

# Making Bricks Without Straw: The Jerusalem Municipality's New Planning Policy for East Jerusalem

January 2010

## Summary

Against the backdrop of an expedited debate initiated by four right-wing members of the Knesset on December 13, 2009, aimed at preventing enforcement of a court order to seal and vacate Beit Yehonatan in Silwan, East Jerusalem, Mayor Nir Barkat presented the city's "new planning policy" for East Jerusalem.

According to Barkat, this policy should provide "significant expansion of the number of floors and of the building ratio with regard to the approved plan, many solutions for adding residential units in the area, and a response to the existing hardship, while in practice some 90 percent of building infractions could theoretically become moot." The two areas selected to serve as "test cases" for the implementation of this new policy are al-Bustan in Silwan and the western slopes of Silwan, where Beit Yonatan is located. Beit Yehonatan, which houses several settler families, was erected without a building permit and has an outstanding order against it for its evacuation and sealing.

In scrutinizing the reality of the planning situation in East Jerusalem, the "significant expansion" presented by Barkat will be nearly impossible to implement by Palestinian residents for several reasons, including:

- **The inability of East Jerusalem residents to prove ownership of their lands, given the lack of land registration with the Israeli authorities.**
- **The space constraints and prohibitive costs for meeting the standard parking requirements for buildings of four or more stories.**
- **The difficulty in creating sufficient access roads to the building sites.**
- **Lack of proper sanitation infrastructure, required for approval of building plans**

In addition, private building plans in East Jerusalem are often denied approval as they do not conform to the Jerusalem Master Plan 2000, which, despite having been completed more than a year ago, has yet to be submitted for public review, and hence is not yet officially in effect.

Thus, when various Israeli officials, like Mayor Barkat or Housing and Construction Minister Ariel Attias, make pronouncements regarding building plans for the Palestinian population of East

Jerusalem, these declarations tend to be empty gestures designed to forestall local and international criticism on one hand, and to “whitewash” Israeli construction (such as Beit Yehonatan) on the other. In the meantime, the authorities shirk their obligations to provide basic services and infrastructure (including sewage and paved roads) to the residents of the eastern part of the city. Rather, the residents themselves are burdened with this responsibility, meaning that Barkat’s policy offer to enable residents to build is rendered extremely expensive and, in practice, impossible.

## **1...Background**

On January 10, 2010 the Constitution and Law Committee of the Knesset held a second debate on “policies of enforcement of the planning and building law at Beit Yehonatan in Silwan,” and “inadequate enforcement of planning and building laws in Jerusalem and the Negev,” following a motion for expedited debate by Knesset members Yariv Levin (Likud), Zevulun Orlev (Habayit Hayehudi), Zeev Elkin (Likud) and Uri Uriel (Ha’ichud Haleumi).

The first debate on this matter was held on December 13, 2009, at the initiative of the same four Knesset members. Its purpose was to prevent the enforcement of an order to seal and vacate Beit Yehonatan.<sup>1</sup> The buildings' name appeared in a document published by the municipality in October 2009, which included plans to immediately demolish 42 structures in the eastern part of the city.

During this debate, Jerusalem Mayor Nir Barkat presented a new municipal policy devised to “systematically address the illegal construction in Jerusalem.” Barkat reprised the complex and problematic nature of building issues in East Jerusalem, and put forward the principles of his new policy. Its purpose is “to achieve a significant improvement in licensing and planning services; modification of enforcement policy and its integration in overall policy; revised planning that takes cognizance of reality; and a unified policy for East and West Jerusalem and for Jews and non-Jews alike.” The city chose two areas in Silwan as test cases for implementing the new policy: the al-Bustan neighborhood<sup>2</sup> (referred to as King Solomon’s Gardens in the policy plan) and the western slopes of the village, where Beit Yehonatan is located.

## **2...Principles of the new plan for al-Bustan and the slopes of Silwan**

As noted, both al-Bustan and the western slopes of Silwan are characterized by a high ratio of buildings that lack construction permits. In the al-Bustan neighborhood, 43 buildings currently have demolition orders, and on the slopes of Silwan there are more than 70 such buildings, among which four are more than four stories high (including Beit Yehonatan, assumed to be a decisive factor in selecting the area as one of the first two test cases for the new policy).

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<sup>1</sup> Beit Yehonatan is a seven-story building erected without a permit for the settler organization Ateret Cohanim in the heart of the Yemenite neighborhood of Silwan. The building deviates significantly from the regional master plan, which permits buildings of no more than two stories. The seal and vacate order has been in effect for this building since January 2007. See Ir Amim’s report, “[Shady Dealings in Silwan](#).”

