

# Island Ordinance Spatial Development Saba 2010

*Geldend van 10-10-2010 t/m heden*

## Intitulé

Island Ordinance Spatial Development Saba 2010

## Chapter I Definitions

### Article 1

- 1.

This island ordinance means by:

- *Federal ordinance*: the federal ordinance Foundations for Spatial Development Planning (P.B. 1976, no. 195);

- *Development plan*: a plan which indicates the development to be pursued in the long term, of the area included therein;

- *Structure*: every construction of wood, stone, metal or other material, which is, directly or indirectly joined to the ground, or either directly or indirectly is supported in or on the ground;

- *Building*: any structure forming a covered area, accessible for people, completely or partly surrounded by walls;

- *Construction*: the erection, completion or partial renovation of buildings or other structures;

- *Demolishing*: the tearing down of a structure or of a part thereof;

- *Administration building*: the office of the Island Government, in The Bottom;

- *Stake holder*: Interested party; *Sub-dividing*: the splitting up of premises, which is in the hands of one owner, into two or more lots for building purposes.

- 2.

For the purpose of this ordinance under “ground” is also understood the coves, waters and bays within the coastline.

## Chapter II Development plans

## **Article 2**

The Executive Council is to institute a study, as regards the existing situation and as regards the possible and advisable development of the island territory, for a good spatial development of the Island Territory and with a view to the finalizing of development plans

## **Article 3**

A development plan is established by island ordinance and comprises:

- a.  
  
a recapitulating program along broad lines, in which the points of departure of the plan are expounded;
- b.  
  
one or more maps ( drawings, in which the points of departure of the plan have been elaborated upon by designation of use ( zones);
- c.  
  
use regulations as meant in chapter III.
- d.  
  
an explanation, in which a report is also made of the study which forms the basis of the plan.
- e.  
  
keeping in mind natural elements

## **Article 4**

- 1.  
  
Before a development plan is established, a draft development plan is placed for public review, the Executive Council holds a public hearing at a place to be determined by the latter, at which the preliminary design is presented and those present are given the opportunity to voice their opinion about the preliminary design. The Executive Council may be assisted by experts in the field.
- 2.  
  
Place and time of the hearing are announced in advance in one or more local newspapers and further in the manner customary for publication of official announcements, in the Dutch and English language.

## **Article 5**

- 1.

A draft development plan is placed for public review for a period of thirty days for any one, at the administration office.

- 2.

Placement for public review is announced in the manner indicated in article 4, second paragraph. Further stakeholders of the publication and placement for public review of the draft development plan are informed in person.

- 3.

With regard to the stakeholders, who have no known address or actual residence on Saba, while their address outside of Saba is unknown, as well as with regard to possible unknown stakeholders, the information of the announcement and the placement for public review of the draft development plan is affixed to the main entrance of the court building at the Administration Building located in The Bottom. A copy of this is given to the assistant Public Prosecutor on Saba, who endorses the original.

- 4.

The publication contains notification of the power to submit objections.

- 5.

Anyone may submit a written objection, within the term mentioned in the first paragraph, at the Island Council, with a copy to the Executive Council.

- 6.

As regards the objections as meant in the previous paragraph, the Executive Council asks for advice from a committee of Experts to be appointed to his end. Task and composition of this Committee are regulated further by Island Resolution containing general measures.

- 7.

The Executive Council sends the incoming objections immediately after receipt to the Committee meant in the previous paragraph.

- 8.

The Committee advises the Executive Council within sixty days after the expiration of the term mentioned in the first paragraph.

## **Article 6**

- 1.

If no objection has been submitted, the Island Council decides within two months after the expiration of the term mentioned in article 5, first paragraph, with regard to the establishment of the draft development plan. If, in accordance with article 5, fourth paragraph, an objection has been submitted, this term may be extended by two months.

- 2.

If at the point of ratification of the development plan, a deviation is made from the draft or from the advice as meant in article 5, eighth paragraph, reasons shall be given for the decision of the Island Council.

#### **Article 7**

- 1.

After the establishment, the development plan shall be placed for public review at the Government Building, for thirty days for all.

- 2.

Placement for public review is announced in the manner as indicated in article 4, second paragraph.

- 3.

Those persons who submitted objections to the Island Council on a timely basis, as well as those who have objections to changes in the development plan, which the Island Council made upon establishment, may institute an appeal in writing at the Governor, ultimately within six weeks after the term of public review has expired.

#### **Article 8**

If circumstances require such and at least once in five years, the development plan is revised. Articles 2 through 7 are applicable accordingly to such a revision.

