



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 761

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 158 1993

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 27 of 1993: Town Planning Amendment Act, 1993

EXPLANATORY NOTE:

- _____ Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.

ACT

To amend the Town Planning Ordinance, 1954, so as to change the name of the South West African Planning Advisory Board to the Namibia Planning Advisory Board; to provide for the promulgation of an approval of a scheme by notice in the *Gazette*; to adjust certain provisions of the Ordinance in view of the independence of Namibia; and to provide for matters incidental thereto.

(Signed by the President on 26 November 1993)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Amendment of section 2 of Ordinance 18 of 1954, as amended by section 2 of Ordinance 13 of 1970 and section 2 of Ordinance 11 of 1973.

1. Section 2 of the Town Planning Ordinance, 1954 (hereinafter referred to as the Ordinance), is hereby amended -

- (a) by the insertion before the definition of "building" of the following definition:

" 'board' means the Namibia Planning Advisory Board referred to in section 9;";

- (b) by the deletion of the definition of "Executive Committee";

- (c) by the substitution for the definition of "local authority" of the following definition:

" 'local authority' means a local authority council as defined by section 1 of the Local Authorities Act, 1992 (Act 23 of 1992);";

- (d) by the insertion of the following definition after the definition of "public place":

" 'Minister' means the Minister of Local Government and Housing;".

Amendment of section 4 of Ordinance 18 of 1954, as amended by section 1 of Ordinance 13 of 1970 and section 1 of Ordinance 11 of 1973.

2. Section 4 of the Ordinance is hereby amended -

- (a) by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of subsections (2), (3) and (4) hereof, the [**Executive Committee**] Minister may from time to time, after consultation with the local authority concerned, by [**proclamation**] notice in the [**Official**] *Gazette*, apply the provisions of this Ordinance to any local authority not mentioned in the Third Schedule.";

- (b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

"(b) by notice once a week for three consecutive weeks in a newspaper circulating in the [**area of the**] local authority area concerned, and once during this period in the [**Official**] *Gazette*."; and

- (c) by the substitution for subsection (4) of the following subsection:

"(4) Upon receipt of any such petition the [**Executive Committee**] Minister shall refer it to the board [**constituted under section nine hereof**], for consideration and report, and, if no sufficient cause has been shown why the power proposed to be exercised shall not be exercised, the [**Executive Committee**] Minister may exercise such power.".

Amendment of section 5 of Ordinance 18 of 1954, as amended by section 1 of Ordinance 11 of 1973.

3. The following section is hereby substituted for section 5 of the Ordinance:

"5. Every local authority to which the provisions of this Ordinance have been applied by section [**three**] 3 shall within a period of one year from the commencement of this Ordinance or within such

further period or periods as the **[Executive Committee] Minister** may in his or her discretion allow, prepare and submit to the **[Executive Committee] Minister**, in such form as may be prescribed, a town-planning scheme, hereafter referred to as a scheme, in respect of all the land situated within the local authority area or such portion thereof as the **[Executive Committee] Minister** may decide and, with the consent of the **[Executive Committee] Minister**, specified land outside the boundaries of such local authority area.”

Substitution of section 6 of Ordinance 18 of 1954, as amended by section 1 of Ordinance 11 of 1973.

4. The following section is hereby substituted for section 6 of the Ordinance:

“6. Every local authority to which the provisions of this Ordinance have been applied in terms of subsection (1) of section **[four]** 4 shall within a period of three years from the date of the **[proclamation] notice** applying such provisions or within such further period as the **[Executive Committee] Minister** may in his or her discretion allow, prepare and submit to the **[Executive Committee] Minister** a scheme in respect of all the land situate within the **[municipality] local authority area** or such portion thereof as the **[Executive Committee] Minister** may decide and, with the consent of the **[Executive Committee] Minister**, specified land outside the boundaries of such local authority area.”

Amendment of section 7 of Ordinance 18 of 1954, as amended by section 1 of Ordinance 11 of 1973.

5. Section 7 of the Ordinance is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A local authority which has not been required to submit a scheme as aforesaid may on its own initiative prepare and submit to the **[Executive Committee] Minister** a scheme in respect of all or any of the land situate within the local authority area and, with the consent of the **[Executive Committee] Minister**, specified land outside the boundaries of such local authority area.”

Amendment of section 9 of Ordinance 18 of 1954, as amended by section 3 of Ordinance 13 of 1970 and section 1 of Ordinance 11 of 1973.

6. (1) Section 9 of the Ordinance is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) The body corporate which immediately before the commencement of the Town Planning Amendment Act, 1993, existed under the name South West African Planning Advisory Board, shall continue to exist as a body corporate under the name Namibia Planning Advisory Board.”; and

(b) by the insertion after subsection (1) of the following subsection:

“(1A) The Board shall consist of not less than three and not more than ten members who shall be appointed by the Minister and of whom one shall be designated by the Minister as chairperson of the board.”.

(2) The change of name effected by the amendment under subsection (1)(a) shall not affect the rights, obligations and liabilities of the body corporate referred to in section 9 of the Ordinance, and any reference in any law, register, title deed or other document to the South West African Planning Advisory Board shall be construed as a reference to the Namibia Planning Advisory Board.

