

Gujarat Town Planning And Urban Development Act, 1976

[19 June 1976]

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Gujarat Town Planning And Urban Development Act, 1976

[19 June 1976]

An Act to consolidate and amend the law relating to the making and execution of development plans and town planning schemes in the State of Gujarat.

In exercise of the powers conferred by section 3 of the Gujarat State Legislature (Delegation of Powers) Act, 1976 (44 of 1976), the President is pleased to enact as follows:-

Footnote:-

1. For Reasons for Enactment see Gujarat Government Gazette, Extraordinary, Part IV, dated the 21st June, 1976, page 170.

CHAPTER 1 Preliminary

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Gujarat Town Planning and Urban Development Act, 1976.

(2) It extends to the whole of the State of Gujarat.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(i) "Agriculture" includes-

(a) Horticulture;

(b) Farming;

(c) Raising of crops, fruits, vegetables, grass, fodder, trees or any other kind of cultivation;

(d) Breeding and keeping of live-stock, including horses, donkeys, mules, pigs, fish, poultry and bees; and

(e) The use of land for any purpose which is ancillary to its cultivation or to any other agricultural purpose,

But does not include the use of land as a garden which is an appendage to a building and the expression "agricultural" shall be construed accordingly;

(ii) "Amenity" includes roads, streets, open spaces, parks, playgrounds, recreational grounds, water and electric supply, street lighting, sewerage, drainage, public works and other utility services and conveniences;

- (iii) "Appropriate authority", in relation to a development area, means an area development authority or an urban development authority, as the case may be;
- (iv) "Area development authority" means an area development authority constituted under section 5 1 [and includes a local authority, designated as such under sub-section (1) of section 6 or Government company designated as such under section 6-A];
- (v) "Authorised officer" means an officer appointed by the State Government under sub-section (2) of section 9;
- (vi) "Building operations" includes,-
 - (a) Erection or re-erection of a building or any part thereof;
 - (b) Roofing or re-roofing of a building or any part of a building or any open space;
 - (c) Any material alteration of a building as is likely to affect the alteration of its drainage or sanitary arrangement or to materially affect its security, or the construction of a door opening on any street or land not belonging to the owner;
- (vii) "Chief Town Planner" means the officer appointed as Chief Town Planner to the Government of Gujarat;
- (viii) "Development", with all its grammatical variations and cognate expressions, means the carrying out of any building, engineering, mining, or other operations in, or over, or under land or the making of any material change in any building or land or in the use of any building or land, and includes layout and sub-division of any land;
- (ix). "Development area" means an area declared to be a development area under section 3 or, as the case may be, an urban development area under section 22;
- (x) "Development plan" means a plan for the development or re-development or improvement of a development area;
- (xi) "engineering operations" includes the formation or laying out of a street or of means of access to a road or the laying out of means or water supply, drainage, sewerage, supply of electricity or gas or of any other public utility service;
- (xii) "Final plot" means a plot reconstituted from an original plot and allotted in a town planning scheme as a final plot;
- (xiii) "Land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;
- (xiv) "Local authority" means a municipal corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949, as in force in the State of Gujarat, a municipality constituted or

deemed to be constituted under the Gujarat Municipalities Act, 1963, a committee appointed for a notified area under the Gujarat Municipalities Act, 1963 or a gram or nagar panchayat constituted or deemed to be constituted under the Gujarat Panchayats Act, 1961;

(xv) "Notification" means a notification published in the Official Gazette;

(xvi) "Occupier" includes,-

(a) Any person who for the time being is paying or is liable to pay to the owner the rent of the land or building in respect of which such rent is paid or is payable;

(b) An owner living in or otherwise using his land or building;

(c) A rent free tenant;

(d) A licensee in occupation of any land or building;

(e) Any person who is liable to pay to the owner damages or compensation for the use and occupation of any land or building;

(xvii) "Operational construction" means any construction whether temporary or permanent, which is necessary for the operation, maintenance, development or execution of any of the following services, namely:-

(a) Railways;

(b) National highways;

(c) National waterways;

(d) Major ports;

(e) Airways and aerodromes;

(f) Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication;

(g) Regional grid for electricity;

(h) Any other service which the State Government may, if it is of opinion that the operation, maintenance, development or execution of such service is essential to the life of the community, by notification, declare to be a service for the purposes of this clause.

Explanation:- For the removal of doubts, it is hereby declared that the construction of-

(i) New residential buildings (other than gate lodges, quarters for limited essential operational staff and the like), roads and drains in railway colonies, hotels, clubs, institutes and schools, in the case of railways; and

(ii) A new building, new structure or new installation or any extension thereof, in the case of any other service, shall not be deemed to be construction within the meaning of this clause;

(xviii) "Owner", in relation to any property, includes any person

who is, for the time being receiving or entitled to receive, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as an agent, trustee, guardian, manager or receiver for any other person or for any religious or charitable institution, the rents or profits of the property; and also includes a mortgagee in possession thereof;

(xix) "Plot" means a portion of land held in one ownership and numbered and shown as one plot in a town planning scheme;

(xx) "Preliminary scheme" means a preliminary scheme relating to a town planning scheme prepared by the Town Planning Officer under section 51;

(xxi) "Prescribed" means prescribed by rules made Under this Act;

(xxii) "Reconstituted plot" means a plot which is in any way altered by the making of a town planning scheme.

Explanation:- For the purposes of this clause "altered" includes the alteration of ownership of a plot;

(xxiii) "Regulation" means a regulation made under section 119 and includes zoning and other regulations made as part of a development plan or town planning scheme;

(xxiv) "Residence" includes the use for human habitation of any land or building or part thereof, the use of gardens, grounds, garages, stables and out-houses, if any, appertaining to such land or building, and the expression "residential" shall be construed accordingly;

(xxv) "Rule" means a rule made under section 118;

(xxvi) "Scheme" means a town planning scheme prepared under this Act, and includes a plan or plans, together with the descriptive matter, if any, relating to such scheme;

(xxvii) "Town Planning Officer" means Town Planning Officer appointed under section 50;

(xxviii) "Urban development authority" means an urban development authority constituted under section 22;

(xxix) "Urban development area" means an area declared to be an urban development area under section 22;

2 [(xxx) "Government company" means a Government company registered under the Companies Act, 1956 which has one of its objects the development of an area.]

Footnotes:-

1. These words, brackets, figures and letter were inserted by Guj. 2 of 1999, section (2)(1)(i).

2. Clause (xxx) was added by Guj. 2 of 1999, section 2 (1) (ii).

CHAPTER 2 Development Area And Constitution Of Area Development Authorities

3. Declaration Of Development Area :-

(1) The State Government may, for the purpose of securing planned development of areas within the State, declare, by notification, and in such other manner as may be prescribed, any area in the State to be a development area.

(2) Every notification issued under sub-section (1) shall define the limits of the area to which it relates.

(3) The State Government may, by notification, amalgamate two or more development areas into one development area, sub-divide any development area into different development areas and include such sub-divided areas in any other development area.

4. Exclusion Of Whole Or Part Of Development Area From Operation Of Act :-

(1) The State Government may, by notification, withdraw from the operation of the relevant provisions of this Act, the whole or part of any development area declared under section 3.

(2) Where any notification is issued under sub-section (1) in respect of any development area or part thereof-

(a) the relevant provisions of this Act and all notifications, rules, regulations, orders, directions and powers issued, made or conferred, thereunder shall cease to apply to the said area or, as the case may be, part thereof;

(b) the State Government shall, after consultation with the area development authority or authorities concerned frame, a scheme determining the portion of the balance of the fund of the area development authority or authorities which shall vest in the State Government and the local authority or authorities concerned and in what manner the properties and liabilities of the area development authority or authorities shall be apportioned between the State Government and the local authority or authorities concerned and on the scheme being notified, the fund, properties and liabilities of the area development authority or authorities, shall vest and be apportioned accordingly.

5. Constitution Of Area Development Authority :-

(1) As soon as may be after the declaration of a development area

under section 3, the State Government shall, by notification, constitute an authority for such area to be called the area development authority of that development area for the purpose of carrying out the functions assigned to an area development authority under this Act.

(2) Every area development authority constituted under subsection (1) shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both moveable and immovable, and to contract, and by the said name sue and be sued.

(3) An area development authority shall consist of the following members, namely:-

(i)a Chairman to be appointed by the State Government; (ii) the Chief Town Planner or his representative, ex-officio;

1 [(iii)such persons not exceeding four from amongst the members of the local authorities functioning in the development area as may be nominated by the State Government;

(iii-a) the Presidents of the district panchayats functioning in the development area or in any part thereof-ex-officio;]

(iv) Two officials of the State Government to be nominated by that Government, ex-officio;

(v) A non-official who possesses special knowledge or practical experience in town planning, to be appointed by the State Government;

(vi) A member secretary to be appointed by the State Government who shall also be designated as the Chief Executive Authority of the area development authority.

(4)The State Government may, if it thinks fit, appoint one of the members as the Vice Chairman of the area development authority.

(5)2 [The conditions of service] of the members of an area development authority other than ex-officio members shall be such as may be prescribed and the members shall be entitled to receive such remuneration or allowances or both as the State Government may by order determine.

3 [(5A) The Chairman and the members of an Area Development Authority other than ex-officio members shall hold office during the pleasure of the State Government.]

(6)(a) If the State Government is of opinion that any member of an area development authority is guilty of misconduct in the discharge of his duties or is incompetent or has become incapable of performing his duties as such member, or should for any other good and sufficient reasons, be removed, the State Government

may, after giving him an opportunity to be heard, remove him from office.

(b) Any member of the area development authority other than an ex-officio member may at any time resign his office by writing under his hand addressed to the State Government and upon the acceptance thereof, the office of such member shall become vacant.

(7) In the event of a vacancy occurring in the office of any member of an area development authority, the vacancy shall be filled by the State Government as soon as possible after the vacancy has occurred by nomination or appointment,⁴ [as the case may be.]

(8)(i) An area development authority shall meet at such time and place as the Chairman may determine and may, subject to the provisions of this sub-section make regulations for regulating the procedure and conduct of its business at its meetings.

(ii) The Chairman, and in his absence, any other member chosen by the members present from amongst themselves shall preside at a meeting of the area development authority.

(iii) All questions at a meeting of the area development authority shall be decided by a majority of votes of the members present and voting and in the case of equality of votes, the persons presiding shall have a casting vote.

(9)(i) An area development authority may, with the previous sanction of the State Government, associate with itself or consult such persons whose assistance or advice it may desire for the purpose of performing any of its functions under this Act and such persons may be paid by the area development authority such remuneration or fees as may be sanctioned by the State Government.

(ii) The person so assisting or advising the area development authority may take part in the meetings of the authority relevant to the purpose for which he is associated or consulted but shall not have the right to vote at a meeting or take part in the meeting of the authority relating to matters concerned with any other purpose.

(10) Subject to the provisions of section 104, an area development authority may appoint such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

(11) The officers and employees appointed under sub-section (10) shall be entitled to receive such salaries or allowances and shall be governed by such terms and conditions of service, as may be determined by the State Government.

(12) The member Secretary of the area development authority and

the officers and employees of that authority shall work under the supervision and control of its Chairman.

Footnotes:-

1. Clauses (iii) and (iii-a) were substituted for Clause (iii) by Guj. 2 of 1999, section 3.
2. These words were substituted and shall be deemed always to have been substituted for the words " The term of office and conditions of service" by Guj. 1 of 1999, section 3, Schedule, entry No. 11 (1).
3. Sub-section (5A) was inserted and shall be deemed always to have been inserted, Guj. 1 of 1999, entry No. 11 (2).
4. These words were substituted and shall be deemed always to have been substituted for the portion beginning with the words "as the case may be" and ending with the words "vacancy had not occurred", by Guj. 1 of 1999, section 3, Schedule, entry 11 (3).

6. Power To Designate A Local Authority As Area Development Authority :-

(1) The State Government may, instead of constituting an area development authority for a development area, designate any local authority functioning in a development area or part thereof, as the area development authority for that development area.

(2) The local authority designated under sub-section (1) as the Area Development Authority shall, for the purposes of performing the functions assigned to an area development authority under this Act, set up a Planning Committee consisting of the following members, namely:-

(i) Six members of the local authority appointed by it out of whom one shall be designated as the Chairman;

(ii) The Chief Town Planner or his representative to be nominated by the State Government;

1 [(iii) One official of the State Government to be nominated by the State Government, ex-officio;

(iv) Chief Officer or, as the case may, be Secretary of the local authority.]

(3) The Planning Committee set up under sub-section (2) shall have all the powers, responsibilities and status as are given to a Standing Committee² [or, as the case may be Executive committee,] if any, appointed under the Act under which the local authority is constituted.

Footnotes:-

1. Clauses (iii) and (iv) were inserted by Guj. 2 of 1999, section 4 (1).
2. These words were inserted, by Guj. 2 of 1999, section 4 (1).

7. Powers And Functions Of Area Development Authority :-

(1) 1 [The powers and functions of] an area development authority shall be-

(i) To undertake the preparation of development plans under the provisions of this Act for the development area;

(ii) To undertake the preparation 2 [and execution] of town planning schemes under the provisions of this Act, if so directed by the State Government;

(iii) To carry out surveys in the development area for the preparation of development plans or town planning schemes;

(iv) To control the development activities in accordance with the development plan in the development area;

3 [(iv-a) to levy and collect such scrutiny fees for scrutiny of documents submitted to the appropriate authority for permission for development as may be prescribed by regulations;]

(v) To enter into contracts, agreements or arrangements with any person or organisation as the area development authority may deem necessary for performing its function;

(vi) To acquire, hold manage and dispose of property, movable or immovable, as it may deem necessary;

(vii) To execute works in connection with supply of water, disposal of sewerage and provision of other services and amenities;

4 [(vii-a) To levy and collect such fees for the execution of works referred to in clause (vii) and for provision of other services and amenities as may be prescribed by regulations;]

(viii) To exercise such other powers and perform such other functions as are supplemental, incidental or consequential to any of the foregoing powers and functions or as may be directed by the State Government.

(2) The area development authority may, with the approval of the State Government, delegate 5 [any of its powers and functions] to the local authority or authorities within its jurisdiction.

(3) The area development authority shall have its office at such place as the State Government may specify in this behalf.

Footnotes:-

1. These words were substituted for the words "The function of by Guj. 3 of 1995, section 2 (1) (a).

2. These words were inserted by Guj. 2 of 1999, section 6.
3. Clause (iv-a) was inserted by Guj. 3 of 1995, section 2 (1) (b).
4. Clause (vii-a) was inserted by Guj. 3 of 1995, section 2 (1) (c).
5. These words were substituted for the words "any of its functions" by Guj. 3 of 1995, section 2 (2).