### **Chapter III Zoning regulations**

#### **Article 9**

- 1.

In a development plan, in the interest of good spatial and sustainable development, zoning regulations are included.

- 2.

The zoning regulations may contain restrictions with regard to building, the execution of other work or activities in, on or above the ground included therein and the use of that ground and the buildings thereon.

## **Article 10**

- 1.

The zoning regulations may contain detailed as well as global instructions with regard to the spatial design of the planning area;

- 2.

The zoning regulations may determine, that taking into consideration the rules set in those regulations:

- a.

the Executive Council can elaborate on the zoning (global zoning);

- b.

the Executive Council can modify the zoning within certain boundaries.

## **Article 11**

To the extent the zoning regulations are not in accordance with the provisions of the Building- and Inspection ordinance 1935, these provisions remain not applicable.

# **Chapter IV Civil Works**

## **Article 12**

- 1.

The zoning regulations may contain provisions to the effect that it is prohibited to execute certain works, not being structures or activities, within an area indicated in the plan, without or in deviation of a written permit from the Executive Council (civil works permit). There may be conditions attached to such a permit.

- 2.

The works and activities meant in the first paragraph may concern, among other:

- a.

leveling, raising, surfacing or blasting of the ground;

- b.

construction of roads and other property surfacing;

- c.

installing aboveground or underground structures, installations or equipment;

- d.

works and activities which could influence the water management and the groundwater level;

- e.

installation of wharves or berthing places;

- f.

the clearing of trees or other growth;

- g.

planting of the grounds;

- h.

the demolishing of structures;

- i.

the running off of water.

- j.

Impact on terrestrial or marine biodiversity

- 3.

The application for a civil works permit is submitted in writing to the Executive Council. The applicant is obliged to provide all information and to submit all documents which are necessary to evaluate the request. The Executive Council takes a decision within sixty days after receipt of the request. This decision is made known to the applicant in writing.

- 4.

The civil works permit may only and must be refused if the work or the activity is in conflict with the zoning regulations.

- 5.

The Executive Council puts off the decision, if there are no grounds to reject the permit and for the area, in which the work or the activity shall be executed, before the application has been submitted, a preparatory decision as meant in article 16 has been

taken or a draft-development plan or a draft revision of an established development plan has been placed for public review.

- 6.

If there are no grounds to reject the permit and the work or the activities are in accordance with development plan being prepared or its revision, the Executive Council, in deviation of the fifth paragraph, may decide to grant the civil works permit.

- 7.

The postponement ends at the time that the preparatory decision has expired or the term mentioned in article 6, first paragraph has been exceeded or the (revised) development plan has been established by the Island Council.

- 8.

The applicant may institute an appeal at the Executive Council against the decision to grant a conditional permit, to reject the permit or to postpone the decision on the permit application, within six weeks after the date on which the copy of the decision was sent. The applicant has equal authority, if the Executive Council has not decided within the term stated in the third paragraph or if the permit is withdrawn.

- 9.

As regards the appeal as meant in the previous paragraph, the Executive Council asks for advice from the committee meant in article 5, sixth paragraph. Article 5, seventh paragraph is applicable accordingly. The committee gives advice ultimately within thirty days after the date on which the term of appeal has passed.

- 10.

The Executive Council will place the advice mentioned in paragraph 9 for public review within fourteen days at the administration building. The period of public review is fourteen days.

- 11.

Within fourteen days after the period of public review mentioned in paragraph 9, the person who made the appeal and other known stakeholders shall be invited to a hearing by and before the Executive Council

- 12.

The Executive Council decides on the appeal within four months after the appeal has been submitted or ultimately four months after the date on which the term of appeal has passed. This period may be extended once with a period of thirty days. If deviated from the advice as meant in paragraph 10, the decision of the Executive Council shall be motivated.

- 13.

The civil works permit may be withdrawn:

- a.  
if the civil works permit was granted on the basis of incorrect or incomplete information and documents given by the applicant;
- b.  
if the works or activities have not been started within 6 months according to point 1 of article 15 of the Building and Housing ordinance 1999;
- c.  
if one is acting in conflict with the conditions under which the permit was granted.

## **Chapter V Use**

### **Article 13**

The zoning regulations may determine that it is prohibited to use structures and undeveloped grounds, to have these used or to allow them to be used in a manner or for a purpose in conflict with the purpose given to the ground.

