



**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING & URBAN
DEVELOPMENT**

State Department for Public Works

**PROPOSED CLIMATE CHANGE (GREEN & RESILIENT BUILDINGS)
REGULATIONS, 2023.**

LEGAL NOTICE NO.

THE CLIMATE CHANGE, 2016
(No. 11 of 2016)

IN EXERCISE of the powers conferred by section 36 (1) of the Climate Change Act 2016, the Cabinet Secretary for the Environment, Climate Change and Forestry makes the following Regulations; —

CLIMATE CHANGE (GREEN & RESILIENT BUILDINGS) REGULATIONS, 2023

Citation 1. These Regulations may be cited as the Climate Change (Green & Resilient Buildings) Regulations, 2023.

Interpretation 2. In these Regulations, unless context otherwise requires—

“**Act**” shall mean Climate Change Act of 2016.

“**Administrator**” means the Principal Secretary of the State Department for the time being responsible for Public Works;

“**Climate Change**” has a meaning assigned to it under the Climate Change Act of 2016.

“**Green Code**” means the Code for Environmental Sustainability of Buildings issued by administrator.

“**Green building**” means an integrated, whole-building approach to the planning, design, construction, operation, and maintenance of buildings and their surrounding landscapes that help mitigate the environmental, economic and social impacts of buildings, so as to be energy efficient, sustainable, safe, cost-effective, accessible, healthy, and productive.

“**Green Building practice**” is the practice of adopting measures that promote resource management, efficiency and sustainability while minimizing the negative impact of buildings on human health and the environment.

“Accredited Green Building Professional” shall mean a person accredited by the administrator to carry out green and resilient buildings certification, consultancy work of auditing, accrediting, verifying, or combination; or any other related function as may be designated, in writing.

“Green building checklist” means a scorecard developed by the administrator for the purpose of calculating a score on an appropriate rating system.

“Green Communities” means the national Green Building Program designed by a Government or its partners that provides criteria for the design, development and operation of affordable housing and settlement.

“Certification of Sustainability” is a certificate issued by an accredited green building professional to an organization seeking registration providing a proof of conforming to standards relating to sustainability parameters subjected to its building.

“Building Rating System” is a rating product registered and accredited by the administrator, for use in Kenya by an accredited green building professional.

“Circular Economy” has a meaning assigned to it under the Sustainable Waste Management Act, 2022.

“Climate change resilience” The ability of a system and its component parts to anticipate, absorb, accommodate, or recover from the effects of a hazardous climate change –driven event in a timely and efficient manner, including through ensuring the preservation, restoration, or improvement of its essential basic structures and functions

“Historic Buildings” has a meaning assigned to it under the National Museums and Heritage Act of 2006.

“New construction” means the construction of any building whether as a stand-alone building or an addition to an existing building or enlargements of existing buildings, exclusive of any alterations or repairs to any existing portion of a building.

“Public-financing” means:

- a) Financing of a project or contract where funds or resources to be used for construction and development costs, excluding ongoing operational costs, are received from public sources, or funds or resources which, in accordance with a grant or otherwise, the National Treasury administers, including a contract, grant, loan, tax abatement or exemption, land transfer, land disposition and development agreement, or tax increment financing, or any combination thereof; provided, that funds may be applied to the financing percentage only if permitted by the national law and grant conditions; or
- b) Financing whose stated purpose is, in whole or in part, to provide for the new construction or substantial rehabilitation of affordable housing.

“Zero carbon buildings” means structures that have a minimal or net-zero carbon footprints over their entire lifecycle to meet building operations energy consumption annually

Application of regulations

3. These regulations are applied to all buildings; public and private in Kenya;
4. Without prejudice to 3) above these regulations shall specifically apply to;
 - a) Public Buildings and facilities upon which public financing has been expended on design, documentation, construction and supervision processes.
 - b) Private building works; for residential, non-residential or for mixed-use as shall be further defined in the National Guidelines made thereof;
5. Newly constructed public buildings after the effectivity of these Regulations shall incorporate principles of Green and Resilient buildings covered under these Regulations.
6. New buildings not described under section 5) may incorporate the principles of these regulations