8. Expenses Of Area Development Authority :-

(1) The State Government shall, by an order in writing, determine the amount which a local authority or authorities functioning in the development area shall pay as contribution, either in one lump sum or in such installments as may be specified in the order, towards the expenses incurred by an area development authority in the discharge of its functions,

(2) The local authority shall, not later than thirty days of the receipt of the order under sub-section (1), pay to the area development authority concerned the amount of contribution specified in the order in the manner indicated therein and if the local authority fails to so pay such amount, the State Government may, on receipt of necessary intimation from the area development authority, recover it from the local authority as arrears of land revenue and pay it to the area development authority.

9. Development Plan :-

(1) As soon as may be after the constitution of an area development authority for any development area under section 51[or designation of a local authority as the area development authority under sub-section (1) of section 6,] the area development authority shall, not later than three years after the declaration of such area as a development area or within such time as the State Government may, from time to time, extend, prepare and submit to the State Government a draft development plan for the whole or any part of the development area in accordance with the provisions of this Act.

(2) If a draft development plan is not prepared and submitted to the State Government by any area development authority within the period specified in sub-section (1) or within the period extended under that sub-section, an officer Appointed by the State Government in this behalf may prepare and submit to the State Government in the prescribed manner a draft development plan and recover the cost thereof from such area development authority out of its funds.

Footnote:-

1. These words, brackets and figures were inserted, by Guj. 3 of 1995, section3.

10. Copy Of Draft Development Plan To Be Open For Public Inspection :-

A copy of the draft development plan as prepared under section 9 in respect of any area shall be kept open for inspection by the public during office hours at the head office of the area development authority, or as the case may be, at the office of the authorised officer.

11. Manner Of Preparation Of Draft Development Plan :-

The draft development plan shall be on a scale not lower than eighty meters to a centimeter and shall show in distinguishing prescribed colours the area or sites and the uses to which they are proposed to be put.

12. Contents Of Draft Development Plan :-

(1) A draft development plan shall generally indicate the manner in which the use of land in the area covered by it shall be regulated and also indicate the manner in which the development therein shall be carried out.

(2) In particular, it shall provide, so far as may be necessary, for all or any of the following matters, namely:-

(a) Proposals for designating the use of the land for residential, industrial, commercial, agricultural and recreational purposes;

(b) Proposals for the reservation of land for public purposes, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, public assembly, museums, art galleries, religious buildings, playground, stadiums, open spaces, dairies and for such other purposes as may, from time to time, be specified by the State Government;

(c) Proposals for designation of areas for zoological gardens, green belts, natural reserves and sanctuaries;

(d) Transport and communications, such as roads, highways, parkways, railways, waterways, canals and airport, including their extension and development;

(e) Proposals for water supply, drainage, sewage disposal, other

public utility amenities and services including supply of electricity and gas;

(f) Reservation of land for community facilities and services;

(g) Proposals for designation of sites for service industries, industrial estates and any other industrial development on an extensive scale;

(h) Preservation, conservation and development of areas of natural scenery and landscape;

(i) Preservation of features, structures or places of historical, natural, architectural or scientific interest and of educational value;

(j) Proposals for food control and prevention of river pollution;

(k) proposals for the reservation of land for the purpose of Union, any State, local authority or any other authority or body established by or under any law for the time being in force;

(l) The filling up or reclamation of low lying, swampy or unhealthy areas or levelling up of land;

(m) Provision for controlling and regulating the use and development of land within the development area, including imposition of conditions and restrictions in regard to the open space to be maintained for buildings, the percentage of building area for a plot, the location, number, size, height, number of stories and character of buildings and density of built up area allowed in specified area, the use and purposes to which a building or specified areas of land may or may not be appropriated, the subdivisions of plots, the discontinuance of objectionable uses of land in any area in any specified periods, parking spaces, loading and unloading space for any building and the sizes of projections and advertisement signs and hoardings and other matters as may be considered necessary for carrying out the objects of this Act;

(n) Provision for preventing or removing pollution of water or air caused by the discharge of waste or other means as a result of the use of land;

(o) Such other proposals for public or other purposes as may from time to time be approved by the area development authority or as may be directed by the State Government in this behalf.

13. Publication Of Draft Development Plan :-

(1) The area development authority or, as the case may be, the authorised officer shall, as soon as may be, after a draft development plan is prepared and submitted to the State Government under section 9, publish it in the Official Gazette and

in such other manner as may be prescribed alongwith a notice in the prescribed manner, inviting suggestions or objections from any person with respect to the development plan within a period of two months from the date of its publication.

(2) The following particulars shall be published alongwith the-draft development plan, namely:-

(a) A statement indicating broadly the uses to which lands in the area covered by the plan are proposed to be put and any survey carried out for the preparation of the draft development plan;

(b) Maps, charts and statements explaining the provisions of the draft development plan;

(c) The draft regulations for enforcing the provisions of the draft development plan;

(d) Procedure explaining the manner in which permission for developing any land may be obtained from the area development authority or, as the case may be, the authorised officer;

(e) A statement of the stage of development by which it is proposed to meet any obligation imposed on the area development authority by the draft development plan;

(f) An approximate estimate of the cost involved in acquisition of land reserved for public purposes.

14. Suggestions Or Objections To Draft Development Plan To Be Considered :-

If within the period specified in section 13 any person communicates in writing to the area development authority, or, as the case may be, to the authorised officer any suggestions or objections relating to the draft development plan, the said authority or officer shall consider such suggestions or objections and may modify such plan as it or he thinks fit.

15. Modifications Made After Publication Of Draft Development Plan :-

When the modifications made by an area development authority or, as the case may be, by the authorised officer in the draft development plan are of an extensive or of a substantial nature, the said authority or, as the case may be, the authorised officer shall publish the modifications in the Official Gazette alongwith a notice in the prescribed manner inviting suggestions or objections from any person with respect to the proposed modifications within a period of two months from the date of publication of such notice

and thereupon, the provisions of section 14 shall apply in relation to such suggestions or objections.

16. Submission Of Draft Development Plan To The State Government For Sanction :-

(1) After a draft development plan is published as aforesaid and the objections or suggestions thereto, if any, are received, the area development authority or, as the case may be, the authorised officer shall, within a period of six months from the date of publication of the draft development plan under section 13, submit to the State Government for its sanction the draft development plan and the regulations with the modifications, if any, made thereto under section 14 or section 15:

Provided that the State Government may, on an application by the area development authority or the authorised officer, by order in writing, extend from time to time, the said period by such further period or periods as may be specified in the order, so however, that the period or periods so extended shall not, in any case, exceed twelve months in the aggregate.

(2) The particulars published under sub-section (2) of section 13, and the suggestions or objections received under section 14 or section 15, shall also be submitted to the State Government, alongwith the draft development plan.

17. Power Of State Government To Sanction Draft Development Plan :-

(1) (a) On receipt of the draft development plan under section 16, the State Government may, by notification,-

(i) sanction the draft development plan and the regulation so received, within the prescribed period, for the whole of the area covered by the plan or separately for any part thereof, either without modification, or subject to such modification, as it may consider proper; or

(ii) Return the draft development plan and the regulations to the area development authority or, as the case may be, to the authorised officer, for modifying the plan and the regulations in such manner as it may direct:

Provided that, where the State Government is of opinion that substantial modifications in the draft development plan and regulations are necessary, the State Government may, instead of returning them to the area development authority or, as the case

may be, the authorised officer under this sub-clause, publish the modifications so considered necessary in the Official Gazette alongwith a notice in the prescribed manner inviting suggestions or objections from any person with respect to the proposed modifications within a period of two month from the date of publication of such notice; or

(iii) Refuse to accord sanction to the draft development plan and the regulations and direct the area development authority or the authorised officer to prepare a fresh development plan under the provisions of this Act.

(b) Where a development plan and regulations are returned to an area development authority, or, as the case may be, the authorised officer under sub-clause (ii) of clause (a), the area development authority, or, as the case may be, the authorised officer, shall carry out the modifications therein as directed by the State Government and then submit them as so modified to the State Government for sanction; and the State Government shall thereupon sanction them after satisfying itself that the modification suggested have been duly carried out therein.

(c) Where the State Government has published the modification considered necessary in a draft development plan as required under the proviso to sub-clause (ii) of clause (a), the State Government shall, before according sanction to the draft development plan and the regulations, take into consideration the suggestions or objections that may have been received thereto, and thereafter accord sanction to the drafts development plan and the regulations in such modified form as it may consider fit.

(d) The sanction accorded under¹[clause (a), clause (b)] or clause (c) shall be notified by the State Government in the Official Gazette and the draft development plan together with the regulations so sanctioned shall be called the final development plan.

(e) The final development plan shall come into force on such date as the State Government may specify in the notification issued under clause (d):

Provided that the date so specified shall not be earlier than one month from the date of publication of such notification.

(2) Where the draft development plan submitted by an area development authority or, as the case may be, the authorised officer contains any proposals for the reservation of any land for a purpose specified in clause (b) or¹[clause (n) or clause (o)] of sub-section (2) of section 12 and such land does not vest in the area development authority, the State Government shall not include the

said reservation in the development plan, unless it is satisfied that such authority would acquire the land, whether by agreement or compulsory acquisition, within ten years from the date on which the final development plan comes into force.

(3) A final development plan which has come into force shall, subject to the provisions of this act, be binding on the area development authority concerned and on all other authorities situated in the area of the development plan.

(4) After the final development plan comes into force, the area development authority concerned may execute any work for developing, re-developing or improving any area within the area covered by the plan in accordance with the proposals contained in the development plan.

Footnotes:-

1. These words, brackets and letters were substituted for the word, brackets and letter "clause (b)" by Guj. 2 of 1999, section 7 (1).

18. Extension Or Reduction Of Development Plan :-

(1) If at any time after a development plan prepared for any area has been sanctioned, the State Government is of opinion that it is necessary to extend or reduce the limits of such area, it may, by notification, extend or reduce the limits of such area and direct the area development authority to prepare, publish and submit to the State Government for sanction within the period specified by the State Government in this behalf, a draft development plan for the extended area or, as the case may be, the proposals for the withdrawal of the plan from the reduced area after following the procedure prescribed under this Act for the preparation, publication, and sanction of a development plan.

(2) The draft development plan or the proposals for the withdrawal of a plan to be prepared under sub-section (1) may contain proposals for modifying the development plan already sanctioned, if such modifications are found absolutely necessary as a consequence of the extension, or, as the case may be, reduction of the area covered by the development plan in the interest of a rational development of the area as so extended or reduced.

19. Variation Of Final Development Plan :-

(1) If on a proposal from an area development authority in that behalf or otherwise, the State Government is of opinion that it is necessary in the public interest to make any variation in the final

development plan (hereinafter referred to as variation), it shall publish in the Official Gazette,

- (a) The variation proposed in the final development plan,
- (b) The amendment, if any, in the regulations, and
- (c) The approximate cost, if any, involved in the acquisition of land, which by virtue of the variation would be reserved for a public purpose,

Alongwith a notice, inviting a suggestions or objections from any person with respect to the variation within a period of two month from the date of publication of the variation.

(2) After considering the suggestions or objections, if any, received under sub-section (1) within the period specified therein and after consulting the area development authority in a case where the variation is not proposed by that authority, the State Government may, by notification, sanction the variation with or without modifications, as it may consider fit to do and such variation shall come into force on such date as may be specified in the notification.

(3) From the date of coming into force of the variation, the provisions of this Act shall apply to such variation, as they apply to a final development plan.

(4) If any person who is affected by such variation has incurred any expenditure in complying with the final development plan as it existed before such variation, such person shall be entitled to received compensation,-

- (i) Where the variation is made on the proposal of an area development authority, from that authority, and
- (ii) In any other case, from the State Government,

If such expenditure is rendered abortive by reason of the variation of the plan.

20. Acquisition Of Land :-

(1) The area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b), clause (d),¹[clause (f), clause (k), clause (n) or clause (o)] of sub-section (2) of section 12, may acquire the land either by agreement or under the provisions of the Land Acquisition Act, 1894 (I of 1894).

(2) If the land referred to in sub-section (1) is not acquired by agreement within a period of ten years from the date of the coming into force of the final development plan or if proceedings under the

Land Acquisition Act, 1894 (I of 1894) are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisition, the designation of the land as aforesaid shall be deemed to have lapsed.

Footnote:-

1. These words, brackets and letters were substituted for the words, brackets and letters "clause (k) or clause (n)" by Guj. 2 of 1999, section 8.

21. Revision Of Development Plan :-

Atleast once in ten years from the date on which a final development plan comes into force, the area development authority shall revise the development plan after carrying out, if necessary, a fresh survey and the provisions of sections 9 to 20, shall, so far as may be, apply to such revision.

CHAPTER 3 Declaration Of Urban Development Areas And Constitution Of Urban Development Authorities

22. Declaration Of Urban Development Area And Constitution Of Urban Development Authority :-

(1) Where the State Government is of opinion that the object of proper development or redevelopment of any urban area or group of urban areas in the State together with such adjacent areas as may be considered necessary, whether covered under a development area already declared as such under section 3 or not, will be best served by entrusting the work of development or redevelopment thereof to a special authority, instead of to an area development authority, the State Government may, by notification, declare such area to be an urban development area and constitute an authority for such area to be called the urban development authority of that area, and thereupon all the powers and functions of an area development authority relating to the development or redevelopment of a development area under this Act shall, in relation to such urban development area, be exercised and performed by such urban development authority^{1***}.

(2) Every notification issued under sub-section (1) shall define the limits of the area to which it relates.

2[(2A) The State Government may, by notification in the Official Gazette, include in or exclude any area from an urban development area, amalgamate two or more urban development areas into one urban development area, sub-divide any urban development area into different urban development areas and include such sub-divided urban development area in any other urban development area.]

(3) Every urban development authority constituted under subsection (1) shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and by the said name sue and be sued.

(4) The urban development authority shall consist of the following members namely:-

(i) a Chairman to be appointed by the State Government;

(ii) such persons, not exceeding 3[four in number] who are members of the local authority or authorities functioning in the urban development area, as may be nominated by the State Government;

(iii) 4[Three officials] of the State Government, to be nominated by that Government, ex-officio;

(iv) the Presidents of the district panchayats functioning in the urban development area, or, as the case may be, part thereof, ex-officio;

(v) the Chief Town planner or his representative, ex-officio;

(vi) the Chief Engineer or Engineers (Public Health) of the local authority or authorities functioning in the urban development area or his or their nominee or nominees, ex-officio;

5[(vi-a) the Municipal Commissioner of the Municipal Corporation, if any, functioning in the urban development area, ex-officio;]

(vii) a member secretary to be appointed by the State Government who shall also be designated as the Chief Executive Authority of the Urban Development Authority.

