

The Legal Regulation of Licensing in the Saudi System

Mohammed Hadi H Hakami¹

Abstract

This study delves into the concept and legal nature of building permits within the Saudi regulatory framework, highlighting building permits as crucial administrative licenses. These permits allow individuals to engage in construction activities under defined rules and conditions aimed at organizing urban development and preserving the civilized character of cities and towns. The research discusses the definitions of building permits as set forth by the Saudi regulator and clarifies their legal nature as administrative decisions issued by the administrative authority to serve the public interest, demonstrating how they align with the elements of an administrative decision. The study details the conditions required for the issuance of a building permit, such as the necessity for the land to be within the urban boundary and the submission of a formal application by the owner, fulfilling all the statutory requirements and conditions. It also discusses the administrative authority's power to grant or withhold the permit and how this authority is restricted by statutory conditions to ensure a balance between private and public interests. Furthermore, the research explores the scope of application for building permits, elucidating the works requiring permits like construction, alterations, restoration, and others. It clarifies that the Saudi system encompasses all regions of the kingdom without exception under specific conditions that ensure the safety and quality of construction, considering the public interest. The study concludes by affirming the importance of building permits in regulating urban development and securing real estate rights within a legal framework that serves the public interest and promotes sustainable urban development.

Keywords: Legal, Licensing, Saudi System

INTRODUCTION

The Saudi system has recognized the right of individuals to property ownership and its protection from any infringement that may harm it. A property owner has the freedom to use, exploit, and dispose of their property through all permissible transactions. This includes real estate ownership, where the owner can engage in all activities that they deem beneficial to their interest, such as selling, leasing, farming, or endowing the property, and notably, the right to construct.

However, the owner's freedom to act upon their property is constrained so that it does not conflict with the public interest of the community, such as when the right to construct clashes with the public urban order and its regulations, or causes harm to others.

Therefore, the Saudi regulator has made it mandatory for owners to obtain a license before initiating construction works, aiming to regulate construction and urban development, and balance the right to build as a private interest and a guaranteed right for the individual, with the public urban order which necessitates the preservation of public health, tranquility, and security. Additionally, it emphasizes the need for general coordination in construction and the aesthetic appearance of cities and villages.

Research Questions

This research addresses a primary question about the legal framework for building licenses in the Saudi system and branches into the following questions:

What is the definition of a building license in the Saudi system, and what is its legal nature?

What are the conditions required to obtain a building license?

Is the administrative authority in granting a building license restricted or absolute?

¹ Lecturer in the Department of Law, College of Business Administration, Najran University, Najran, Kingdom of Saudi Arabia. E-mail: mmhakami@nu.edu.sa

What is the scope of application for a building license in the Saudi system?

Research Objectives

To understand the nature of building licenses in the Saudi system and their legal framework.

To identify the conditions for building licenses and their scope of application in the Saudi system.

To explore the administrative authority in granting or withholding a building license.

Previous Studies

Upon review, I have not found any previous studies that discuss the impact of urban boundaries on reducing urban sprawl in the Kingdom of Saudi Arabia.

Research Plan

The research plan includes an introduction, four sections, and a conclusion:

The first section: Concept of the building license, its legal nature, and it contains two subsections:

The first subsection: Definition of a building license.

The second subsection: The legal nature of a building license.

The second section: Conditions for granting a building license.

The third section: The administrative authority in granting or withholding a building license.

The fourth section: The scope of application for a building license.

CONCLUSION

Section One: The Concept of Building License and Its Legal Nature.

A building license is one of the types of administrative licenses¹ considered by the Saudi regulator as part of municipal licenses², Through it, the administrative authority regulates individuals' activities in the construction field, imposing adherence to urban planning rules and the preservation of the cities and villages' cultural character.

This license also aids in limiting informal construction that affects the health, aesthetic, and social aspects of the city. It contributes to preventing encroachment on others' properties and rights. Simultaneously, the building license also acts as a guarantee for the licensee to freely conduct their activity without opposition from others or unlawful prevention by the administration. In this section, I will define the building license and explain its legal nature through the following subsections:

First Subsection: Definition of Building License

The Saudi regulator has defined a building license within its comprehensive definition of municipal licensing as: "A written approval from the ministry for a natural or legal person to construct or open a place for any activity on a specific site, according to the conditions set forth in the municipalities and villages system and related regulations"³.

Furthermore, the regulator also defined a building license within the executive regulations of the Saudi Building Code system as: "A written permission issued by the municipal body, according to the provisions of the Municipal Licensing Procedures System and its executive regulations"⁴.

Second Subsection: The Legal Nature of a Building License

A building license is nothing more than an individual legal act issued by the administrative authority granting the applicant the right to undertake construction works on the land in question.

The previous depiction shows that the elements of a building license coincide with those of an administrative decision. It is among the means possessed by the administration to achieve the public social interest, and the administration uniquely issues it when the conditions set forth by the regulator are met.

Based on this, a building license must encompass all elements of an administrative decision, including competence, reason, object, form, and purpose.