## **Chapter VI Exemption and supplementary requirements**

### **Article 14**

- 1.  
If the zoning regulations contain the prohibition meant in article 13, the Executive Council is obliged to grant exemption of this prohibition, if there are no urgent reasons to limit the most effective use, upon a request to this end.
- 2.  
The zoning regulations may determine that the Executive Council is authorized to grant exemption upon a request to this end, of provisions indicated to this end in the zoning regulations, taking into consideration the rules to be set in those regulations.
- 3.  
Articles 12, third and eighth through thirteenth paragraphs are applicable accordingly.

### **Article 15**



- 1.

The zoning regulations may determine that the Executive Council can set further requirements as regards the topics described in those regulations.

- 2.

The decision to set further requirements is done in writing and motivated.

- 3.

Interested parties may institute an appeal against the decision at the Island Council, within six weeks after the date on which the copy of the decision was sent.

- 4.

As regards the appeal as meant in the previous paragraph, the Island Council asks for advice from the committee meant in article 5, sixth paragraph. Article 5, seventh paragraph is applicable accordingly. The committee gives advice ultimately within thirty days after the date on which the term of appeal has passed.

- 5.

The Island Council decides on the appeal within four months after the appeal has been submitted or ultimately four months after the date on which the term of appeal has passed. This period may be extended once with a period of thirty days. If deviated from the advice as meant in paragraph 4, the decision of the Island Council shall be motivated.

## **Chapter VII Preparatory decisions**

### **Article 16**

- 1.

The Executive Council can explain that a development plan is being prepared (preparatory decision).

- 2.

The Island Council is informed of the preparatory decision, after its establishment, within two weeks.

- 3.

In the preparatory decision, is determined for which area it is in effect and its implementation date.

- 4.

In the preparatory decision regulations may be given with regard to the building, the execution of other works or activities, in, on or above the ground included therein, as well as with regard to the use of that ground and the buildings thereon. These regulations are only set to the extent this is necessary to prevent an area from becoming less suitable for the realization of a purpose to be given with the plan.

- 5.

The preparatory decision is announced in the manner indicated in article 4, second paragraph and is placed for public review at the administration building for thirty days, for anyone.

- 6.

The preparatory decision expires if within 18 months after the date of its implementation, the draft development plan has not been placed for public review. The Executive Council may extend the preparatory decision by at the most one extension of 6 months. The second and the fifth paragraph are applicable accordingly to such an extension.

## **Chapter VIII Transitional provision in zoning regulations**

### **Article 17**

- 1.

The zoning regulations contain provisions with regard to the preservation of existing structures and the continuation of the existing use of the ground and the structures, in accordance with the situation at the time of placement for public review of the preparatory decision or of the draft development plan.

- 2.

The zoning regulations give guarantees with regard to partial renovation or change of existing structures or, if these are destroyed by a calamity, total renovation of those structures, provided that deviation from the zoning regulations is not increased and the permit for reconstruction of the structure destroyed by the calamity is requested within a period of three years.

- 3.

For the application of this article, by other existing structures are also understood structures which were under construction at the point in time mentioned in the first paragraph, based on a valid building permit.

## **Chapter IX Damages**

### **Article 18**

- 1.

If a stakeholder, as a result of the zoning regulations, suffers or shall suffer damages, which can reasonably not be for his account or not entirely for his account, upon his request he shall be allotted damage compensation, to be determined by the judge in fairness, from the island treasury. For the application of this article paragraph, is not included in the zoning regulations;

- a.

the order of the realization of the development plan;

- b.

the lay-out of the road network or the sub-division of lots;

- c.

the number, the placement, the measurements or the appearance of the buildings to be erected.

- 2.

Such a request must be submitted in writing to the Island Council, with a copy to the Executive Council. It mentions, to the extent possible, the nature and extent of the damage. The Island Council may ask for an advice as mentioned in paragraph 4.

- 3.

The stakeholder may institute an appeal at the Island Council against the decision to deny partly or in full the request mentioned in paragraph 2, within six weeks after the date on which the copy of the decision was sent. The stakeholders has equal authority, if the Island Council has not decided within the term stated in the third paragraph or if the permit is withdrawn.

- 4.

As regards the decision as meant in the previous paragraph, the Island Council asks for advice from the committee meant in article 5, sixth paragraph. Article 5, seventh paragraph is applicable accordingly. The committee gives advice ultimately within thirty days after the date on which the term of appeal has passed.

- 5.

The Island Council will place the advice mentioned in paragraph 4 for public review within fourteen days at the administration building. The period of public review is fourteen days.

- 6.

Within fourteen days after the period of public review mentioned in paragraph 5, the person who made the appeal and other known stakeholders shall be invited to a hearing by and before the Island Council

- 7.