(5) The provisions of sub-sections (5) to (12) of section 5 shall apply in relation to an urban development authority as they apply in relation to an area development authority, with the modification that references to an area development authority in the said subsection shall be construed as references to an urban development authority.

Footnotes:-

1. The words "and not by any other authority" were deleted by Guj. 2 of 1999, section 9 (1).

2. Sub-section (2A) was inserted, by Guj. 2 of 1999, section 9 (2).
3. These words were substituted for the words "two in number," by Guj. 2 of 1999, section 9 (3) (a).
4. These words were substituted for the words "two officials," by Guj. 2 of 1999, section 9 (3) (b).
5. Clause (vi-a) was inserted by Guj. 2 of 1999, section 9 (3) (c).

23. Powers And Function Of Urban Development Authority

:-

(1) 1 [The powers and functions of] an urban development authority shall be:-

- (i) To undertake the preparation of development plans under the provisions of this Act, for the urban development area;
- (ii) To undertake the preparation 2 [and execution] of town planning schemes under the provisions of this Act, if so directed by the State Government;
- (iii) To carry out surveys in the urban development area for the preparation of development plans or town planning schemes;
- (iv) To guide, direct and assist the local authority or authorities and other statutory authorities functioning in the urban development area in matters pertaining to the planning, development and use of urban land;
- (v) To control the development activities in accordance with the development plan in the urban development area;
- 3 [(v-a) to levy and collect such security fees for scrutiny of documents submitted to the appropriate authority for permission for development as may be prescribed by regulations;]
- (vi) To execute works in connection with supply of water, disposal of sewerage and provision of other services and amenities;
- 4 [(vi-a) to levy and collect such fees for the execution of works referred to in clause (vi) and for provision of other services and amenities as may be prescribed by regulations;]
- (vii) To acquire, hold, manage and dispose of property, movable or immovable, as it may deem necessary;
- (viii) To enter into contracts, agreements or arrangements, with any local authority, person or organisation as the urban development authority may consider necessary for performing its functions;
- (ix) To carry any development works in the urban development area as may be assigned to it by the State Government from time to time;

(x) To exercise such other powers and perform such other functions as are supplemental, incidental or consequential to any of the foregoing powers and functions or as may be directed by the State Government.

(2) The urban development authority may, with the approval of the State Government, delegate 5 [any of its powers and functions] to the local authority or authorities functioning in the urban development area.

(3) The urban development authority shall have its office at such place as the State Government may specify in this behalf.

Footnotes:-

1. These words were substituted for the words "The functions of by Guj. 3 of 1995, section 4 (1) (a).

2. These words were inserted by Guj. 2 of 1999, section 10.

3. Clause (v-a) was inserted by Guj. 3 of 1995, section 4 (1) (b).

4. Clause (vi-a) was inserted by Guj. 3 of 1995, section 4 (1) (c).

5. These words were substituted for the words "any of its functions", by Guj. 3 of 1999, section 4 (2).

1 [23A. Entrustment of powers and functions to Government company:-

The State Government may, by notification, in the Official Gazette, entrust to the Government company, all or any of the powers and functions of the appropriate authority.]

Footnote:-

1. Section 23A was inserted by Guj 2 of 1999, section 11.

24. Expenses Of Urban Development Authority :-

(1) The State Government shall, by an order in writing, determine the amount which a local authority or authorities functioning in the urban development area shall pay as contribution, either in one lump-sum or in such instalments as may be specified in the order, towards the expenses incurred by the urban development authority in the discharge of its functions.

(2) The local authority shall, not later than thirty days of the receipt of the order under sub-section (1), pay to the urban development authority concerned the amount of contribution specified in the order in the manner indicted therein and if the local authority fails to so pay such amount, the State Government may, on receipt of necessary intimation from the urban development authority, recover it from the local authority as arrears of land revenue and pay it to the urban development authority.

25. Application Of Certain Provisions Of Act Applicable To Urban Development Authority :-

The provisions of this Act with regard to the preparation, publication, sanction, variation and revision of a development plan and all other matters connected therewith or incidental thereto and the powers and duties of an area development authority relating to the development or redevelopment of a development area shall, so far as may be, apply to an urban development authority.

CHAPTER 4 Control of Development and Use of Land Included In Development Plans

26. Restriction On Development After Publication Of Draft Development Plan :-

On or after the date on which a draft development plan is published in the Official Gazette under section 13 in respect of any development area, no person shall carry on any development in any building or in or over any land, within the limits of the said area without the permission in writing of the appropriate authority and without obtaining certificate from the appropriate authority to the effect that development charge¹[and scrutiny fees] as leviable under this Act has been paid or that no such charge¹[and scrutiny fees] is leviable:

Provided that no such permission shall be necessary:-

- (i) for the carrying out of any work for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance thereof;
- (ii) For the carrying out any work in compliance with any order or direction made by any authority under any law for the time being in force;
- (iii) For the carrying out or any work by any authority in exercise or its powers under any law for the time being in force;
- (iv) For the carrying out of-
 - (a) Any operational construction undertaken by the Central Government or a State Government;
 - (b) Any work for the purpose of inspecting, repairing or renewing any drains, sewers, mains, pipes cables, telephone or other apparatus or the breaking open of any street or other land for such purpose;
- (v) For any excavation, including excavation of wells made in the

ordinary course of an agricultural operation;

(vi) For the construction of a road intended to give access to land solely for agricultural purposes;

(vii) For the normal use of land which has been used temporarily for other purposes;

(viii) In case of land normally used for one purpose and occasionally used for any other purpose, for the use of land for that other purpose on occasions;

(ix) For use, for any purpose incidental to the use of a building for human habitation or any other building or land attached to such building.

Footnote:-

1. These words were inserted by Guj. 3 of 1995, section 5.

27. Application Of Permission For Development :-

Any person, not being the Central Government or a State Government, intending to carry out any development in any building or in or over any land within the limits of a development area on or after the date referred to in section 26, shall, except where such development is for any of the purposes specified in the proviso to that section, make an application in writing to the appropriate authority for permission for such development in such form and containing such particulars and accompanied by such documents as may be prescribed,¹[and by such scrutiny fees as may be prescribed by regulations].

Footnote:-

1. These words were added by Guj. 3 of 1995, section 6.

28. Permission For Retention Or Continuance Of Use Of Any Building Or Work Or Any Use Of Land :-

(1) Any person not being the Central Government or a State Government intending to retain any use of building or work constructed or carried out on any land, or to continue any use of land made, before the date on which a final development plan in respect of any development area in which such building or land is situated comes into force, which use is not in conformity with the provisions of the regulations or the final development plan shall make an application in writing to the appropriate authority for permission to retain or continue such use, containing such particulars and accompanied by such document, as may be prescribed¹[and by such scrutiny fees as may be prescribed by

regulations] within six months from the date on which the final development plan in respect of such development area comes into force.

(2) On and after the date on which the said period of six months expires, no person shall retain or continue any such use of building or work or land, without such permission having been obtained or contrary to the terms thereof:

Provided that where such person has applied under sub-section (1) within the period of six months and no order under section 29 has been made within that period, he shall retain or continue such use until the date of such order.

Footnote:-

1. These words were inserted by Guj. 3 of 1995, section 7.

29. Grant Refusal Of Permission :-

(1) On receipt of an application under section 27 or section 28, the appropriate authority shall furnish the applicant with a written acknowledgment of its receipt and after satisfying itself that the development charge¹[and scrutiny fees,] if any, payable by the applicant has been paid and after making such inquiry as it thinks fit may, subject to the provisions of this Act, by order in writing-

- (i) Grant the permission with or without any condition; or
- (ii) Grant the permission, subject to any general or special orders made by the State Government in this behalf; or
- (iii) Refuse to grant the permission.

(2) Any permission under sub-section (1) shall be granted in the prescribed form and every order granting permission subject to conditions or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(3) Every order under sub-section (1) shall be communicated to the applicant in the manner prescribed by regulations.

(4) If the appropriate authority fails to communicate its order to the applicant within three months from the date of receipt of the application, such permission shall be deemed to have been granted to the applicant on the expiry of the said period of three months.

(5) If any person carries on any development work or retains the use of any building or work or continues the use of land in contravention of the provisions of section 27 or section 28 or of any permission granted under sub-section (1) of this section, the appropriate authority may direct such person, by notice in writing, to stop further progress of such work or to discontinue any use and

may, after making an inquiry in the prescribed manner, remove or pull down any building or work carried out and restore the land to its original condition or, as the case may be, take any measures to stop such use.

(6) Any expenses incurred by the appropriate authority under subsection (5) shall be a sum due to the appropriate authority under this Act from the person in default.

Footnote:-

1. These words were inserted, by Guj. 3 of 1995, section 8.

30. Supplementary Provision As To Grant Of Permission :-

The power to grant necessary permission for any development, or for the retention or continuance of use of land shall include the power to grant permission for the retention on land of any building or work constructed or carried out thereon before the date of publication of the draft development plan under section 13 or for the continuance of any use of land instituted before that date.

31. Obligation To Purchase Land On Refusal Of Permission Or Grant Of Permission In Certain Cases :-

(1) Where permission for the retention or continuance or retention of use of building or work or land of the kind referred to in section 28 is refused or is granted subject to any conditions, then, if any owner of the land claims-

(a) In a case where permission for such use is refused, that the land has become incapable of reasonable beneficial use in its existing state,

(b) In a case where permission for such use is granted subject to conditions, that the land cannot be rendered capable of reasonable beneficial use by carrying out the conditions of the permissions,

He may, within the time and in the manner prescribed by regulations made by the appropriate authority, serve on the appropriate authority a notice (hereinafter referred to as a purchase notice) requiring the appropriate authority to purchase his interest in the land in accordance with the provisions of this section.

(2) Where a purchase notice is served on the appropriate authority under this section, the appropriate authority shall forthwith transmit a copy of the notice to the State Government and the State Government shall, if it is satisfied that the condition specified in clause (a) or clause (b) of sub-section (1), as the case may be, is fulfilled, confirm the notice and thereupon the appropriate authority

shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of this Act, and to serve on the owner a notice for acquiring his interest in such land on such date as the State Government may direct.

(3) If within the period of six months from the date on which the purchase notice is served under this section, the State Government has not confirmed the notice, the notice shall be deemed to be confirmed at the expiration of that period and the appropriate authority on which the notice was served shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of this Act, at the expiration of the said period.

32. Lapse Of Permission :-

Every permission granted or deemed to have been granted under section 29 shall remain in force for a period of one year from the date of such grant and thereafter it shall lapse:

Provided that, the appropriate authority may, on application made to it, from time to time, extend such period by a further period or periods not exceeding one year at a time, so however, that the extended period shall in no case exceed three years in the aggregate:

Provided further that the lapse of the permission as aforesaid shall not bar any subsequent application for fresh permission under this Act.

33. Power Of Re-Vocation And Modification Of Permission To Development :-

(1) If it appears to the appropriate authority that it is necessary or expedient, having regard to the development plan that may have been prepared or may be under preparation or having regard to any variation made in the final development plan that any permission granted under section 29 should be revoked or modified, the appropriate authority may, after giving the person concerned an opportunity of being heard, by order, revoke or modify the permission to such extent as appears to it to be necessary:

Provided that where the permission relates to the carrying out of any building or other operation, in or over any land, no such order shall affect such of the operations as may have already been carried out in pursuance of the permission; and no such order shall

be passed after such operations have substantially progressed or have been completed.

(2) Where any permission is revoked or modified by an order made under sub-section (1) and any owner claims within the time and in the manner prescribed, compensation for the expenditure incurred in carrying out any development in accordance with such permission which has been rendered abortive by the revocation or modification, the appropriate authority shall, after giving the owner a reasonable opportunity of being heard, assess and offer such compensation to the owner as it thinks fit.

(3) If the owner does not accept the compensation and give notice within such time as may be prescribed of his refusal to accept the compensation, the appropriate authority shall refer the matter, in the City of Ahmedabad, to the Principal Judge of the City Civil Court, Ahmedabad, and elsewhere to the District Judge and the decision of such Judge shall be final and binding on the owner and appropriate authority.

34. Sanction For Sub-Division Of Plot Or Lay-Out Of Private Street :-

(1) Every person who intends to sub-divide his plot or make or layout a private street on such plot on or after the date of the publication of the draft development plan in the Official Gazette under section 13 shall submit the intended layout plan for such purpose together with the prescribed particulars¹[and with such scrutiny fees as may be prescribed by regulations] to the appropriate authority for sanction.

(2) The appropriate authority may, within the prescribed period, sanction such plan either without modifications or subject to such modifications or conditions as it considers expedient or may refuse to give sanction, if the appropriate authority is of opinion that such division or laying out of street is not in any way consistent with the proposals of the development plan.

(3) No compensation shall be payable for the refusal of a sanction or for the imposition of modifications or conditions in the sanction.

(4) If any person does any work in contravention of sub-section (1), or in contravention of the modifications or conditions in any sanction given under sub-section (2) or in spite of refusal of sanction under the said sub-section (2), the appropriate authority may direct such person by notice in writing to stop any work in progress and after making an inquiry in the prescribed manner

remove or pull down any work or restore the land to its original condition.

(5) Any expenses incurred by the appropriate authority under subsection (4) shall be a sum due to the appropriate authority under this Act from the person in default.

Footnote:-

1. These words were inserted and shall be deemed always to have been inserted by Guj. 3 of 1995, section 9.

35. Penalty For Unauthorised Development Or Use Or Continuance Or Retention Of The Use Without Permission :-

(1) Any person who, whether at his own instance or at the instance of any other person commences, undertakes or carries out development:-

(a) Without the permission required under section 27; or

(b) Which is not in accordance with any permission granted or is in contravention of any condition subject to which such permission has been granted;

(c) After such permission has been duly revoked; or

(d) In contravention of any modification made in such permission, Shall, on conviction, be punished with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to one hundred rupees for every day during which the offence continues after conviction for the first offence.

(2) Any person who continues to use or allows the use of any land or building or work in contravention of the provisions of a development plan without being allowed to do so under section 29 or where the continuance of such use has been allowed under that section, continues such use after the period for which the use has been allowed, or without complying with the terms and conditions under which the continuance of such use is allowed, shall, on conviction, be punished with fine which may extend to one thousand rupees, and in the case of a continuing offence, with a further fine which may extend to one hundred rupees for every day during which such offence continues after conviction for the first offence.

36. Power To Require Removal Of Unauthorised Development Or Use :-

(1) Where any development has been carried out in any of the

circumstances referred to in sub-section (1) of section 35, or any use of land or building or work is continued so as to constitute an offence punishable under sub-section (2) of that section, the appropriate authority may, subject to the provisions of this section and within three years of such development, or continuance of use so made, serve on the owner a notice requiring him, within such period, being not less than one month as may be specified therein, after the service of the notice, to take such steps as may be specified in the notice,--

(a) To restore the land or building to its condition existing before the said development took place, in cases specified in clause (a) or clause (c) of sub-section (1) of section 35;

(b) To secure compliance with the conditions or with the permission as modified, as the case may be, in cases specified in clause (b) or clause (d) of sub-section (1) of section 35;

(c) To discontinue such use of building or land or work:

Provided that where the notice requires the discontinuance of any use of land or building, the appropriate authority shall also serve a notice on the occupier.

