning confirmation, utility capacity and approval status in acquisitions, joint ventures and financing.

5 **Audit existing approvals**

for validity, conditions, phasing and variations, and seek written clarification where transition risk arises.

6 **Engage early**

with residents, utilities and agencies on projects with significant traffic, infrastructure or environmental impact.

5. What to watch

The Policy sets the direction, but several instruments will decide how it applies in practice. Watch for:

The county planning by-law, expected within 18 months, which will codify zoning, fees, development rights, enforcement and penalties.

Finance legislation establishing any new charges, including the development impact fee formula, credits and exemptions.

The infrastructure fund framework that will receive and spend development impact fees.

Rules for development rights, covering valuation, registration and lender consent.

Transitional provisions for pending applications, existing approvals and phased projects.

Procedures for public participation and appeals.

OUR VIEW

- The Policy is a necessary modernisation, with a clearer spatial structure and a closer link between growth and infrastructure.
- The near-term risk is sequencing: ambitious charges and incentives have been announced before the laws needed to apply them.
- Where the County asks for a new or unusual charge, ask for its legal basis, computation and review route before accepting it.
- Projects priced on aggressive density or unbuilt infrastructure are the most exposed.

TALK TO US

Every situation is different. This is where we get specific to yours.

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