Repeal of section 11 of Ordinance 18 of 1954, as amended by section 1 of Ordinance 13 of 1970.

7. Section 11 of the Ordinance is hereby repealed.

Amendment of section 13 of Ordinance 18 of 1954, as amended by section 5 of Ordinance 13 of 1970 and section 1 of Ordinance 11 of 1973.

8. Section 13 of the Ordinance is hereby amended by the deletion of subsections (4) and (5).

Amendment of section 26 of Ordinance 18 of 1954, as amended by section 1 of Ordinance 11 of 1973.

9. Section 26 of the Ordinance is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) After the approval of a scheme the [**Executive Committee**] Minister shall [**notify**] give notice of such approval [**by proclamation**] in the [**Official**] Gazette and such scheme shall come into operation upon the publication of such [**proclamation**] notice, and thereafter be referred to as an approved scheme.”.

Amendment of section 47 of Ordinance 18 of 1954, as amended by section 6 of Ordinance 13 of 1970 and section 1 of Ordinance 13 of 1973.

10. Section 47 of the Ordinance is hereby amended -

- (a) by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything contained in any other [**Ordinance or Proclamation**] law, the ownership of every public place as defined in section [**two**] 2 which is situate in a local authority area, shall, if it does not already do so, vest in the local authority for the use and benefit of the public, but if any such public place is situate outside a local authority area the ownership thereof shall vest in the [**Executive Committee**] State in trust for any future local authority pending the inclusion of such public place in a local authority area when the ownership thereof shall vest in the local authority for the use and benefit of the public: Provided that -

- (a) in respect of any public place the dominium whereof vests in the [**Crown**] State, the local authority or, as the case may be, the [**Executive Committee**] Minister shall be vested only with the control and management thereof;
- (b) every public place shall be held by the local authority or, as the case may be, the [**Executive Committee**] State, for the purposes for which it was set apart or which it was intended to serve or which it may by immemorial usage have come to serve;
- (c) such vesting shall not be deemed to impose any greater liability upon the local authority or, as the case may be, the [**Executive Committee**] State in regard to the repair and maintenance of public places than is imposed by any other law.”; and
- (b) by the substitution for subsection (5) of the following subsection:

“(5) If the effect of any decision referred to in subsection (4) is that the land in question constitutes a public place the ownership of which vests in the local authority within whose area such

public place is situate, or in any other case the [Executive Committee] State in trust, the local authority or the [Executive Committee] Minister shall cause a diagram thereof to be prepared and submitted to the Surveyor-General for approval and upon the approval of that diagram may proceed under section [thirty-one] 31 of the [Deeds Registry Proclamation, 1939 (Proclamation No. 37 of 1939)] Deeds Registries Act, 1937 (Act 47 of 1937), for the purpose of securing transfer of such public place.”

Amendment of section 48 of Ordinance 18 of 1954, as amended by section 1 of Ordinance 13 of 1970 and section 1 of Ordinance 5 of 1979.

11. Section 48 of the Ordinance is hereby amended by the substitution for the words following paragraph (c) of the following words:

“shall be guilty of an offence and liable on conviction to a fine not exceeding [five hundred rand] R2 000 or [in default of payment,] to imprisonment for a period not exceeding six months: Provided that in the case of a continuing offence an additional fine not exceeding [twenty-five rand] R50 for every day upon which the contravention continued may be imposed [but no such fine shall in any one prosecution or within any one month exceed five hundred rand].”

Amendment of section 48A of Ordinance 18 of 1954, as inserted by section 6 of Ordinance 11 of 1973 and amended by section 1 of Ordinance 23 of 1973 and section 2 of Ordinance 10 of 1977.

12. Section 48A of the Ordinance is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subject to the provisions of subsections (3) and (4), any person who erects any such building or causes any such building or buildings to be erected on such land in defiance of such prohibition, shall be guilty of an offence, and liable on conviction to a fine not exceeding [four hundred rand] R2 000 or to imprisonment for a period not exceeding six months.”

Amendment of section 49 of Ordinance 18 of 1954.

13. Section 49 of the Ordinance is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The regulations may prescribe penalties for any contraventions thereof or default in complying therewith, not exceeding in any case a fine of [ten pounds] R2 000 or [in default of payment,] to imprisonment for a period not exceeding [one month] six months.”

Substitution of certain expressions in Ordinance 18 of 1954.

14. The Ordinance is hereby amended -

- (a) by the substitution for the expression "Executive Committee", wherever it occurs, of the word "Minister";
- (b) by the substitution for the expression "Legislative Assembly", wherever it occurs, of the expression "Parliament";
- (c) by the deletion in the expression of "*Official Gazette*", wherever it occurs, of the word "*Official*";
- (d) by the substitution for the expression "the Territory", wherever it occurs, of the word "Namibia"; and
- (e) by the substitution for the expression "Territory Revenue Fund", wherever it occurs, of the expression "State Revenue Fund".

Saving.

15. Any person who, at the commencement of this Act, holds office as a member of the board referred to in section 9 of the Ordinance by virtue of his or her appointment under subsection (1) of that section before the amendment of that provision by this Act, shall be deemed to have been appointed under subsection (1A) of that section as inserted by this Act.

Short title.

16. This Act shall be called the Town Planning Amendment Act, 1993.