(2) The steps that may be specified in the notice under sub-section (1) may include the following, namely:--

(a) The demolition or alteration of any building or work;

(b) The carrying out on land of any building or other operations.

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply to the appropriate authority for withdrawal of the notice.

(4) If, after hearing the applicant, the appropriate authority directs that the notice shall be withdrawn as respects any of the matters specified therein in relation to any building, or work or land, the notice shall stand withdrawn to that extent and thereupon the owner shall be required to take steps specified in the notice under sub-section (1) as respects the other matters and as respects the building, work or the land with respect to which the notice may not have been withdrawn.

(5) If within the period specified in the notice under sub-section (1), or, as the case may be, within such period as may be prescribed, after disposal of the application under sub-section (4), the notice or so much of it as stands is not complied with, the appropriate authority may,

(a) prosecute the owner for not complying with the notice and, where the notice requires the discontinuance of any use of land or building any other person also who uses the land or building or

causes or permits the land or building to be used in contravention of the notice; and

(b) where the notice requires the demolition or alteration of any building or work or the carrying out of any building or other operations, itself cause the restoration of the building to its condition before the development took place and secure compliance with the conditions of the permission or with the permission as modified by taking such steps as the appropriate authority may consider necessary, including demolition or alteration of any building or work or carrying out of any building or other operations, and recover the amount of any expenses incurred by it in this behalf from the owner as arrears of land revenue.

(6) Any person prosecuted under clause (a) of sub-section (5) shall, on conviction, be punished with fine which may extend to five thousand rupees, and in the case of a continuing offence, with a further fine which may extend to one hundred rupees for every day during which such offence continues after conviction for the first offence.

37. Removal Of Unauthorised Temporary Development Summarily :-

(1) Notwithstanding anything herein before contained in this Chapter, where any person has carried out any development of a temporary nature in any of the circumstances referred to in sub-section (1) of section 35, so as to constitute an offence punishable under that section, the appropriate authority may, by order in writing, direct such person to remove any structure or work erected within fifteen days of the receipt of the order, and if thereafter, the person does not comply with the order, the appropriate authority may request the Commissioner of Police in the City of Ahmedabad and the District Magistrate elsewhere, to have such structure or work summarily removed without any notice as directed in the order, and thereupon any such structure or work shall be summarily removed without any order as aforesaid being made.

(2) The decision of the appropriate authority on the question as to what is development of a temporary nature shall be final.

38. Recovery Of Expenses Incurred :-

Any expenses incurred by the appropriate authority under section 36 or section 37 shall be a sum due to the appropriate authority under this Act from the person in default or the owner of the land,

building or land concerned.

39. Development Undertaken On Behalf Of Government And Appropriate Authority :-

(1) Where any Department of the Central Government or a State Government intends to carry out development of any land for any purpose of the Government or for carrying out any operational construction, it shall inform in writing the appropriate authority of its intention to do so, giving full particulars thereof, and accompanied by such documents and plans as may be prescribed at least thirty days before undertaking such development or construction.

(2) Where the appropriate authority raises any objection to the proposed development on the ground that such development is not in conformity with the provisions either of any development plan under preparation, or development plan already sanctioned, or of any building bye-laws in force for the time being, or for any other material consideration, the Department shall--

(i) Either make necessary modifications in the proposals for development to meet the objections raised by the appropriate authority; or

(ii) Submit the proposals for development together with the objections raised by the appropriate authority to the State Government for decision.

(3) The State Government on receipt of the proposals for development together with the objections of the appropriate authority shall, either approve the proposals with or without modifications or direct the department to make such modifications in the proposals as it considers necessary in the circumstances.

(4) Where an appropriate authority intends to carry out development of land for its own purpose in the exercise of its powers under any law for the time being in force, such development shall be in conformity with the development plan and of the bye-laws or regulations relating to construction of buildings.

(5) The provisions of sections 26, 27 and 28 shall not apply to developments carried out under this section.

CHAPTER 5 Town Planning Schemes

40. Making And Contents Of A Town Planning Scheme :-

(1) Subject to the provision of this Act or any other law for the time

being in force, the appropriate authority may make one or more town planning schemes for the development area or any part thereof, regard being had to the proposals in the final development plan, if any.

(2) A town planning scheme may be made in accordance with the provisions of this Act in respect of any land which is-

(i) In the course of development;

1 [(ii) likely to be used for residential or commercial or industrial or for building purposes; or]

(iii) Already built upon.

Explanation:- For the purpose of this sub-section the expression "land likely to be used for building purposes" shall include any land likely to be used as, or for the purpose of providing, open spaces, roads, streets, parks, pleasure or recreation grounds, parking spaces or for the purpose of executing any work upon or under the land incidental to a town planning scheme, whether in the nature of a building work or not.

(3) A town planning scheme may make provision for any of the following matters, namely:-

(a) The laying out or relaying out of land, either vacant or already built upon;

(b) The filling up or reclamation of low-lying, swampy or unhealthy areas, or levelling up of land;

(c) Lay-out of new streets or roads, construction, diversion, extension, alteration, improvement and closing up of streets and roads and discontinuance of communications;

(d) The construction, alteration and removal of buildings, bridges and other structures;

(e) The allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, green-belts, dairies, transport facilities, public purposes of all kinds;

(f) Drainage, inclusive of sewerage, surface or sub-soil drainage and sewage disposal;

(g) Lighting;

(h) Water supply;

(i) The preservation of objects of historical or national interest or natural beauty, and of buildings actually used for religious purposes;

(j) The reservation of land to the extent of ten per cent. or such percentage as near thereto as possible of the total area covered under the scheme, for the purpose of providing housing accommodation to the members of socially and economically

backward classes of people;

2 [3 [(jj) (a) the allotment of land from the total area covered under the scheme, to the extent of.-

(i) Fifteen per cent. for roads,

(ii) five per cent. for parks, play grounds, gardens and open space,

(iii) five per cent. for social infrastructure such as school, dispensary, fire brigade, public utility place as earmarked in the Draft Town Planning Scheme, and

(iv) fifteen per cent. for sale by appropriate authority for residential, commercial or industrial use depending upon the nature of development:

Provided that the percentage of the allotment of land specified in paragraphs (i) to (iii) may be altered depending upon the nature of development and for the reasons to be recorded in writing;

(b) the proceeds from the sale of land referred to in para (iv) of sub-clause (a) shall be used for the purpose of providing infrastructural facilities;

(c) the land allotted for the purposes referred to in paragraphs (ii) and (iii) of sub-clause (a) shall not be changed by variation of schemes for the purposes other than public purpose;]]

(k) the imposition of conditions and restrictions in regard to the open space to be maintained around buildings, the percentage of building area for a plot, the number, size, height and character of building allowed in specified areas, the purposes to which buildings or specified areas may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable uses of lands in any area in specified periods, parkings space and loading and unloading space for any building and the sizes or locations of projections and advertisement signs;

(l) the suspension, so far as may be necessary, for the proper carrying out of the scheme, of any rule, bye-law, regulation, notification or order made or issued under any Act of the State Legislature or any of the Acts which the State Legislature is competent to amend:

Provided that any suspension under this clause shall cease to operate in the event of the State Government refusing to sanction the preliminary scheme, or in the event of the withdrawal of the scheme under section 66, or on the coming into force of the final scheme;

(m) such other matters not inconsistent with the objects of this Act as may be prescribed.

Footnotes:-

1. Clause (ii) was substituted by Guj. 4 of 1986, section 2 (a).
2. Clause (jj) was inserted by Guj. 4 of 1986, section 2 (b).
3. Clause (jj) was substituted by Guj. 2 of 1999, section 12.

41. Power Of Appropriate Authority To Resolve On Declaration Of Intention To Make Scheme :-

(1) Before making any town planning scheme under the provisions of this Act in respect of any area, the appropriate authority in consultation with the Chief Town Planner may, by resolution, declare its intention to make such a scheme in respect of such area.

(2) Within twenty-one days from the date of such declaration (hereinafter referred to as the declaration of intention to make a scheme), the appropriate authority shall publish it in the prescribed manner and shall despatch a copy thereof alongwith a plan showing the area which it proposes to include in the town planning scheme to the State Government.

(3) A copy of the plan despatched to the State Government under sub-section (2) shall be open to the inspection of the public during office hours at the office of the appropriate authority.

42. Making And Publication Of Draft Scheme :-

(1) Within¹[nine months] from the date of the declaration of intention to make a scheme under section 41, the appropriate authority shall make a draft scheme of the area in respect of which the said declaration has been made and publish the same in the Official Gazette, alongwith the draft regulations for carrying out the provisions of the scheme:

Provided that on application by the appropriate authority in that behalf, the State Government may, from time to time, by notification, extend the aforesaid period by such period or periods, as may be specified, therein so however, that the period or periods so extended shall not in any case exceed²[three months] in the aggregate.

(2) If the draft scheme is not made and published by the appropriate authority within the period specified in sub-section (1) or within the period extended under the proviso to that sub-section, an officer appointed by the State Government may make and published in the Official Gazette, a draft scheme for the area in respect of which the declaration of intention to make a scheme has been made within a period of nine months from the date of the expiry of the aforesaid period, or the extended period, as the case

may be.

(3) If such publication is not made by the officer appointed under sub-section (2), the declaration of intention to make a scheme shall lapse and for a period of three years from the date of such declaration, it shall not be competent for the appropriate authority to declare its intention to make any town planning scheme for the said area or for any part thereof.

Footnotes:-

1. These words were substituted for the words "twelve months" by Guj. 2 of 1999, section 13 (a).

2. These words were substituted for the words "six months", by Guj. 2 of 1999, section 13 (b).

43. Power Of State Government To Require Appropriate Authority To Make Scheme :-

(1) Notwithstanding anything contained in sections 41 and 42, the State Government may, after making such inquiry as it deems necessary, by notification, require any appropriate authority functioning within a development area to make and publish in the prescribed manner and submit for its sanction a draft scheme in respect of any area in regard to which a town planning scheme may be made.

(2) For the purposes of this Act and the rules made thereunder, the requisition under sub-section (1) by the State Government shall be deemed to be the declaration of intention to make a scheme under section 41.

44. Contents Of Draft Scheme :-

The draft scheme shall contain the following particulars, namely:-

- (a) The area, ownership and tenure of each original plot;
- (b) The particulars of land allotted or reserved under clause (e) of sub-section (3) of section 40 with a general indication of the uses to which such land is to be put and the terms and conditions subject to which such land is to be put to such uses;
- (c) The extent to which it is proposed to alter the boundaries of original plots;
- (d) An estimate of the net cost of the scheme to be borne by the appropriate authority;
- (e) A full description of all the details of the scheme under subsection (3) of section 40 as may be applicable;
- (f) The laying out or relaying out of land either vacant or already

built upon;

(g) The filling up or reclamation of low-lying, swampy or unhealthy areas or levelling up of land; and

(h) Any other prescribed particulars.

45. Reconstitution Of Plots :-

(1) In the draft scheme referred to in section 44, the size and shape of every plot shall be determined, so far as may be, to render it suitable for building purposes and where the plot is already built upon, to ensure that the building, as far as possible, complies with the provisions of the scheme as regards open spaces.

(2) For the purposes of sub-section (1), the draft scheme may contain proposals-

(a) To form a final plot by the reconstitution of an original plot by the alteration of its boundaries, if necessary;

(b) To form a final plot from an original plot by the transfer of any adjoining lands;

(c) To provide with the consent of the owners that two or more original plots which are owned by several persons or owned by persons jointly be held in ownership in common as a final plot, with or without alteration of boundaries;

(d) To allot a final plot to any owner dispossessed of land in furtherance of the scheme; and

(e) To transfer the ownership of a plot from one person to another.

(3) Where under clause (k) of sub-section (3) of section 40, the purpose to which buildings or specified areas may not be appropriated have been specified, the buildings shall cease to be used for a purposes other than the purposes specified in the scheme within such time as may be specified in the final scheme and the person affected by the provision shall be entitled to compensation from the appropriate authority in the manner and according to the method prescribed:

Provided that in ascertaining such compensation the time within which the person affected was permitted to change the use shall be taken into consideration.

46. Disputed Ownership :-

(1) Where there is a disputed claim to the ownership of any place of land included in an area in respect of which a declaration of intention to make a scheme has been made and any entry in the record of rights or mutation relevant to such disputed claim is

inaccurate or inconclusive, an inquiry may be held on an application being made by the appropriate authority or the Town Planning Officer at any time prior to the date on which the Town Planning Officer draws up the preliminary scheme under section 51 by such officer as the State Government may appoint for the purpose of deciding as to who shall be deemed to be the owner for the purposes of this Act.

(2) Such decision shall not be subject to appeal but it shall not operate as a bar to a regular suit in a court of competent jurisdiction.

(3) Such decision shall, in the event of a Civil Court passing a decree which is inconsistent therewith, be corrected, modified or rescinded in accordance with such decree as soon as practicable after such decree has been brought to the notice of the appropriate authority by the person affected by such decree.

47. Objections To Draft Scheme To Be Considered :-

If within one month from the date of publication of a draft scheme, any person affected by such scheme communicates in writing to the appropriate authority, any objections relating to such scheme, the appropriate authority shall consider such objections and may at any time before submitting the draft scheme to the State Government as hereinafter provided modify such scheme as it thinks fit.

48. Power Of State Government To Sanction Draft Scheme :-

(1) The appropriate authority shall, within¹[three months] from the date of the publication of the draft scheme in the Official Gazette, submit the draft scheme with any modifications that may have been made therein under section 47 together with the objections which may have been communicated to it, to the State Government for sanction.

(2) If the State Government sanctions such scheme, it shall in such may thinks fit, the State Government may, within²[three months] from the date of its receipt, by notification, sanction such scheme with or without modifications or subject to such conditions as it may thinks fit to impose or refuse to sanction it.

(3) If the State Government sanctions such scheme, it shall in such notification state at what place and time the draft scheme shall be open for the inspection of the public.

Footnotes:-

1. These words were substituted for the words "four months" by Guj. 2 of 1999, section 14 (1).
2. These words were substituted for the words "six months, "by Guj. 2 of 1999, section 14 (2).

48A. Vesting of land in appropriate authority :-

¹ [48-A.Vesting of land in appropriate authority:-

(1) Where a draft scheme has been sanctioned by the State Government under sub-section (2) of section 48, (hereinafter in this section, referred to as the sanctioned draft scheme), all lands required by the appropriate authority for the purposes specified in clause (c), (f), (g), or (h) of sub-section (3) of section 40 shall vest absolutely in the appropriate authority free from all encumbrances.