Exclusion of applicability

7. These Regulations do not apply to existing buildings constructed before the effectivity date
8. When alterations, additions, conversions and renovations of existing buildings constructed after the effectivity of these regulations is to be applied, the whole building shall be subject to the applicable provisions of these regulations and the National Guidelines made thereof.
9. Historic buildings may be exempted from the requirements of these regulations. However, wherever practical, best efforts should be made to incorporate as many of the green and resilient buildings requirements and credits from them as possible, without compromising the historical integrity of the structure.
10. The administrator may prescribe any other building to be exempted from the provisions of these regulations
11. The administrator may, in unusual circumstances and only upon a showing of good cause, grant an exemption from any of the requirements of these regulations based on:
 - a) Substantial evidence of a practical infeasibility or hardship of meeting a required standard;
 - b) A determination that the public interest would not be served by complying with such requirements; or
 - c) Other compelling circumstances as determined by the administrator.
12. The burden under section 11) shall be on the applicant to show circumstances to establish hardship or infeasibility under this part.
13. The administrator shall develop rules to establish requirements for the exemption.

PART V— ESTABLISHMENT OF A GREEN& RESILIENT BUILDINGS UNIT.

Establishment of the unit

- 14.** There is established, under the control of the administrator, a unit to coordinate the implementation of these regulations.

Functions of the unit

- 15.** The unit is established pursuant to provisions of the Act to institutionalize low carbon, resource efficient, climate resilient practices within the built environment in Kenya and specifically;
- a) Formulate, implement, support and administer provisions relating to green and resilient buildings in Kenya
 - b) develop and implement green building standards and codes
 - c) Conduct research and development activities related to sustainable building practices.

- d) Be the repository of resource materials relating to green and resilient buildings;
- e) Establish procedures of undertaking buildings certification in Kenya;
- f) Accredite green building professionals in Kenya
- g) Keep a register of green and resilient buildings in Kenya;
- h) Overseeing certification and rating systems meeting determined sustainability criteria.
- i) Develop, coordinate and implement green and resilient built environment standards and other technical specifications;
- j) Formulate, develop and implement guidelines and other policy pathways accelerating building decarbonization.
- k) Develop a pathway towards adoption of circular economy in the construction sector
- l) Register, establish and promote project assessment and certification tools for use in Kenya.
- m) Support and organise professional development activities on green and resilient buildings;
- n) Support in monitoring, reporting and verification of the built environment's greenhouse gas emission reductions.
- o) Undertake such other duties and tasks as may be assigned.

PART VI-GREEN AND RESILIENT BUILDING PROMOTION, RATING, MATERIALS AND CERTIFICATION SYSTEMS.

Green and resilient building promotion

- 16.** In overseeing the implementation of these regulations, the administrator shall endeavour to decrease adverse effect on the environment by decreasing greenhouse gas emissions, over-exploitation and dependence on natural resources; and specifically enforce:
- a) Reduction in energy consumption without compromising the comfort levels in buildings
 - b) Reduction of water consumption within the built environment
 - c) Decreased destruction of natural areas, habitats and biodiversity, and reduced soil erosion in the built environment.
 - d) Reduced air and water pollution during construction and demolition; and
 - e) Reduced waste generation during building construction,

operations and deconstruction

- Rating, materials and certification systems**
17. Additional principles and objectives in the National Climate Change Action Plan, Kenya's National Determined Contribution and other National policies shall inform the interpretation of the principles in section 16).
 18. Nothing in these Regulations shall prevent the administrator from developing further standards or guidelines promoting green and resilient building principles in Kenya.
 19. The administrator shall;
 - a) Advance the undertaking of building certification.
 - b) Establish, accredit and promote the application of various green and resilient building rating and certification systems to be employed to measure the compliance of buildings in Kenya.
 - c) Promote development, adoption, usage of, and approve rating systems
 20. A rating system approved for use in Kenya shall evaluate performance of buildings for its entire lifespan.
 21. There is establishment of a dedicated system of eco-product labelling and certification of building materials based on criteria as shall be established.
 22. The system established under section 21) shall formulate and harbour a national green and resilient building repository.

PART VII- REGISTRATION AND CERTIFICATION OF GREEN AND RESILIENT BUILDINGS.