The Island Council decides on the appeal within four months after the appeal has been submitted or ultimately four months after the date on which the term of appeal has passed. This period may be extended once with a period of thirty days. If deviated from the advice as meant in paragraph 5, the decision of the Island Council shall be motivated.

## **Chapter X Compulsory- and penal provisions**

### **Article 19**

- 1.

The Executive council is authorized to have removed, prevented or performed or returned to the previous condition all that is in conflict with that which is held, made or stated, undertaken, left out, damaged or removed, for the account of the violator, by or by virtue of this island ordinance.

- 2.

Except in urgent cases, the Executive Council will not make use of this authority, until such time as the stakeholder has been warned in writing and he has been given the opportunity to bring the situation in line with that determined by or by virtue of this island ordinance, within a term of at the most sixty days.

### **Article 20**

- 1.

Violation of the zoning regulations, of the regulations for a preparatory decision as well as the provision in article 22, first paragraph, is punished with imprisonment of at the most two months or with a monetary fine of at the most five thousand guilders.

- 2.

If at the time of the violation, a year has not yet passed since a prior conviction of the guilty party because of a similar violation, has become irrevocable, imprisonment or a monetary fine up to double the amount of the maximum stated in the first paragraph may be imposed.

- 3.

The punishable acts meant in this article are considered as criminal acts.

- 4.

The Executive Council proposes the civil servants of the Island Territory Saba, who shall be charged with the supervision of the compliance of this island ordinance, to the Governor, so that, in accordance with article 185 of the Code of Criminal Procedure.

## **Chapter XI Allotment plans**

### **Article 21**

For a period of at the most five years after the implementation of the island ordinance, spatial development planning Saba, for areas for which no preparatory decision as meant in article 16 has been taken, or no draft development plan has been placed for public review or a development plan has been established, a transitional arrangement for the sub-dividing of land in accordance with the provision in articles 22 through 28, shall be in effect.

### **Article 22**

- 1.

The sub-dividing of land may solely be done in accordance with a allotment plan approved by the Executive Council.

- 2.

Before being able to proceed with the building of land with two or more buildings, sub-division is compulsory.

- 3.

The Executive Council is authorized, in special cases, to grant exemption of the provision in the second paragraph. Conditions may be attached to such an exemption in the interest of a proper spatial development.

### **Article 23**

- 1.

The allotment plan must in any case, present an elaborated upon image in one or more maps, at the most suitable scale, as well as in a elucidatory description, of:

- a.

the boundary;

- b.

the geographical condition;

- c.

the sub-division;

- d.

the building;

- e.

the façade alignment

- f.

the roads;

- g.

the pipes or as the case may be the pipe strips;

- h.

the facilities for the water management in the broadest sense;

- i.

the utilities.

- j.

Parking

- k.

Intended purpose of building use.

- 2.

At the discussion of the draft-allotment plan, the Executive Council takes into account the development to be expected on the surrounding land.

- 3.

The draft allotment plan must be submitted in writing, by the owner or his representative, at the Executive Council.

- 4.

The draft allotment plan lies at the Administration Building for public review for thirty days, for all.

- 5.

Placement for public review is made known in the manner indicated in article 4, second paragraph.

- 6.

Stakeholders may submit an objection in writing, against the draft allotment plan to the Executive Council within the term of six weeks, mentioned in the fourth paragraph.

#### **Article 24**

- 1.

The Executive Council decides within four months after the draft allotment plan has been submitted. It may postpone the decision once for at the most thirty days.

- 2.

If the Executive Council has not taken a decision within the term mentioned in the previous paragraph, with regard to the approval of the draft allotment plan, the approval must be considered to have been withheld.

#### **Article 25**

The Executive Council, in any event, withholds its approval from the draft allotment plan, if:

- a.

the premises to be sub-divided, because of its natural condition or because of its form or measurements are unsuitable for the intended construction, also taking into consideration the interest of a proper spatial development of the area in question and the surrounding area.

- b.

The intended construction, from the point of view of the general interest, would cause serious difficulty due to insufficient connection with the existing construction or due to the lack of the necessary public facilities, while no reasonable provision has been made for the short term or which can only be made at disproportionately high costs.

#### **Article 26**

- 1.

The Executive Council is authorized to demand the necessary supplements and changes to the draft-allotment plan and to attach conditions to the approval, in the interest of a proper spatial development. In the event these supplements and changes are not made, the Executive Council may withhold its approval from the draft allotment plan.

- 2.