(2) Nothing in sub-section (1) shall affect any right of the owner of the land vesting in the appropriate authority under that sub-section.

(3) The provisions of sections 68 and 69 shall mutatis mutandis apply to the sanctioned draft scheme as if,-

(i) Sanctioned draft scheme were a preliminary scheme, and

(ii) In sub-section (1), for the words "comes into force", the words, brackets and figures "the date on which the draft scheme is sanctioned under sub-section (2) of section 48" were substituted.]

Footnote:-

1. Section 48-A was inserted, by Guj. 2 of 1999, section 15.

49. Restrictions On Use And Development Of Land After Declaration Of A Scheme :-

(1) (a) On or after the date on which a draft scheme is published under section 41, no person shall, within the area included in the scheme, carry out any development unless such person has applied for and obtained the necessary permission for doing so from the appropriate authority in prescribed form¹[and on payment of such scrutiny fees as may be prescribed by regulations;]

(b) Where an application for permission under clause (a) is received by the appropriate authority, it shall send to the applicant a written acknowledgment of its receipt and after making such inquiry as it deems fit and in consultation with the Town Planning Officer, if any, may either grant or refuse such permission or grant it subject to such conditions as it may think fit to impose;

(c) If the appropriate authority does not communicate its decision

to the applicant within three months from the date of acknowledgments of its receipt, such permission shall be deemed to have been granted to the applicant;

(d) If any person contravenes the provisions of clause (a) or of any condition imposed under clause (b), the appropriate authority may direct such person by notice in writing to stop any development in progress, and after making an inquiry in the prescribed manner remove, pull down, or alter any building or other development or restore the land or building in respect of which such contravention is made to its original condition;

(e) Any expenses incurred by the appropriate authority under clause (d) shall be a sum due to it under this Act from the person in default;

(f) The provisions of section 35 shall so far as may be, apply in relation to the unauthorised development or use of land included in a town planning scheme;

(g) The restrictions imposed by this section shall cease to operate in the event of the State Government refusing to sanction the draft scheme or the preliminary scheme or in the event of the withdrawal of the scheme under section 66 or in the event of the declaration of intention lapsing under sub-section (3) of section 42;

(h) Any diminution in the value of an original plot occasioned by any contravention of the provisions of clause (a) or of any condition imposed under clause (b) shall, notwithstanding anything contained in sections 77, 78 and 79 be taken into account in fixing the market value of such plot.

(2) No person shall be entitled to compensation in respect of any damage, loss or injury resulting from any action taken by the appropriate authority under the sub-section (1) of section 70 except in respect of a building or work begun or contract entered into before the date on which a declaration of intention to make a scheme is published under section 41 or the publication of the draft scheme under sub-section (1) of section 42:

Provided that where any person is entitled to any compensation in respect of any building or work under this sub-section, he shall be so entitled only in so far as such building or work has proceeded at the time of the declaration of intention or publication, as the case may be, and subject to the conditions of any agreement entered into between such person and the appropriate authority.

(3) On and after the date referred to in clause (a) of sub-section (1), the appropriate authority intending to carry out development of land, within the area included in the scheme, for its own purpose

in exercise of its powers under any law for the time being in force shall carry out such development in conformity with the provisions of such scheme, and of the bye-laws and regulations relating to construction of buildings.

(4) The provisions of this section shall not apply to any operational construction undertaken by the Central Government or a State Government.

Footnote:-

1. These words were added and shall be deemed always to have been added by Guj. 3 of 1995, section 10.

50. Appointment Of Town Planning Officer :-

(1) Within one month from the date on which the sanction of the State Government to a draft scheme is notified in the Official Gazette, the State Government shall appoint a Town Planning Officer possessing such qualification as" may be prescribed, for the purpose of such scheme and provide him with such number of officers and staff as may be considered necessary and his duties shall be as hereinafter provided:

1 [Provided that the State Government may, on the request made by the Appropriate Authority, appoint a Town Planning Officer within one month from the date of the publication of the Draft Scheme under sub-section (1) of section 42.]

(2) The State Government may, if it thinks fit, at any time, remove, on the ground of incompetence or misconduct or any other good and sufficient reason a Town Planning Officer appointed under this section and shall forthwith appoint another person in his place and any proceeding pending before Town Planning Officer immediately before the date of his removal shall be continued and disposed of by the new Town Planning Officer Appointed in his place:

Provided that no Town Planning Officer shall be removed under this subsection except after an inquiry in which he has been informed of the charges against him and a reasonable opportunity of being heard in respect of those charges has been given to him.

(3) Subject to the provisions of sub-section (2), a Town Planning Officer appointed under sub-section (1) for the purpose of any scheme shall cease, to hold office with effect from the date on which the final scheme is sanctioned under section 65.

Footnote:-

1. This proviso was added by Guj. 2 of 1999, section 16.

51. Duties Of Town Planning Officer :-

Within a period of twelve months from the date of his appointment, the Town Planning Officer shall, after following the prescribed procedure, sub-divide the town planning scheme into a preliminary scheme and a final scheme:

1 [Provided that the State Government may, by order in writing, extend the said period by such further period not exceeding nine months in aggregate and any such order extending the period may be made so as to have retrospective effect:

Provided further that the State Government may, by order and for reasons to be recorded in writing, extend such further period not exceeding six months.]

Footnote:-

1 . These provisos were substituted for the original by Guj. 2 of 1999, section 17.

52. Contents Of Preliminary And Final Scheme :-

(1) In a preliminary scheme, the Town Planning Officer shall,-

(i) After giving notice in the prescribed manner and in the prescribed form to the persons affected by the scheme, define and demarcate the areas allotted to, or reserved for, any public purpose, or for a purpose of the appropriate authority and the final plots;

(ii) After giving notice as aforesaid, determine in a case in which a final plot is to be allotted to persons in ownership in common, the shares of such persons;

(iii) Provide for the total or partial transfer of any right in an original plot to a final plot or provide for the transfer of any right in an original plot in accordance with the provisions of section 81;

(iv) Determine the period within which the works provided in the scheme shall be completed by the appropriate authority.

(2) The Town Planning Officer shall submit the preliminary scheme so prepared to the State Government for sanction and shall thereafter prepare and submit to the State Government the final scheme in accordance with the provisions of sub-section (3).

(3) In the final scheme, the Town Planning Officer shall,-

(i) Fix the difference between the total of the values of the original plots and the total of the values of the plots included in the scheme in accordance with the provisions of clause (f) of sub-section (1) of section 77;

- (ii) Determine whether the areas used, allotted or reserved for a public purpose or purposes of the appropriate authority are beneficial wholly or partly to the owners or residents within the area of the scheme;
- (iii) Estimate the portion of the sums payable as compensation on each plot used, allotted or reserved for a public purpose or for the purpose of the appropriate authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public, which shall be included in the costs of the scheme;
- (iv) Calculate the contribution to be levied under sub-section (1) of section 79, on each plot used, allotted or reserved for a public purpose or for the purpose of the appropriate authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public;
- (v) Determine the amount of exemption, if any, from the payment of contribution that may be granted in respect of plots exclusively occupied for religious or charitable purposes;
- (vi) Estimate the increment to accrue in respect of each plot included in the scheme in accordance with the provisions of section 78;
- (vii) Calculate the proportion of the contribution to be levied on each plot in the final scheme to the increment estimated to accrue in respect of such plot under sub-section (1) of section 79;
- (viii) Calculate the contribution to be levied on each plot included in the final scheme;
- (ix) Determine the amount to be deducted from, or added to, as the case may be, the contribution leviable from a person in accordance with the provisions of section 79;
- (x) Estimate with reference to claims made before him, after notice has been given by him in the prescribed manner and in the prescribed form, the compensation to be paid to the owner of any property or right injuriously effected by the making of the town planning scheme in accordance with the provisions of section 82;
- (xi) Draw in the prescribed form the preliminary and the final scheme in accordance with the draft scheme:-

Provided that the Town Planning Officer may make variation from the draft scheme, but no such variation, if it is of a substantial nature, shall be made except with the previous sanction of the State Government, and except after hearing the appropriate authority and any owners who may raise objections.

Explanation:- (i) For the purpose of this proviso "variation of a

substantial nature" means a variation which is estimated by the Town Planning Officer to involve an increase of ten percent in the costs of the scheme as is described in section 77 or rupees one lac, whichever is lower, on account of the provisions of new works or the allotment of additional sites for public purposes included in the preliminary scheme drawn up by the Town Planning Officer.

(ii) If there is any difference of opinion between the Town Planning Officer and the appropriate authority as to whether a variation made by the Town Planning Officer is of substantial nature or not, the matter shall be referred by the appropriate authority to the State Government whose decision thereon shall be final.

53. Certain Decision Of Town Planning Officer To Be Final :-

Except in matters arising out of clauses (iii), (iv), (vi), (vii), (viii), and (x) of sub-section (3) of section 52, every decision of the Town Planning Officer shall be final and binding on all persons.

54. Appeal :-

(1) Any decision of the Town Planning Officer under clauses (iii), (iv), (vi), (vii), (viii) and (x) of sub-section (3) of section 52 shall forth with be communicated to the party concerned in the prescribed form and any party aggrieved by such decision may within one month from the date of communication of decision, present an appeal to the Board of Appeal constituted under section 55.

(2) (a) A Board of Appeal existing immediately before the commencement of the Gujarat Town Planning and Urban Development (Amendment) Act, 1999 shall continue to hear and decide appeal until the date on which the Board of Appeal is constituted (hereinafter referred to as "the said date"), by the State Government under section 55, and

(b) All appeals pending on the said date before any Board of Appeal shall stand transferred to the Board of Appeal so constituted.]

Footnote:-

1. Section 54 was substituted for the original by Guj. 2 of 1999, section 18.

55. Constitution Of Board Of Appeal :-

1 [(1) (a) The State Government shall, from time to time by an

order published in the Official Gazette, constitute a Board of Appeal for hearing and deciding appeals under section 54.

(b) The Board of Appeal shall consist of three Members, one of whom shall be its President and two persons, possessing such qualifications and experience as may be prescribed, as assessor.

(c) The President shall be a person who is or has been a District Judge or a Judge of the City Civil Court, Ahmedabad.

(d) The terms of appointment of the President of the Board of Appeal and conditions of service shall be such as may be prescribed.]

(2) The Board of Appeal constituted under sub-section (1) shall stand dissolved as soon as a copy of its decision in appeal is sent to the Town Planning Officer under sub-section (2) of section 62.

(3) The State Government may, if it thinks fit, remove for incompetence or misconduct or for any other good or sufficient reason any assessor appointed under sub-section (1).

(4) If any assessor is removed or dies or refuses or neglects to act or becomes incapable of acting, the authority who appointed such assessor shall appoint forthwith a fit and proper person in his place.

Footnote:-

1. Sub-section (1) was substituted for the original, by Guj. 2 of 1999, section 19.

56. Town Planning Officer To Assist Board In Advisory Capacity And His Remuneration :-

(1) The Town Planning Officer shall be present at the proceedings before the Board of Appeal.

(2) The Town Planning Officer shall not be required to give evidence in such proceedings but the President may require him to assist the Board in an advisory capacity.

(3) When the Town Planning Officer is required under sub-section (2) to assist the Board of Appeal, he shall, save, where he is a salaried officer of Government, be entitled to such fees as the State Government may from time to time determine.

57. Place Where Board May Sit :-

The Board of Appeal may sit either at the headquarters of the President or at any other place within the local limits of his jurisdiction which he may deem convenient for the consideration and decision of any matter before such Board.

58. Decision Of Questions Of Law And Other Questions :-

All questions of law and procedure shall be decided by the President and all other questions shall be decided by the President and the two assessors or by a majority of them.

59. Powers Of Board To Decide Matter Finally :-

(1) After making such inquiry as it may think fit, the Board of Appeal may either direct the Town Planning Officer to reconsider its proposals, or accept, modify, vary or reject the proposals of the Town Planning Officer.

(2) Every decision of the Board of Appeal shall be final and binding on all persons.

60. Board Not To Be Court :-

Nothing contained in this Act shall be deemed to constitute the Board of Appeal to be a court.

61. Remuneration Of Assessors And Payment Of Incidental Expenses Of Board To Be Added To Costs Of Scheme :-

(1) The assessors shall, save where they are salaried Government Officers, be entitled to such remuneration either by way of monthly salary or by way of fees or partly by way of salary and partly by way of fees, as the State Government may, from time to time, determine.

(2) The salary of the President of the Board of Appeal or an Assessor who is a salaried Government Officer and any remuneration payable under sub-section (1) and the fees payable to a Town Planning Officer under sub-section (3) of section 56 and all expenses incidental to the working of the Board of Appeal shall, unless the State government otherwise determines, be defrayed out of the funds of the appropriate authority and shall be added to the costs of the scheme.

62. Decision Of Town Planning Officer To Be Final In Certain Matters And Variation Of Scheme In View Of Decision In Appeal :-

(1) Where no appeal has been presented under section 54, in respect of a matter arising out of clause (iii), clause (iv), clause (vi), clause (vii), clause (viii) or clause (x) of sub-section (3) of

section 52, the decision of the Town Planning Officer shall be final and binding on the parties.

(2) the Board of Appeal shall send a copy of its decision in appeal to the Town Planning Officer who shall, if necessary, make any variation in the scheme in accordance with such decision and shall forward the final scheme together with a copy of his decision under section 53 and a copy of the decision of the Board of Appeal in appeal to the State Government for the sanction of the final scheme.

63. Power Of Town Planning Officer To Split Up Draft Scheme Into Separate Sections :-

(1) After a Town Planning Officer has been appointed under section 50, the appropriate authority may apply to him to split up the draft scheme into different sections and to deal with each section separately as if such section were a separate draft scheme.

(2) On receipt of an application under sub-section (1), the Town Planning Officer may, after making such inquiry as he thinks fit, split up the draft scheme into sections.

(3) The provisions of this Act and the rules made thereunder shall, so far as may be, apply to each of such sections as it were a separate draft scheme.

64. Submission Of Preliminary Scheme And Final Scheme To Government :-

The Town Planning Officer shall submit to the State Government for sanction the preliminary scheme also before the final scheme is submitted to the State Government under sub-section (2) of section 52, together with a copy of his decision under section 53.

65. Power Of Government To Sanction Or Refuse To Sanction The Scheme And Effect Of Sanction :-

(1) On receipt of the preliminary scheme or, as the case may be, the final scheme, the State Government may-

(a) In the case of preliminary scheme, within a period of two months from the date of its receipt, and

(b) In the case of a final scheme, within a period of three months from the date of its receipt,

By notification, sanction the preliminary scheme or the final scheme or refuse to give sanction, provided that in sanctioning any such

scheme, the State Government may make such modifications as may, in its opinion, be necessary for the purpose of correcting an error, irregularity or informality.