<sup>2</sup> A neighborhood stretching between Wadi Hilweh and the ancient part of Silwan. Without a detailed building plan, most (about 90) of the buildings in this neighborhood were built without construction permits. A plan presented by the residents, with encouragement from the city, to regularize construction in the neighborhood, was rejected in February 2009 by the Regional Planning Committee, on the basis that the city intended to designate the area as a “green zone.”

Based on the city's new planning policy, which conforms with the Jerusalem 2000 Master Plan (which has yet to be made available for public scrutiny; see below), construction up to four stories will be permitted in these areas – as in the other areas designated as residential in the visual basin of the Old City – rather than two stories as was the case hitherto. This will require **submission of a specific plan for every existing and new construction.**

According to the policy document released by the city, “the change in the new planning policy in the areas of King Solomon's Gardens and western Silwan will facilitate broad regularization of the construction in the area, will facilitate submission of plans whose aim is new construction or regularization of existing buildings up to four stories, and will permit the regularization of the vast majority of the existing structures, congruent with accepted planning criteria [...] The additions proposed by the master plan in this area will mean a very significant increase in the number of floors and the building ratio relative to the approved plan, and will provide many solutions for additional residential units in this area while addressing the existing housing shortage, and in practice about 90 percent of existing illegal building will theoretically be regularized.”

That the mayor chose to present his new planning policy regarding one of the most sensitive areas in Jerusalem at a meeting convened by members of right-wing Knesset factions whose aim was to prevent the enforcement of the order to seal and vacate Beit Yehonatan, should not be overlooked. This report, however, seeks to identify the gap between what is theoretically possible and what is actually possible in terms of building options in East Jerusalem in the context of the new policy that the city is seeking to promote.

### **3...Obstacles to implementing the city's new policy**

The Jerusalem municipality is acutely aware of the problematic nature of the planning situation created in East Jerusalem over the last forty-two years under Israeli rule. The policy document issued by the municipality acknowledges a few of the reasons for building without permits in East Jerusalem, including the lack of adequate master plans, the absence of land registration in the eastern part of the city and the absence of government services for such registration; and a lack of coordination between government bodies (“sometimes in Israel, the right hand doesn't know what the left hand is doing”).

It is very doubtful, however, whether the city's new planning policy will be able to successfully resolve the problems that the city itself has identified. The reasons are as follows:

- **The need to prove ownership of the land:**

The Planning and Building Law enables planning and building by a private party, on condition that the property is properly registered in the party's name in the Israeli land registry. In the event that the property is not registered, the law requires proof of connection between the applicant and the property, via sworn statements submitted by the applicant from neighbors, the village mukhtar, an attorney, and so forth, as a substitute for **proof of ownership**. About a decade ago, the planning authorities in Jerusalem introduced a more rigorous standard than the

one demanded by law. Under this requirement, a resident whose property ownership is not regularized, must begin the process of property registration by preparing a Plan for Registration Purposes (PRP), prior to beginning the planning and construction processes pursuant to a building permit. In February 2009, the city decided that, in addition to preparing a PRP and having it approved by the Israel Mapping Center, the applicant must also open a registration file with the land registrar. In many cases, this requirement freezes the process of property registration from the outset. Today, the requirement to prove ownership prevents many Palestinians from realizing their building rights on their property due to the flawed process of registration of the land and the great difficulty in actually proving ownership. Moreover, through this process of registering property ownership, Palestinian residents are at high risk that the state of Israel could become a co-owner of the property by applying the Law of Absentee Property.<sup>3</sup>

It is worth emphasizing that, beyond all the concrete difficulties, this requirement actually obliges the property owner himself, to do what should be the responsibility of the Israeli public authority, and which the latter has prevented for the last forty-two years, as a result of the legal and political complexities in East Jerusalem.<sup>4</sup>

- **Standard parking requirements:**

Pursuant to City Construction Plan 5166 regarding standard parking requirements in Jerusalem, every planned residential unit must have at least one parking space, congruent with the size of the unit and the area, as a condition for receiving a building permit. Due to the high density in the two areas of Silwan under discussion, land for parking for the potential construction is scarce, making the probability that the building owners will be able to obtain permits for additional construction up to four floors close to nil.