If the allotment plan provides for the construction of one or more new roads or for the widening of one or more existing roads, the approval is only granted if the irrevocable guarantee has been given that:

- a.

the land allocated for these roads either is granted in usufruct under the conditions set forth in paragraph 3 of this article, or, if for whatever reason usufruct is not established, the land allocated for these roads is transferred in ownership without consideration to the island territory. In the allotment plan it may be determined that right of usufruct will be established or the transfer is done, immediately after the road(s) has (have) been constructed, in accordance with requirements to be set by the Island Territory.

- b.

in the case the allotment plan is consecutive and/or, profiting from the road(s) mentioned under a., the allotment plan contains a reasonable contribution to those road(s).

- 3.

The usufruct as mentioned in paragraph 2 of this article is granted under the following, but not limited to these, conditions:

- a.

the usufruct shall be granted and established without consideration or monetary compensation;

- b.

the usufruct shall be renewed every, and within each, thirty years by the owner of the property or its successive owners, by granting the usufruct under the same conditions to the Island Territory or its legal successors, unless deemed necessary otherwise by the Executive Council;

- c.

the usufruct shall be registered in the public register upon establishment;

- d.

the usufruct shall prevail over any other exclusive rights, mortgage or pledge; and,

- e.

any other condition that the Executive Council deems necessary.



- 4.

Non compliance with, or violation of one or more of each the conditions under paragraph 3 of this article will lead to the immediate transfer of ownership of that property by law to the Island Territory.

- 5.

The Executive Council may grant exemption of the provision in the second paragraph in special circumstances.

- 6.

To the extent, in an approved allotment plan, provisions with regard to façade building lines have been included, which are not in agreement with the provisions with regard to the façade building lines in the Building and Housing Ordinance 1999.

## **Article 27**

- 1.

The approval of the allotment plan is done by island resolution, containing general measures. If no objection has been submitted against the plan, in accordance with article 23, sixth paragraph, reasons shall be given for the approval.

- 2.

Upon the approval of an allotment plan, a certified copy is sent to the applicant by the Secretary of the Island Territory.

- 3.

The approved allotment plan lies for thirty days at the Administration Building for public review by all.

- 4.

Placement for public review is announced in the manner indicated in article 4, second paragraph.

- 5.

The applicant as well as stakeholders may submit an appeal to the Island Council, within six weeks after the term mentioned in the third paragraph. Article 12, eight through thirteenth paragraphs are applicable accordingly.

## **Article 28**

With regard to the revision of an allotment plan, the provisions of this chapter are applicable accordingly.

# Chapter XI A Temporary procedure far reaching activities

## Article 29

- 1.

Up to January 2012, for areas for which no preparatory resolution as meant in article 16 has been taken, no draft-development plan has been placed for public review or a draft development plan has been established, is applicable that for the following works and activities prior written permission of the Executive Council is required;

- a.

the excavation, raising, leveling or blasting of the ground;

- b.

the construction of roads and other property pavements;

- c.

works and activities which could influence the water management and the ground water level;

- d.

the clearing of trees or clearing of other growth leading to deforestation;

- e.

the demolition of structures.

- 2.

The request for permission as meant in the first paragraph is submitted in writing to the Executive Council. Articles 12 eight through thirteenth paragraph, 23 second through sixth paragraph and article 24 are applicable, with the understanding that instead of the draft allotment plan is read: the request. The applicant is obliged to provide all information and to submit all documents which are necessary to be able to evaluate the request.

- 3.

The Executive Council may withhold its permission on the request, if the intended works and activities from the point of view of the general interest would present serious difficulty:

- a.

due to irreparable damage to nature, the environment or the current use of the land and the surrounding lands; or

- b.

due to irreparable infringement on the expected spatial development of the land and the surrounding lands.

- 4.

The Executive Council may attach conditions, serving to prevent the consequences meant in the third paragraph, to the permission.

- 5.

The permission may be with drawn on the grounds mentioned in article 12, thirteenth paragraph.

## **Chapter XII Transitional and Final provisions**

### **Article 30**

The administrative law ordinance “Landsverordening Administratieve Rechtspraak – Landsverordening van de 3de augustus 2001 houdende regels betreffende de administratieve rechtspraak” (P.B. 2001, nr. 79) or any successive administrative legislation of a higher order that this Ordinance Spatial Development Saba 2010 will be applicable at all times and prevail in case of a legislative conflict.

### **Article 31**

- 1.

This island ordinance may be cited as: Island ordinance “Spatial Development Saba 2010”.

- 2.

Underlying ordinance shall take effect five days after the date of publication.