(2) Where the State Government sanctions the preliminary scheme or the final scheme, it shall state in the notification-

(a) The place at which the scheme shall be kept open for inspection by the public, and

(b) A date (which shall not be earlier than one month after the date of the publication of the notification) in which all the liabilities created by the scheme shall come into force:

Provided that the State Government may from time to time extend such date, by notification, by such period, not, exceeding three months at a time, as it thinks fit.

(3) On and after the date fixed in such notification, the preliminary scheme or the final scheme, as the case may be, shall have effect as if it were enacted in this Act.

66. Withdrawal Of Scheme :-

(1) If at any time before the preliminary scheme is forwarded by the Town Planning Officer to the State Government, a representation is made to the Town Planning Officer by the appropriate authority and a majority of the owners in the area, that the scheme should be withdrawn, the Town Planning Officer shall, after inviting from all persons interested in the scheme objections to such representation, forward such representation together with the objections, if any, to the State Government.

(2) The State Government, after making such inquiry as it may deem fit, may, if it is of opinion that it is necessary or expedient so to do, by notification, direct that the scheme shall be withdrawn and upon such withdrawal no further proceeding shall be taken in regard to such scheme.

67. Effect Of Preliminary Scheme :-

On the day on which the preliminary scheme comes into force-

(a) All lands required by the appropriate authority shall, unless it is otherwise determined in such scheme, vest absolutely in the appropriate authority free from all encumbrances;

(b) All rights in the original plots which have been re-constituted into final plots shall determine and the final plots shall become subject to the rights settled by the Town Planning Officer.

68. Power Of Appropriate Authority To Evict Summarily :-

On and after the date on which a preliminary scheme comes into force, any person continuing to occupy any land which he is not entitled to occupy under the preliminary scheme shall, in accordance with the prescribed procedure, be summarily evicted by the appropriate authority.

69. Power To Enforce Scheme :-

(1) On and after the date on which the preliminary scheme comes into force, the appropriate authority shall, after giving the prescribed notice and in accordance with the provisions of the scheme,

(a) Remove, pull down, or alter any building or other work in the area included in the scheme which is such as contravenes the scheme or in the erection or carrying out of which any provision of the scheme has not been complied with;

(b) Execute any work which it is the duty or any person to execute under the scheme in any case where it appears to the appropriate authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by the appropriate authority under this section shall be recovered from the person in default or from the owner of the plot in the manner provided for the recovery of sums due to the appropriate authority under the provisions of this Act.

(3) If any question arises as to whether any building or work contravenes a town planning scheme or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, it shall be referred to the State Government and the decision of the State Government shall be final and binding on all persons.

(4) No person shall be entitled to compensation in respect of any damage, loss or injury resulting from any action taken by the appropriate authority under the provisions of this section except in respect of the building or work begun before the date referred to in sub-section (1) and only in so far as such building or work has proceeded until that date:

Provided that any claim to compensation, which is not barred by this subsection shall be subject to the condition of any agreement entered into between the claimant and the appropriate authority.

(5) The provisions of this section shall not apply to any operational

construction undertaken by the Central Government or a State Government.

70. Power To Vary Scheme On Ground Of Error, Irregularity Or Informality :-

(1) If after the preliminary scheme or the final scheme has come into force, the appropriate authority considers that the scheme is defective on account of an error, irregularity or informality, the appropriate authority may apply in writing to the State Government for the variation of the scheme.

(2) If on receiving such application or otherwise, the State Government is satisfied that the variation required is not substantial, the State Government shall publish a draft of such variation in the prescribed manner.

(3) The draft variation published under sub-section (2) shall state every variation proposed to be made in the scheme and if any such variation relates to a matter specified in any of the clauses (a) to (h) of sub-section (3) of section 40, the draft variation shall also contain such other particulars as may be prescribed.

(4) The draft variation shall be open to the inspection of the public at the head office of the appropriate authority during office hours.

(5) Within one month of the date of publication of the draft variation, any person affected thereby may communicate in writing his objections to such variation to the State Government through the Collector and send a copy thereof to the appropriate authority.

(6) After receiving the objections under sub-section (5), the State Government may, after consulting the appropriate authority and after making such inquiry as it may think fit, by notification-

(a) Appoint a Town Planning Officer and thereupon the provisions of this Chapter shall, so far as may be, apply to such draft variation as if it were a draft scheme sanctioned by the State Government, or

(b) Make the variation with or without modification, or

(c) Refuse to make the variation.

(7) From the date of the notification making the variation, with or without modification, such variation shall take effect as it were incorporated in the scheme.

1 [70A.Variation of Town Planning Scheme for land allotted for public purpose:-

If at any time after the final town planning scheme comes into force, the appropriate authority is of the opinion that the purpose

for which any land is allotted in such scheme under any of the paragraphs (ii) and (iii) of sub-clause (a) of clause(jj) of sub-section (3) of section 40 requires to be changed to any other purpose specified in any of the said paragraphs, the appropriate authority may make such change after following the procedure relating to amendment of regulations, specified in section 72 as if such change were an amendment of regulations.]

1. Section 70A was Inserted by Guj. 2 of 1999, section 20.

71. Variation Of Town Planning Scheme By Another Scheme

:-

Notwithstanding anything contained in section 70, a town planning scheme may at any time be varied by a subsequent scheme made, published and sanctioned in accordance with the provisions of this Act.

72. Amendment Of Regulations :-

(a) If at any time after the final town planning scheme comes into force, the appropriate authority is of the opinion that the regulations relating to a town planning scheme require to be amended, it may publish the requisite draft amendment in the prescribed manner and invite suggestions or objections thereto from any person;

(b) if within one month from the date of publication of the draft amendment, any person communicates in writing to the appropriate authority any suggestions or objections relating to such amendment, the appropriate authority shall consider such suggestions or objection and may, at any time before submitting, the draft amendment to the. State Government as hereinafter provided, modify such amendment as it thinks fit;

(c) the appropriate authority shall within a period of two months from the date of its publication, submit the draft amendment alongwith the suggestions or objections to the State Government and shall at the same time apply for its sanction;

(d) after receiving such application and after making such inquiry as it may think fit, the State Government may sanction the amendment submitted with or without modifications as it deems necessary or refuse to sanction the amendment;

(e) if the amendment is sanctioned by the State Government, the final town planning scheme shall be deemed to have been varied in accordance with the amendment.

73. Compensation When Scheme Varied :-

If at any time after the date on which the scheme has come into force, such scheme is varied, any person who has incurred any expenditure for the purpose of complying with such scheme shall be entitled to be compensated by the appropriate authority for the expenditure, if such expenditure is rendered abortive by reason of the variation of such scheme.

74. Apportionment Of Costs Of Scheme Withdrawn Not Sanctioned :-

In the event of a town planning scheme being withdrawn or sanction to a preliminary scheme being refused by the State Government, the State Government may direct that the costs of the scheme shall be borne by the appropriate authority or be paid to the appropriate authority by the owners concerned in such proportion as the State Government may in each case determine.

75. Right To Appear By Recognised Agent :-

Every party to any proceedings before the Town Planning Officer or the Board of Appeal shall be entitled to appear either in person or by his recognised agent.

76. Powers Of Civil Courts In Respect Of Certain Matters :-

For the purposes of this Act, an officer appointed under sub-section (1) of section 46 or the Town Planning Officer or the Board of Appeal shall have the same powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Issuing commissions for the examination of witnesses or documents.

CHAPTER 6 Finance

77. Costs Of Scheme :-

- (1) The costs of a town planning scheme shall include-

(a) All sums payable by the appropriate authority under the provisions of this Act, which are not specifically excluded from the costs of the scheme;

(b) All sums spent or estimated to be spent by the appropriate authority in the making and execution of the scheme:

1 [Provided that the estimates shall be with reference to the period during which the preliminary scheme is to be implemented after it is sanctioned under section 65];

(c) All sums payable as compensation for land reserved or designated for any public purpose or for the purposes of the appropriate authority which is solely beneficial to the owners of land or residents within the area of the scheme;

(d) Such portion of the sums payable as compensation for land reserved or designated for any public purpose or for the purpose of the appropriate authority which is beneficial partly to the owners of land or residents within the area of the scheme and partly to the general public, as is attributable to the benefit accruing to the owners of land or residents within the area of the scheme from such reservation or designation;

(e) All legal expenses incurred by the appropriate authority in the making and in the execution of the scheme;

(f) Any amount by which the total amount of the values of the original plots exceeds the total amount of the values of the plots included in the final scheme, each of such plots being estimated at its market value at the date of the declaration of intention to make a scheme, with all the buildings and works thereon at the said date and without reference to improvements contemplated in the scheme other than improvements due to alteration of its boundaries.

2 [(g) twenty percent of the amount of the cost of infrastructure provided in the area adjacent to the area of the scheme as is necessary for the purpose of and incidental to the scheme.]

(2) If in any case the total amount of the values of the plots included in the final scheme exceeds the total amount of the values of the original plots, each of such plots being estimated in the manner provided in clause (f) of sub-section (1), then the amount of such excess shall be deducted in arriving at the costs of the scheme as defined in sub-section (1).

Footnotes:-

1. This proviso was added by Guj. 4 of 1986, section 3 (a).

2. Clause (g) was inserted, by Guj. 4 of 1986, section 3 (b).

78. Calculation Of Increment :-

For the purpose of this Act, the increments shall be deemed to be the amount by which at the date of the declaration of intention to make a scheme the market value of the plot included in the final scheme estimated on the assumption that the scheme has been completed would exceed at the same date the market value of the same plot estimated without reference to improvements contemplated in the scheme:

Provided that in estimating such value, the value of buildings or other works erected or in the course of erection on such plot shall not be taken into consideration.

79. Contribution Towards Costs Of Scheme :-

(1) The costs of the scheme shall be met wholly or in part by a contribution to be levied by the appropriate authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of such plot by the Town Planning Officer:

Provided that-

(i) (a) where the cost of the scheme does not exceed half the increment, the cost shall be met wholly by a contribution, and

(b) Where it exceeds half the increment, to the extent of half the increment it shall be met by a contribution and the excess shall be borne by the appropriate authority;

(ii) Where a plot is subject to a mortgage with possession or to a lease, the Town Planning Officer shall determine in what proportion the mortgagee or lessee on the one hand and the mortgagor or lessor on the other hand shall pay such contribution;

(iii) no such contribution shall be levied on a plot used, allotted or reserved for a public purpose or for the purpose of the appropriate authority which is solely beneficial to the owners of land or residents within the area of the scheme; and

(iv) the contribution levied on a plot used, allotted or reserved for a public purpose or for the purpose of the appropriate authority which is beneficial partly to the owners of land or residents within the area of the scheme and partly to the general public shall be calculated in proportion to the benefit estimated to accrue to the general public from such use, allotment or reservation.

(2) The owner of each plot included in the final scheme shall be primarily liable for the payment of the contribution leviable in

respect of such plot.

80. Certain Amounts To Be Added To, Or Deducted From, Contribution Leviable From A Person :-

The amount by which the total value of the plots included in the final scheme with all the buildings and works thereon allotted to a person falls short of or exceeds the total value of the original plots with all the buildings and works thereon of such person shall be deducted from, or, as the case may be, added to, the contribution leviable from such person, each of such plots being estimated at its market value at the date of the declaration of intention to make a scheme or the date of the notification issued by the State Government under sub-section (1) of section 43 and without reference to improvements contemplated in the scheme other than improvements due to the alteration of its boundaries.

81. Transfer Of Right From Original To Final Plot Or Extinction Of Such Right :-

Any right in an original plot which in the opinion of the Town Planning Officer is capable of being transferred wholly or in part, without prejudice to the making of a town planning scheme, to a final plot shall be so transferred and any right in an original plot which in the opinion of the Town Planning Officer is not capable of being so transferred shall be extinguished:

Provided that an agricultural lease shall not be transferred from an original plot to a final plot without the consent of all the parties to such lease.

82. Compensation In Respects Of Property Or Right Injurious Affected By Scheme :-

The owner of any property or right which is injuriously affected by the making of a town planning scheme shall, if he makes a claim before the Town Planning Officer within the prescribed time, be entitled to be compensated in respect thereof by the appropriate authority or by any person benefitted or partly by the appropriate authority and partly by such person as the Town Planning Officer may in each case determine:

Provided that the value of such property or rights shall be deemed to be its market value at the date of the declaration of intention to make a scheme or the date of the notification issued by the State

Government under sub-section (1) of section 43 without reference to improvements contemplated in the scheme, as the case may be.

83. Exclusion Of Compensation In Certain Cases :-

(1) No compensation shall be payable in respect of any property or private right which is alleged to be injuriously affected by reason of any provisions contained in the town planning scheme, if under any other law for the time being in force applicable to the area for which such scheme is made no compensation is payable for such injurious affection.

(2) Any property or private right shall not be deemed to be injuriously affected by reason of any provision inserted in a town planning scheme which imposes any conditions and restrictions in regard to any of the matters specified in clause (k) of sub-section (3) of section 40.

84. Provision For Cases In Which Amount Payable To Owners Exceeds Amount Due From Him :-

If the owner of an original plot is not provided with a plot in the preliminary scheme or if the contribution to be levied from him under section 79 is less than the total amount to be deducted therefrom under any of the provision of this Act, the net amount of his loss shall be payable to him by the appropriate authority in case or in such other manner as may be agreed upon by the parties.

85. Provision For Case In Which Value Of Developed Plot Is Less Than Amount Payable By Owners :-

(1) If from any cause the total amount which would be due to the appropriate authority under the provisions of this Act from the owner of a plot to be included in the final scheme exceeds the value of such plot estimated on the assumption that the scheme has been completed, the Town Planning Officer shall at the request of the appropriate authority direct the owner of such plot to make payment to the appropriate authority of the amount of such excess.

(2) If such owner fails to make such payment within the prescribed period, the Town Planning Officer shall, if the appropriate authority so requests, acquire the original plot of such defaulter and apportion the compensation among the owner and other persons interested in the plot on payment by the appropriate authority of the value of such plot estimated at its market value at the date of

the declaration of intention to make a scheme or the date of a notification under sub-section (1) of section 43 and without reference to improvements contemplated in the scheme; and thereupon the plot included in the final scheme shall vest absolutely in the appropriate authority free from all encumbrances but subject to the provisions of this Act:

Provided that the payment made by the appropriate authority on account or the value of the original plot shall not be included in the costs of the scheme.