The other alternative is to construct underground parking, or to raise the building in order to create parking spaces underneath it, at street level. These two possibilities require demolishing the existing structure and building again, and render the construction process much more costly

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<sup>3</sup> The Law of Absentee Property of 1950 states that, if a person was in an enemy country at the time of the 1948 census, his property will be confiscated by the Custodian of Absentee Property without compensation and without the need to notify the property owner. After the annexation of East Jerusalem in 1967, this law was applied to the annexed territory along with the rest of Israeli law, with a regulation stating that in East Jerusalem, the relevant date would be the date of the census following the annexation and not the original date, i.e. 1948. Hence property would be confiscated from anyone who was not present in East Jerusalem at the time of the census in 1967. Despite two clearly stated advisory opinions by attorneys general that this law should not be used in East Jerusalem, over the years it has been widely applied. Today, if during the process of registering land, any of its original owners are proven not to have been physically in the area annexed in 1967, a pro rata portion of the land will be confiscated by the Custodian of Absentee Property.

<sup>4</sup> See the Bimkom report "*Milkud tichnuni*" (Hebrew): [Part I here](#); [Part II here](#).

while creating the need for alternative housing for the residents until the new construction is completed, a process that can take many months and even years. Furthermore, it should be noted that the land in question is in the very heart of historic Jerusalem, an archeologically highly sensitive location. Undoubtedly, any digging required to provide underground parking will require a preparatory salvage excavation, which makes the process even longer and more expensive.<sup>5</sup>

- **Access to the structure:**

Approval of building plans and the granting of permits is conditioned, inter alia, upon the existence of sufficient access to the building site that allows infrastructure to be brought to the site, with the width of the access route determined by the scope of the construction project.

Silwan is one of the most crowded neighborhoods in East Jerusalem, and its road infrastructure is dilapidated and obsolete; it cannot meet the requirements for new building or for expansion of existing structures. Hence, constructing a new four-story building (or adding stories to make an existing structure into a four-story building) would require creating a new access route which, due to the existing high density of the area, would be very difficult to do.

Moreover, it is the local authority that generally assumes responsibility for creating roads where needed, after which it passes the costs on to the residents. In East Jerusalem, the entire process – planning, approval and implementation, all very costly – is left to the individual, which naturally makes it more difficult for the Palestinian resident to obtain the elusive permit.

- **Sewage infrastructure:**

Pursuant to the instructions of the Ministry of the Environment and the Ministry of Health, the existence of a proper sewage system is one of the preconditions for approving a building plan.

In East Jerusalem, there is a shortage of some 70 km of main sewage pipes, and in most of the Palestinian neighborhoods, people use septic tanks, which are impermissible under the regulations of the Ministry of the Environment and the Ministry of Health.

Installation of main sewage lines, to which homeowners can connect, is a service that the authorities generally provide to residents of this country as a matter of course. This is not the case in East Jerusalem, where residents are responsible for the installation of sewage lines. The high costs and the bureaucratic hardships involved in installing sewage lines have proven an obstacle for people to take advantage of the potential of building on their property.

- **Adding floors:**

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<sup>5</sup> On November 8, 2009, the Regional Planning and Building Committee rejected Plan 13002 seeking to add more units for Palestinian residents in Ras al-Amud, inter alia arguing that “further residential additions cannot be approved without a solution for parking.”

Although Barkat's new city plan for East Jerusalem, in the wake of the Jerusalem 2000 Master Plan, will allow construction up to a height of four stories, it should be noted that the city's building regulations do not allow the addition of more than two floors to an existing structure. Hence, in buildings of only one story (admittedly, there are very few) the maximum height would be three stories, not four.

#### **4... Obstacles to potential construction outside the visual basin of the Old City**

The preceding section addressed a few of the major obstacles to realizing the potential regularization of existing buildings and new construction in the areas designated as "case studies" for the new planning policy for East Jerusalem.

As noted, the Jerusalem 2000 Master Plan, which has yet to be made available for public examination and which is the basis for Mayor Barkat's new policy, limits building to a height of four stories within the boundaries of the visual basin of the Old City. Beyond those boundaries, the plan allows building to a height of six stories, although here, too, we are generally dealing with a merely theoretical possibility.

Apart from the obstacles enumerated already – the need to prove ownership, the absence of appropriate infrastructures for sewage and road access, the limitation on adding stories to an existing structure, and the standard parking requirements – construction to a height of six stories in the Palestinian neighborhoods of East Jerusalem outside the visual basin of the Old City is not realistic in most cases, for several additional reasons:

- **A freeze on private plans:**

Paradoxically, the announcement by the city of its intention to introduce planning for an area hitherto unplanned is liable to impede the progress of private plans in that same area. In such a case, the planning authorities could impose a freeze on all private plans at various stages of the planning process, until the authorities complete the comprehensive plan for that area, **even if the private party proves that his plan conforms to the comprehensive plan**. This freeze is absolute and for an indefinite time period, and is liable to continue for months, even years.