- Accreditation of practitioners**
23. A person or body operating in Kenya on matters green and resilient buildings shall be required to be accredited by the administrator.
 24. An accredited person may practice as a green and resilient building consultant, a certifier, an auditor or combination if he has met prescribed requirements in the application form.
 25. In a case of a body, it shall be required to furnish;
On Accreditation;
 - a) The building rating and certification tool promoting.
 - b) Professional registration procedures and development programs in place, if any;
 - c) Certification processes to be used in assessing, rating and certifying buildings for compliance; and
 - d) Any other information as may be required in the application form

Annually;

- a) Details of such persons so registered with it; for purposes of carrying out functions relating to provisions of these Regulations.
 - b) Professional development activities carried out; and
 - c) Any other information as may be required.
- 26.** Such person or firms accredited shall be issued with a certificate of intent to be a green building consultant, certifier, an auditor or combination;
- 27.** An accredited green building consultant, certifier or an auditor shall adhere to the established code of practice; and any other guideline provided thereof in promotion of green & resilient buildings in Kenya.
- 28.** The administrator may, in writing, exempt a person or firm from accreditation pursuant to the provisions of guidelines established.
- 29.** A developer of any building works that is subject to certification shall, when applying for certification, submit —
- a) a declaration from each appropriate practitioner who assessed the building works or any part thereof, stating the numerical score assigned; and
 - b) such other documents as the green building professional may require in any particular case.
- 30.** The administrator shall prescribe rules leading to certification of green and resilient buildings.
- 31.** Registration and Certification of green and resilient buildings shall be done by a green building practitioner accredited to carry out such function.
- 32.** A developer or a building owner, where he considers certification of the building thereafter, shall engage an accredited green building practitioner to ensure that the building works are designed with physical features or amenities, and may be carried out using methods and materials to meet the minimum standards stipulated in these regulations.
- 33.** An accredited green building practitioner, in a prescribed circumstance, shall issue a certification of sustainability to the effect that a building has met prescribed requirements of certification
- 34.** Prior to issuance of certificate of sustainability, the building works shall meet all the relevant mandatory requirements regulated under the national building code
- 35.** The parameters to be employed by the green building practitioner on a building requiring certification shall be submitted to the

administrator with further indications of the location, nature and scope of the proposed sustainable features.

36. A certificate of sustainability shall be given within such periods or at such times and in such forms as shall be prescribed;
37. A certificate of sustainability issued to a building has a validity period of not more than seven years from the date of issue, and as such, shall expire.
38. A certificate of sustainability issued may be suspended or revoked by the green building professional or the administrator if the owners of the building breaches the conditions set out in the application form
39. Such suspended or revoked certificates shall be communicated to the administrator by the green building practitioner, being the issuee.
40. The administrator, in consultation with the accredited green building practitioners shall develop rules on certification and auditing of buildings for purposes of these regulations.
41. The administrator shall together-with the accredited green building practitioners, continuously undertake monitoring and evaluation on such buildings issued with Certification of Sustainability.
42. The administrator shall once in every three years, develop a report on conformance of buildings with the principles of the Act and any other National and International obligation and submit to the Cabinet Secretary.

PART VIII- GREEN BUILDINGS RELATED RECORDS

Inventory of Green buildings

43. The administrator shall cause to be kept a register with such information and documents as may be prescribed in connection with the functions and duties arising from these regulations.
44. The information and documents that may be prescribed for the purposes of section 43) above include, in particular—
 - i) documents that are given or issued to, or deposited in accordance with provision made by or under these regulations, or copies of such documents;
 - ii) copies of documents that are given, made or issued in accordance with provision so made;
 - iii) information with respect to documents of the kind mentioned in paragraph i) or ii);
 - iv) Information with respect to matters to which such documents relate.

45. Information and documents that are required to be kept in a register under section 44) shall be so kept for the prescribed period.
46. A person or firm being in the green building practice—
 - i) shall maintain a register required under section 45) in the prescribed manner;
 - ii) shall ensure that their register is available for inspection during prescribed periods;
 - iii) shall, in prescribed circumstances, provide to members of the public, on request, copies of information and documents kept;
 - iv) May, in prescribed circumstances, charge a member of the public to whom they provide such copies a fee calculated in the prescribed manner