86. Payment By Adjustment Of Account :-

All payments due to be made to any person by the appropriate authority under this Act shall, as far as possible, be made by adjustment in such account with the appropriate authority in respect of the plot concerned or of any other plot in which he has an interest and failing such adjustment, shall be paid in cash or in such other manner as may be agreed upon by the parties.

87. Payment Of Net Amount Due To Appropriate Authority :-

(1) The net amount payable under the provisions of this Act by the owner of a plot included in the final scheme may at the option of the contributor be paid in lump-sum or in annual installments not exceeding ten.

1[(2) If the owner elects to pay the amount by installment, interest at such rate as is arrived at by adding two percent to the bank rate published under section 49 of the Reserve Bank of India Act, 1934, from time to time, shall be charged per annum on the net amount payable.]

(3) If the owner of a plot fails to exercise the option on or before the date specified in a notice issued to him in that behalf by the appropriate authority, he shall be deemed to have exercised the option of paying contribution in installments and the interest on the contribution shall be calculated from the date specified in the notice, being the date before which he was required to exercise the option.

(4) Where two or more plots included in the final scheme are of the same ownership the net amount payable by such owner under the provisions of this Act shall be distributed over his several plots in proportion to the increments which is estimated to accrue in respect of each plot unless the owner and the appropriate authority agree to a different method of distribution.

Footnote:-

1. This sub-section was substituted by Guj. 4 of 1986, section 4.

88. Power Of Appropriate Authority To Make Agreement :-

(1) The appropriate authority shall be competent to make any agreement with any person in respect of any matter which is to be provided for in a town planning scheme, subject to the power of the State Government to modify or disallow such agreement and unless it is otherwise expressly provided therein, such agreement shall take effect on and after the day on which the town planning scheme comes into force.

(2) Such agreement shall not in any way affect the duties of the Town Planning Officer as described in Chapter V or the rights of third parties but it shall be binding on the parties to the agreement notwithstanding any decision that may be passed by the Town Planning Officer:

Provided that if the agreement is modified by the State Government, either party shall have the option of avoiding it, if it so elects.

89. Recovery Of Arrears :-

(1) Any sum due to the appropriate authority under this Act or any regulation made thereunder shall be a first charge on the plot on which it is due, subject to the prior payment of land revenue, if any, due to the State Government thereon.

(2) Any sum due to the appropriate authority under this Act or any regulation made thereunder which is not paid on demand on the day on which it becomes due or on the day fixed by the appropriate authority shall be recoverable by the appropriate authority by distress and sale of the goods and chattel of the defaulter as if the amount thereof were a property tax due by the said defaulter.

(3) In lieu of the recovery of the dues of the appropriate authority in the manner provided in sub-section (2), any sum due or the balance of any sum due, as the case may be, by such defaulter may be recovered from him by a suit in any court of competent jurisdiction.

90. Powers Of Appropriate Authority To Borrow Money For Development Plan Or For Making Or Executing A Town Planning Scheme :-

(1) An appropriate authority may for the purpose of a development plan or for the making or execution of a town planning scheme borrow moneys and if the appropriate authority is a local authority the money shall be borrowed in accordance with the provisions of the Act under which the local authority is constituted or if such Act does not contain any provision for such borrowing, in accordance with the Local Authorities Loans Act, 1914 (9 of 1914), or as the case may be, the Saurashtra Local Authorities Loans Act, 1951 (Sau. XVIII of 1951).

(2) Any expenses incurred by an appropriate authority or the State Government under this Act in connection with a development plan or a town planning scheme may be defrayed out of the funds of the appropriate authority.

91. Fund Of The Appropriate Authority :-

(1) An appropriate authority shall have and maintain its own fund to which shall be credited-

(a) All moneys received by the authority by way of grants, loans,¹[advances, fees, development charges or otherwise;]

(b) All moneys derived from its undertakings, projections and other sources;

(c) Such amount of contributions from local authorities as the State government may specify from time to time to be credited to the fund of the authority.

(2) The fund of an appropriate authority shall be applied towards meeting-

(a) Expenditure incurred in the administration of this Act;

(b) Cost of acquisition of land for the purposes of this Act;

(c) Expenditure for any development of land in the development area;

(d) Expenditure for such other purposes as the State Government may direct.

(3) An appropriate authority may keep in current account with the State Bank" of India or any other bank approved by the State Government in this behalf, such sums of money out of its fund as may be prescribed and any money in excess of the said sum shall be invested in such manner as may be approved by the State Government.

(4) The State Government may, make such grants, advances and loans to an appropriate authority as the State Government may deem necessary for the performance of its functions under this Act

and all grants, loans and advances so made shall be made on such terms and conditions as the State Government may determine.

Footnote:-

1. These words were substituted for the words "advances or otherwise" by Guj. 3 of 1995, section 11.

92. Power Of Authority To Borrow Money :-

An appropriate authority may, from time to time, borrow at such rate of interest and for such period and upon such terms, as the State Government may approve, any sum of money necessary for the purpose of--

(a) Meeting expenditure debitable to the capital amount;

(b) Repaying any loan previously taken under this Act.

93. Priority Of Payment Of Interest And Repayment Of Loans :-

All payments due from an appropriate authority for interest on, or for the repayment of, loans shall be made in priority to all other payments due from the said authority.

94. Budget Of Authority :-

An appropriate authority shall prepare in such form, and at such time, every year, as may be prescribed, a budget in respect of the financial year next ensuing, showing the estimated receipts and expenditure of the authority and shall forward to the State Government such number of copies thereof, as may be prescribed.

95. Accounts And Audit :-

(1) An appropriate authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form as the State Government may prescribe.

(2) The accounts of an appropriate authority shall be subject to audit annually by the Accountant General of the State and any expenditure incurred by him in connection with such audit shall be payable by the authority to the Accountant General.

(3) The Accountant General or any person appointed by him in connection with the audit of accounts of an appropriate authority shall have the same rights, privileges and authority in connection with such audit as the Accountant General has in connection with

Government accounts and in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office of the appropriate authority.

(4) The accounts of an authority as certified by the Accountant General or any other person authorised by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government.

96. Annual Reports :-

An appropriate authority shall prepare for every year, a report of its activities during the year and submit the report to the State Government in such form and on or before such date as may be prescribed.

97. Pension And Provident Fund :-

(1) An appropriate authority shall constitute, for the benefit of its salaried wholtime members and of its officers and other employees in such manner and subject to such conditions as may be prescribed, such pension and provident funds as it may deem fit.

(2) Where any such pension or provident fund has been constituted, the State Government may declare that the provisions of the Provident Funds Act, 1925 (19 of 1925), shall apply to such fund as if it were a Government provident fund.

98. Offences And Penalties :-

Whoever does any work in contravention of clause (a), or any condition imposed under clause (b), of sub-section (1) of section 49 shall, on conviction, be punished with fine which may extend to five thousand rupees and the court shall, in such order of conviction, direct that if such contravention continues after the date of the order of conviction, a fine not exceeding one hundred rupees per day for the period during which the contravention continues shall be recovered from the person so convicted:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, the fine shall not be less than five hundred rupees and in the case of a continuing contravention, the fine shall not be less than fifty rupees, per day.

CHAPTER 7 Levy, Assessment And Recovery Of Development

Charges

99. Levy Of Development Charges :-

Subject to the provisions of this Act and the rules made thereunder, an appropriate authority may, with the previous sanction of the State Government, by notification, levy a development charge on lands and buildings within the development area at such rate, not exceeding the maximum rates specified in section 100, as it may determine:

Provided that different rates of development charges may be specified for different parts of the development area and for different uses.

100. Rates Of Development Charges :-

(1) (a) The development charges on lands and buildings leviable under section 99 shall be assessed with reference to their use for different purposes such as:-

- (i) Industrial;
- (ii) Commercial;
- (iii) Residential; and
- (iv) Miscellaneous.

(b) In classifying the lands or buildings under any of the purposes mentioned in clause (a), the predominant purpose for which such lands and buildings are used shall be the main basis.

(2) The rates of development charges shall be determined-

- (a) in the case of land, at a rate to be specified per hectare, and
- (b) in the case of a building, at a rate to be specified per square meter of the floor area of the building:

Provided that no such rate shall exceed fifty thousand rupees per hectare in the case of development of land, and fifteen rupees per square meter in the case of development of a building:

Provided further that where land appurtenant to a building is used for any purpose independent of the building, development charge may be levied separately for such use also.

101. Assessment And Recovery Of Development Charges :-

(1) Any person who intends to carry out any development or institute or change any use of any land or building for which permission is required under this Act, whether he has applied for such permission or not, and any person who has commenced the

carrying out of any such development or has carried out such development or instituted or changed any such use shall apply to the appropriate authority, within such time and in such manner as may be prescribed, for the assessment of development charges payable in respect thereof.

(2) On an application being made under sub-section (1), or if no such application is made, after serving a notice in writing on the person liable to such payment, the appropriate authority shall, after giving the person concerned an opportunity of being heard, and after calling for a report in this behalf from the officer concerned of the authority, determine whether or not any development charge is leviable in respect of that land or building as a result of the carrying out of such development or institution of use, the amount payable, and fix a date by which such payment shall be made.

(3) On the determination of the development charge leviable on any land or building under sub-section (2), the authority shall give to the person liable to pay such charge a notice in writing of the amount of development charge payable by him and the date by which such payment shall be made and such notice shall also state that in the event of failure to make such payment on or before such date interest at the rate of six percent. per annum shall be payable from such date on the amount remaining unpaid.

(4) (a) The development charges payable in respect of any land or building shall be a first charge on such land or building, subject to the prior payment of land revenue, if any, due to the State Government thereon and any other sum due to the appropriate authority.

(b) All development charges payable in respect of any land or building by any person shall, together with interest due upto the date of realisation, be recoverable from such person or his successor-in-interest in such land or building as arrears of land revenue.

102. Constitution Of Tribunals :-

(1) The State Government may constitute as many Tribunals and for such areas as it may consider necessary for hearing appeals against the orders of an appropriate authority relating to the levy or assessment of development charges under this Chapter, and no civil court shall have jurisdiction to decide such disputes.

(2) The Tribunal shall consist of one person only who shall be a Judicial Officer not below the rank of a Civil Judge (Junior Division).

(3) The Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the hearing of an appeal.

103. Appeal And Revision :-

(1) Any person aggrieved by an order passed by an appropriate authority under section 101 may, within a period of two months from the date on which the order was communicated to him in the manner prescribed, appeal against such order to the Tribunal:

Provided that the Tribunal may admit an appeal preferred after the expiration of the said period if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) The appeal shall be made and verified in the prescribed manner and shall be accompanied by such fee not exceeding two hundred and fifty rupees as may be prescribed.

(3) In disposing of an appeal, the Tribunal may, after giving the appellant an opportunity of making his representation and also hearing the appropriate authority whose order is appealed against,-

(a) in the case of an order or decision of assessment of development charges,-

(i) confirm, reduce, enhance, or annul such assessment;

(ii) set aside such assessment and direct the authority to make a fresh assessment after such further inquiry as may be directed; or

(iii) pass such order as it may think fit, or

(b) in the case of any other order or decision, confirm, cancel or vary such order or decision.

(4) The decision of the Tribunal shall be final and binding on all the parties to such appeal.

(5) Notwithstanding that an appeal has been preferred under subsection (1) the payment of development charges in accordance with the order or decision of assessment against which the appeal has been preferred shall not be stayed:

Provided that the Tribunal may, in its discretion, give such directions as it thinks fit in regard to the payment of the development charges before the disposal of the appeal if the appellant furnishes sufficient security to its satisfaction for such payment, in such form and in such manner as may be prescribed.

(6) Any order passed by the Tribunal under the provisions of this Chapter shall be enforced by such authority and in such manner as may be prescribed.

CHAPTER 8 Miscellaneous

104. Power Of State Government To Appoint Its Employees To Any Office Or Post Under Appropriate Authority :-

It shall be lawful for the State Government, if it considers it necessary to do so, to appoint any employee of the State Government to any office or post under an appropriate authority and upon such terms and conditions as the State Government may fix.

105. Bar Of Legal Proceedings :-

No suit, prosecution or other legal proceeding shall lie against the State Government, the appropriate authority or any public servant or person duly appointed or authorised under this Act, in respect of anythings in good faith done or purporting to be done under the provisions of this Act or any rules or regulations made thereunder.

106. Registration Of Document, Plans Or Maps In Connection With Town Planning Scheme Not Required :-

(1) Nothing in the Registration Act, 1908 (16 of 1908) shall be deemed to require the registration of any document, plan or map prepared, made or sanctioned in connection with a scheme which has come into force.

(2) All such documents, plans and maps shall, for the purposes of sections 48 and 49 of the Registration Act, 1908 (16 of 1908) be deemed to have been registered in accordance with the provisions of that Act:

Provided that documents, plans and maps relating to the sanctioned scheme shall be accessable to the public in the manner prescribed.

107. Compulsory Acquisition Of Land Needed For Purpose Of Town Planning Scheme Or Development Plan :-

Land needed for the purposes of a town planning scheme or development plan shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (I of 1894).

108. Vesting Of Property And Right Of Appropriate Authority Ceasing To Exit Or Ceasing To Have Jurisdiction :-

Where any appropriate authority ceases to exist or ceases to have

jurisdiction over any area included in a development plan or town planning scheme, the property and rights vested in such appropriate authority under this Act shall, subject to all charges and liabilities affecting the same, vest in such other appropriate authority or authorities as the State Government may, with the consent of such authority or authorities, by notification, direct; and such appropriate authority or each one of such appropriate authorities shall have all the power under this Act in respect of such plans, schemes or such part of a plan or scheme as comes within its jurisdiction which the appropriate authority ceasing to exist or ceasing to have jurisdiction had.

109. State Government Or Person Appointed By It May Exercise Powers, Perform Duty Conferred Or Imposed On Appropriate Authority And Disbursement Of Expenses In Certain Circumstances :-

(1) If in the opinion of the State Government any appropriate authority is not competent to exercise or perform, or neglects or fails to exercise or perform, any power conferred or duty imposed upon it under any of the provisions of this Act, the State Government or a person or persons appointed in this behalf by the State Government may exercise such power or perform such duty.

(2) Any expenses incurred by the State Government or by such person or persons in exercising such power or performing such duty shall be paid out of the fund of the appropriate authority and the State Government may make an order directing any person who for the time being has custody of any such funds to pay such expenses from such fund and such person shall be bound to comply with such order.

110. Special Provision In Case Of Dissolution Or Supersession Of Local Authority :-

Where a local authority designated as an area development authority under this Act is dissolved or superseded under any of the provisions of the Act under which it was constituted,

(a) the person appointed under such Act to exercise the powers and perform the functions of the local authority shall be deemed to be the development authority under this Act, and he may exercise all the powers and perform all the duties of an area development authority under this Act during the period of his appointment;

(b) in the event of the person appointed as aforesaid exercising the

powers and performing the duties of an area development authority under this Act, any properties which, under the provisions of this Act, vest in the local authority as an area development authority shall, during the period of the dissolution or supersession of the local authority, vest in the State Government and such property shall, at the expiry of the said period vest in such authority as the State Government may, by notification, direct.