Note that even after finalization of the comprehensive plan, a property owner who seeks to build on his land still is required to present a detailed plan for the specific plot of land on which he intends to build, so that the time he is required to wait first for approval of the comprehensive plan **is added to** the time required for obtaining approval of his private plan.

- **Size of the plot of land intended for building:**

The regulations of planning authorities require at least ten dunams (c. 2.5 acres) for a local building plan for East Jerusalem to be considered. This means that someone who has a plot

smaller than ten dunams, and who wants to build on his land, must coordinate with his neighbors – with whom he may not necessarily have common interests – to create a plan for an area of ten-dunam minimum in order for his own plan to proceed. This requirement hinders—and in many cases, thwarts entirely – many new plans, despite the fact that theoretically the property owner has a right to build on his land.

- **The need for a wide access road:**

Approval of a plan for a six-story building obliges an access road of at least 12 meters wide. A wide road is needed both for approval of the plan and for issuance of a building permit. Given the already-described problematic physical realities in East Jerusalem, such access roads do not exist and cannot realistically be created. But even if theoretically possible, paving an access road of 12 meters wide is very costly and burdens the property owner with a significant added cost for his building project.

- **The policy in the context of the Jerusalem 2000 Master Plan:**

Although the Jerusalem 2000 Master Plan was completed more than a year ago and incorporated the comments of then newly elected Mayor Barkat, the plan Interior Minister Eli Yishai has stalled the plan inter alia because he believes that the plan is too “generous” across the board regarding building options for the city’s Palestinian residents.

In the meantime, despite not having undergone public scrutiny and having received final approval, the frozen master plan provides the general guidelines for planning and rejecting building plans in the city.<sup>6</sup>

Moreover, an East Jerusalem resident who seeks to build within the area in which Barkat’s new planning policy proposes expansion, will have to present a plan for the entire area of the expansions (or a significant part thereof) in order to obtain permission for his own private building plan. This is another example of how services provided routinely by the planning authorities in most parts of the country become, in East Jerusalem, the responsibility of the individual seeking a local building permit.<sup>7</sup>

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<sup>6</sup> Thus for example, at a meeting on November 17, 2009, the regional committee rejected plan 13317 for an additional residential unit and a change in zoning in Jabel Mukaber; a representative of the city argued at the meeting that “all the land covered by the plan is included in areas designated as reserved for open, unbuilt space in the new master plan for Jerusalem and hence the plan must be rejected.”

<sup>7</sup> Thus the regional planning committee on November 17, 2009, rejected plan 11114 for construction of new houses in Jabel Mukaber, arguing that “the planned area is included in the areas in which, the new Jerusalem master plan, soon to take effect, designates as urban residential areas. As directed by the master plan, a plan under this zoning category requires approval of the overall master plan for the area before individual plans can be approved. Hence, in the absence of a comprehensive plan for the area, the committee believes that a decision on this plan must be postponed at this stage.”



## **5...Conclusion**

Although Mayor Barkat's announcement of a new planning policy, which was seconded by Housing and Construction Minister Ariel Attias, theoretically should benefit Palestinian residents of East Jerusalem, the picture is much more complicated than what one would be led to expect. The current planning realities in East Jerusalem serve to thwart, de facto, nearly every Palestinian building plan, whether at the stage of approving the plan itself or later on, at the stage of issuing of a building permit. In fact, the huge gap between the theoretical possibilities presented by the city regarding all aspects of Palestinian building in East Jerusalem, and the feasibility of actualizing them in practice, renders the city's declared "new policy" empty of meaning and instead condemns East Jerusalem to continue in its planning chaos as it has for many decades.

In the document of principles underpinning the new planning policy in East Jerusalem, Nir Barkat declares that **"the existing situation demands that we reform our thinking: in practice, the 'inheritance' from the previous governments is unacceptable and necessitates a systematic rethinking,"** The situation outlined in this report shows, however, that, unfortunately, Barkat's new policy does not really offer the "systematic rethinking" so greatly needed in East Jerusalem.

If the Israeli authorities – municipal and national – recognize the severity of the building problems in East Jerusalem, they must act first to change the problematic prerequisites for the area and offer pragmatic building solutions taking into consideration the complex realities there. If not, that same problematic "inheritance" mentioned by Barkat will endure, while the planning chaos that exists in East Jerusalem will intensify.