PART IX- GREEN COMMUNITIES, AFFORDABLE HOUSING PROJECTS AND MULTI-UNIT RESIDENTIAL BUILDINGS

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| Public buildings financing | <ol style="list-style-type: none"> 47. Public financed residential projects are required to meet or exceed the Green Communities certification standard established under specific rules made for this part. 48. Non-residential public buildings are required to meet a minimum determined certification standard for environmental performance. 49. New state-funded building construction and major renovations of existing state-owned facilities are required to be designed to achieve, a minimum certification determined. 50. New major buildings and major renovations must obtain a meet a minimum determined certification standard. 51. Any person, firm or a Government department intending to venture and construct a community housing project, affordable housing projects and/or multi-unit residential buildings shall be required to set aside and properly maintain areas adequate for planting and maintaining trees and flourish said property. 52. Exemptions to these regulations are buildings that are not comfort conditioned buildings, as determined by the administrator. 53. State Agencies and project design team may apply to the administrator for a waiver from these regulations on green communities' projects, affordable housing projects and multi-unit residential buildings. |
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- 54.** Waivers shall be granted when the applicant can demonstrate and document any of the following:
- i) An unreasonable financial burden, taking into account the operating and construction costs over the life of the building and the total cost of ownership of the building.
 - ii) An unreasonable impediment to construction.
 - iii) The standards would impair the principal function of the building
 - iv) The standards would compromise the historic nature of the structure

PART XI- RESPONSIBILITIES OF STAKEHOLDERS.

Project managers responsibility

- 55.** Building project managers shall ensure that;
- i) Project budgets contain a minimum relative per cent investment funding required to support delivery of a Green and Resilient Building.
 - ii) the relevant Certification is achievable in respect of those building works
- 56.** Without generality to section 55), project managers of public buildings and facilities shall be responsible for delivering a Green and Resilient Buildings.
- 57.** County Governments may, in consultation with the administrator, develop County Guidelines emanating from the National Guidelines.
- 58.** County Governments may determine and impose an impact fee on building owners in breach of these Regulations and the County guidelines developed.
- 59.** Project managers of public buildings and facilities shall ensure that request for proposals and tender documents include principles of these regulations as a requirement, as applicable.

PART XII-COMPLIANCE REVIEW, DECLARATION & MONITORING

Compliance of the regulations

- 60.** The administrator shall verify compliance with the requirements of these regulations through:
- i) A self-declaration undertaking by the green building practitioners and developers to comply with the principles of these regulations, in a prescribed format.
 - ii) The Unit established pursuant to Part V of these regulations;
 - iii) Third-party entities prequalified and engaged by the administrator which meets criteria to be established.

61. The administrator shall review the qualifications of each third-party entity approved under section (60) *iii*) of this part at least every 3 years to determine if they shall remain eligible to conduct the verifications required.
62. Any person who contravenes these regulations shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or a twelve months jail term
63. In any proceedings for an offence under section 62), it shall be a defence for the person charged to prove —
 - i) that the commission of the offence was due to the act or default of another appropriate practitioner or to some other cause beyond his control; and
 - ii) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or by any person under his control
64. The administrator shall develop a national guidelines, and may develop rules, and other standard operating procedures for proper functioning of these regulations;
65. Without prejudice to section 62) the national guidelines shall make provisions relating to performance standards, specifically on:
 - i) Energy efficiency in buildings to focuses on the approach that can be used in the building design and system selection to optimise the energy efficiency of buildings.
 - ii) Water efficiency and conservation to focus on the selection of water use efficiency during construction and building operations.
 - iii) Material conservation and resource efficiency to focus on the design, practices and selection of materials and resources that would reduce the environmental impacts of built structures.
 - iv) Innovation and other green features to focuses on the adoption of green practices and new technologies that are innovative and have potential environmental benefits.
 - v) Indoor environmental quality to focus on the design strategies that would enhance the indoor environmental quality which includes air quality, thermal comfort, acoustic control and daylighting; and
 - vi) Planning and Design
 - vii) Waste Management**

PART XIII- FINANCIAL PROVISIONS.

- 66.** The functions emanating from these regulations shall be financed through a vote in the estimates of revenue and expenditure of the administrator
- 67.** The administrator shall ensure compliance to section 66)
- 68.** There shall be payable out of money provided by Parliament—
 - i) Any expenditure incurred in consequence or by virtue of these regulations; and
 - ii) any increase attributable to these regulations

PART XIII-TRANSITIONAL PROVISIONS.

- 69.** Any reference in any written law, in any document or instrument on matters green and resilient buildings shall on and after enactment of these regulations, be construed to be a reference to these regulations.
- 70.** Buildings in Kenya that have previously been certified as green before the commencement of these regulations shall be registered with details of certification entered in the register of certified buildings

Made on the, 2023

Hon. Alice Wahome,
Cabinet Secretary
Ministry of Lands, Public Works, Housing and Urban Development