111. Power Of Entry :-

(1) The Chief Town Planner or any officer authorised by him, any officer of an appropriate authority, the Town Planning Officer or any person authorised by the State Government, an appropriate authority, or the Town Planning Officer, may for the purpose of preparation of a plan or scheme under this Act, enter into or upon any land or building with or without assistance or workmen for-

- (a) Taking any measurement or survey or taking levels of such land or building;
- (b) setting out and marking boundaries and intended line of development;
- (c) marking such levels, boundaries and lines by placing marks and cutting trenches;
- (d) examining works under construction and ascertaining the course of sewers and drains;
- (e) ascertaining whether any land is being or has been developed in contravention of any provision of this Act or rules or regulations thereunder:

Provided that-

- (i) in the case of any building used as a dwelling house, or upon any enclosed part of garden attached to such a building, no such entry shall be made except between the hours of sunrise and sunset or without giving its occupier atleast 24 hours notice in writing of the intention to enter;
- (ii) sufficient opportunity Shall in every instance be given to enable women, if any, to withdraw from such land or building;
- (iii) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the land or building entered.

(2) Any person who obstructs the entry of a person empowered or authorised under this section to enter into or upon any land or building or molests such person after such entry shall, on

conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

112. Services Of Notice, Etc :-

(1) All documents including notices and orders required by this Act or any rule or regulation made thereunder to be served upon any person shall, save as otherwise provided in this Act or rule or regulation, be deemed to be duly served,-

(a) where the document is to be served on a Government department, railway, local authority, statutory authority, company, corporation, society or other body, if the document is addressed to the head of the Government department, General Manager of the railway, secretary or principal officer of the local authority, statutory authority, company, corporation, society or other body at its principal or branch office, or the local or registered office, "as the case may be, and is either-

(i) sent by registered post to such office, or

(ii) delivered at such office;

(b) where the person to be served is a partnership, if the document is addressed to the partnership at its principal place of business, identifying it by the name or style under which its business is carried on and is either-

(i) sent by registered post to such place of business, or

(ii) delivered at the said place of business; and

(c) in any other case, if the document is addressed to the person to be served and-

(i) is given or tendered to him, or

(ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business, or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates, or

(iii) is sent by registered post to that person.

(2) Any document which is required or authorised to be served on the owner or occupier of any land or building may be addressed to the owner or occupier, as the case may be, of that land or building (naming or describing that land or building) without any further name or description and shall be deemed to be duly served-

(a) if the document so addressed is sent or delivered in accordance with clause (c) of sub-section (1), or

(b) if the document so addressed or a copy thereof so addressed is

delivered to some person on the land or building.

(3) Where a document is served on a partnership in accordance with this section, the document shall be deemed to be served on each partner.

(4) For the purpose of enabling any document to be served on the owner of any property, the appropriate authority or the Town Planning Officer may by notice in writing require the occupier (if any) of the property to state the name and address of the owner thereof.

(5) Where the person on whom a document is to be served is a minor, then service upon his guardian or any adult member of his family shall be deemed to be service upon the minor.

113. Public Notice How To Be Made Known :-

Every public notice given under this Act or rules or regulations made thereunder shall be in writing and shall be widely made known in the locality to be affected thereby by affixing copies thereof in conspicuous public places within the said locality and by advertisement in one or more local newspapers.

114. Notices Etc. To Fix Reasonable Time :-

Where any notice, order or other document issued or made under this Act or any rule or regulation made thereunder requires anything to be done for the doing of which no time is fixed in this Act or rule or regulation made thereunder, the notice, order or other document shall specify a reasonable time for doing the same.

115. Offences By Companies :-

(1) If the person committing an offence under this Act is a company every person, who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where

an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance, of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:- For the purposes of this section-

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director" in relation to a firm means a partner in the firm.

116. Members And Officers Of Appropriate Authority To Be Public Servants :-

Every member and every officer and other employees of the appropriate authority shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

117. Effect Of Other Laws :-

Notwithstanding anything contained in any other law for the time being in force-

1.

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

Footnote:-

1. Clause (a) was deleted by Guj. 2 of 1999, section 21.

118. Power To Make Rules :-

(1) The State Government may, by notification, and subject to previous publication, make rules consistent with the provisions of this Act to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the State Government may make rules for all or any of the following matters, namely:-

(i) the manner of declaration of a development area under sub-section (1) of section 3;

(ii) the term of office and conditions of service of the members of

an area development authority under sub-section (5) of section 5;

(iii) the manner in which the draft development plan is to be prepared and submitted to the State Government by the authorised officer under sub-section (2) of section 9;

(iv) the distinguishing colours to be used in the draft development plan under section 11;

(v) the manner of publication of, and the manner in which notice for inviting suggestions or modifications to, the draft development plan under section 13;

(vi) the manner in which a notice for inviting suggestions or objections to modifications in the draft development plan shall be published under section 15 or under the proviso to sub-clause (ii) of clause (a) of sub-section (1) of section 17;

(vii) the period within which the draft development plan and the regulations shall be sanctioned under sub-clause (i) of clause (a) of sub-section (1) of section 17;

(viii) the term of office and conditions of service of the members of an urban development authority under sub-section (5) of section 22, read with sub-section (5) of section 5;

(ix) the form in which, the particulars to be contained and the documents to be accompanied in an application to be made for permission for development under section 27;

(x) the form of the permission to be granted under section 29,

(xi) the manner of making inquiry under sub-section (5) of section 29;

(xii) the time and the manner in which compensation shall be claimed under sub-section (2) of section 33;

(xiii) the time within which the owner is to give notice of refusal to accept the compensation under sub-section (3) of section 33;

(xiv) the particulars to be submitted along with the lay-out plan for the sub-division of a plot or the making or laying out of a private street on such plot under sub-section (1) of section 34;

(xv) the period within which the appropriate authority shall sanction or refuse to sanction the plan under sub-section (2) of section 34;

(xvi) the manner of making inquiry under sub-section (4) of section 34;

(xvii) the manner of making an application for withdrawal of notice under sub-section (3) of section 36;

(xviii) the document and plans to be accompanied with the intimation for carrying out any development work by Government under sub-section (1) of section 39;

(xix) the manner of publication of declaration of intention to make a scheme under sub-section (2) of section 41;

(xx) the manner of publication of a draft scheme under sub-section (1) of section 43;

(xxi) the manner in which and the method by which, compensation shall be payable under sub-section (3) of section 45;

(xxii) the form of permission to be granted by the appropriate authority under clause (a) of sub-section (1) of section 49;

(xxiii) the manner of inquiry for unauthorised development under clause (d) of sub-section (1) of section 49;

(xxiv) the qualification for the appointment of a Town Planning Officer under sub-section (1) of section 50;

(xxv) the procedure to be followed by the Town Planning Officer for sub-dividing the town planning scheme under section 51;

(xxvi) the manner and the form of notice to be served by the Town Planning Officer under sub-section (1) of section 52;

(xxvii) the manner and the form of notice to be given by the town Planning Officer under clause (i) of sub-section (1), or under clause (x) of sub-section (3) of section 52;

(xxviii) the form in which the preliminary and the final scheme shall be drawn under clause (xi) of sub-section (3) of section 52;

(xxix) the form in which the decision of the Town Planning Officer shall be communicated to the party concerned under section 54;

(xxx)¹[the terms of appointment and conditions of service of president; and the qualifications] and experience for the assessors of the Board of Appeal under sub-section (1) of section 55;

(xxxi) the procedure for summary eviction of a person under section 68;

(xxxii) the form of the notice to be given under sub-section (1) of section 69;

(xxxiii) the manner of publication of the draft variation of a scheme under sub-section (2) of section 70;

(xxxiv) the manner of publication of the draft amendment to regulations under clause (a) of section 72;

(xxxv) the time within which any claim is to be made by the owner of any property or right injuriously affected by the making of a town planning scheme under section 82;

(xxxvi) the period for payment of excess amount by the owner under sub-section (2) of section 85;

(xxxvii) the sums of money to be kept in current account by an appropriate authority under sub-section (3) of section 91;

(xxxviii) the form of, and time at which, budget shall be prepared

by an appropriate authority and the number of copies thereof to be forwarded to the State Government under section 94;

(xxxix) the form of the annual statement of accounts including the balance sheet of an appropriate authority under sub-section (1) of section 95;

(xi) the form of the annual report of an appropriate authority and the date before which it shall be submitted to the State Government under sub-section (1) of section 96;

(xii) the manner in which documents, plans and maps relating to a sanctioned scheme shall be accessible to the public, under the proviso to sub-section (2) of section 106;

(xiii) any other matter which is to be, or may be prescribed.

(3) All rules made under this Act shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the Legislature or to such modification as the Legislature may make during the session in which they are so laid or the session immediately following.

(4) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

Footnote:-

1. These words were substituted for the words "the qualifications" by Guj. 2 of 1999, section 22.

119. Power To Make Regulations :-

(1) An appropriate authority may, with the previous approval of the State Government make regulations consistent with this act and the rules made hereunder, to carry out the purposes of the development plan and of the town planning scheme and for regulating its procedure and conduct of business.

(2) In particular, and without prejudice to the generality of the foregoing power such authority may make-

(a) regulations subject to which it shall exercise its powers and perform its functions under this Act;

(b) regulations providing for the delegation of its powers and functions to its Chairman. Vice-Chairman, member-secretary or any of its officers;

(c) regulations for regulating its procedure and the conduct of its business at its meeting;

1[(c-i) regulations prescribing fees to be levied and collected under

clause (iv-a) of sub-section(1) of section 7;]

2[(c-ii) regulations prescribing fees to be levied and collected under clause (vii-a) of sub-section (1) of section 7;]

3[(c-iii) regulations prescribing fees to be levied and collected under clause, (v-a) of sub-section (1) of section 23;]

4[(c-iv) regulations prescribing fees to be levied and collected under clause (vi-a) of sub-section (1) of section 23;]

5[(c-v) regulations prescribing scrutiny fees under section 27 or, as the case may be, sub-section (1) of section 28;]

(d) regulations prescribing the manner in which its order under sub-section (1) of section 29 shall be communicated to the applicant seeking permission under that section;

(e) regulations prescribing the time within which and the manner in which a purchase notice shall be served on the appropriate authority under sub-section (1) of section 31;

6[(e-i) regulations prescribing scrutiny fees under sub-section (1) of section 34 or, as the case may be, clause (a) of sub-section (1) of section 49;]

(f) regulations providing for any other matter which has to be or may be prescribed by regulations.

Footnotes:-

1. Clause (ci) was inserted and shall be deemed always to have been inserted by Guj. 3 of 1995, section 12 (1).

2. Clauses (cii) was inserted, by Guj. 3 of 1995, section 12 (2).

3. Clauses (ciii) was inserted and shall be deemed always to have been inserted, by Guj. 3 of 1995, section 12 (3).

4. Clause (c-iv) was inserted, by Guj. 3 of 1995, section 12 (4).

5. Clause (c-v) was inserted and shall be deemed always to have been inserted, by Guj. 3 of 1995, section 12 (5).

6. Clause (e-i) was inserted and shall be deemed always to have been inserted, by Guj. 3 of 1995, section 12 (6).

120. Dissolution Of Appropriate Authority :-

(1) Where the State Government is satisfied that the purpose for which any appropriate authority was established under this Act has been substantially achieved so as to render the continued existence of the authority in the opinion of the State Government unnecessary, the State Government may, by notification, declare that such authority shall be dissolved with effect from such date as may be specified in the notification and such authority shall be deemed to be dissolved accordingly.

(2) With effect on and from the date specified in the notification under sub-section (1)-

(a) all properties, funds and dues which are vested, or realisable by the appropriate authority shall vest in, or be realisable by, the State Government;

(b) all liabilities which are enforceable against such authority shall be enforceable against the State Government; and

(c) for the purposes of carrying out any development in any area which has not been fully carried out by the authority before its dissolution and for the purpose of releasing properties, funds and dues referred to in clause (a), the functions of such authority shall be discharged by the State Government.

121. Deleted :-

[Provision of Tenancy Acts not to apply to areas under town planning schemes.] Deleted by Guj. 4 of 1986, s.5.

122. Control By State Government :-

(1) Every appropriate authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act. (2) If in, or in connection with, the exercise of its powers and discharge of its functions by any appropriate authority under this Act any dispute arises between the authority and the State Government, the decision of the State Government on such disputes shall be final.

123. No Town Planning Scheme Or Development Plan For Area For Which Housing, Schemes Is Sanctioned Under Housing Board Act :-

Notwithstanding anything contained in this Act, no development plan or town planning scheme shall be made for any area for which a housing scheme has been sanctioned under the provisions of the Gujarat Housing Board Act, 1961 (Guj. XXVIII of 1961).

124. Repeal And Saving :-

(1) The Bombay Town Planning Act, 1954 (Bom. XXVII of 1955), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken (including any declaration of intention to make a development plan of town planning scheme, any draft development plan or draft town

planning scheme published by a local authority, any application made to the State Government for the sanction of any draft development plan or draft town planning scheme, any sanction given by the State Government to the draft development plan or draft town planning scheme or any part thereof any restriction imposed on any person against carrying out any development work in any building or in or over any land or upon an owner of land or building against the erection or re-erection of any building or work, any commencement certificate granted, any order or suspension of rule, bye law, regulation, notification, or order made, any purchase notice served on a local authority, any interest of an owner compulsorily acquired or deemed to have been acquired by it in pursuance of such purchase notice, any revision of development plan, any appointment made of Town Planning officer, any proceeding pending before, and any decision of, a Town Planning Officer, or a Board of Appeal, any final scheme forwarded to, or sanctioned, varied or withdrawn by, the State Government, any delivery of possession enforced, any eviction summarily made, any notice severed, any action taken to enforce a scheme, any costs of scheme calculated and any payment made to local authorities by owners of plots included in a scheme, any recoveries made or to be made or compensation awarded or to be awarded in respect of any plot, any rules or regulations made, under the repealed Act) shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act, and the provisions of this Act shall have effect in relation thereto.

(3) All proceeding pending before a Town Planning Officer or a Board of Appeal under the Act hereby repealed on the date of commencement of this Act shall be disposed of by the Town Planning Officer or the Board of Appeal, as the case may be, appoint or constituted under this Act in accordance with the provisions of this Act.

(4) The mention of particular matters in sub-section (2) shall not affect the general application to the repeal of the said Act of section 7 of the Bombay General Clause Act, 1904 (Bom. I of 1904) (which relates to the effect of repeal).