The Saudi administrative judiciary has considered municipal licenses, including building licenses, as administrative decisions. A series of administrative judicial rulings agreed on this consideration, including the judicial ruling in case number: 547/1/Q for the year 1425 AH, which stated, "Since the plaintiff aims with his lawsuit... to challenge the negative decision represented by the refusal to grant him a license for residential and commercial construction... his claim thus falls within the jurisdiction of the Board of Grievances." Similarly, the judicial ruling in case number 2290/4/Q for the year 1431 AH stated, "... Furthermore, in the panel's opinion, the aim of conferring the right on the defendant to withdraw the license decision is to respect the system. The administration is not infallible and has the right to change its opinion to correct this mistake or to address new elements that were not considered when the decision was made." The ruling in case number 4454/1/Q for the year 1429 AH concluded: Therefore, the panel concludes that the challenge against the defendant's decision to refuse granting the requested license was unfounded as there was nothing to justify it due to the absence of any defect that warrants cancellation in the decision.

In these rulings, the administration's actions in granting, withdrawing, and refusing to issue a license were considered administrative decisions subject to challenge for cancellation and compensation, among other considerations applicable to an administrative decision.

Section Two: Conditions for Granting a Building License in the Saudi System.

The Saudi regulator has imposed a set of conditions on applicants for a building license, which must be adhered to in order to obtain the license, as follows:

First Condition: The land intended for construction must be located within the urban boundary and within an approved plan: This condition applies the urban boundary rules, which prohibit development outside its scope to prevent the emergence of unplanned or informal areas. Therefore, a building license cannot be granted if the land intended for construction is outside the urban boundary or is not within an approved plan. This requirement was emphasized in the ministerial decision issued by the Ministry of Municipal and Rural Affairs and Housing and circulated to the municipalities under number 43529 on the date of 6/9/1439 AH, stating that officials must strictly adhere to not issuing building permits for lands not within an approved plan, regardless of their size. However, the regulator has exempted certain lands from the condition of being within the urban boundary and within an approved plan, allowing their owners to be granted a building license under specific regulations. These lands include:

Agricultural lands.

Small properties located in unplanned or spontaneous areas.

Housing projects

Second Condition: Submission of a request by the owner to the competent authority for a building permit: To obtain a building license, the owner must submit a request to the competent authority, allowing them to conduct construction activities on the property subject to the license. The regulator has stipulated that: "The municipality or municipal authority is responsible for issuing building permits for all types of buildings... based on a request submitted by the applicant"⁶, as the request represents the cause for obtaining a building license, being the factual or regulatory situation that compels the administrative body to intervene, examine the request's compliance with regulatory conditions, and then make the required decision⁷.

The submission of the request requires that it comes from an individual with the legal standing to do so, meaning "the legal relationship that links the applicant for a building license to the property intended for construction".

To verify this condition, the regulator stipulated that the application must include:

A copy of the property owner's identity with the original for verification.

A copy of the property's deed with the original for verification.

The purpose of submitting a copy of the national identity for verification with the original and a copy of the property deed for original verification is to confirm the applicant's relationship to the property intended for construction.

Additionally, the property deed also specifies the property's location, descriptions, area, neighbors, and any related easements and obligations to others if present, to be considered when issuing the building license.

Moreover, the regulator required that the property intended for construction be owned by the applicant, as ownership grants the holder all rights to use, exploit, and dispose of the thing, and thus a building license is granted to those who have the right to exploit that property, being the owner. Under the Saudi Building Code system, the regulator decreed that the submission of a building license request must be through approved engineering offices, where the engineering office takes care of all necessary procedures to obtain a building license.

Third Condition: Completing all requirements and conditions for building licenses as informed to engineering offices: The regulator did not specify these requirements and conditions through the Municipal Licensing Procedures System or its executive regulation. It appears to the researcher that what is meant includes the requirements and conditions contained in the Saudi Building Code, approved under the Saudi Building Code System issued by Royal Decree No. (M/43) on the date of 26/4/1438 AH.

The regulator outlined in the Building Code texts the design and implementation bases and methods suitable for the Kingdom's climatic and geological conditions, including the necessity of obtaining a surveying decision⁸, soil testing, in addition to safety and security conditions at all construction stages; aiming to improve construction quality and ensure the safety of structures and their inhabitants.

Section Three: The Administrative Authority in Granting or Refusing a Building License

The Saudi regulator has endowed the Ministry of Municipal and Rural Affairs and Housing, represented by the secretariats and municipalities, with the authority to oversee construction and urban development.

A building license falls within the powers granted to the Ministry of Municipal and Rural Affairs and Housing, which has the right to issue this license to applicants, as well as the right to refuse or cancel it, according to Article (3) of the Municipal Licensing System, which stipulates that: "The ministry is exclusively responsible for issuing, modifying, renewing, canceling, and suspending municipal licenses for all types of activities." However, what is the extent of this entity's authority to carry out these actions within the Saudi system?

The Municipal Licensing System specifies that: "The ministry issues the municipal license after completing all its procedures within a period not exceeding ten working days from the date of application submission. If the application is denied, the refusal must be in writing and reasoned, and the applicant must be notified at the address specified in the application"⁹.

Furthermore, the executive regulation of the Municipal Licensing Procedures System states that: "The secretariat or municipality is responsible for issuing a building license for all types of buildings after meeting the building standards required by the ministry, civil defense, and other governmental bodies overseeing the activity, based on an application submitted by the licensee, accompanied by the following:

A copy of the property owner's identity with the original for verification.

A copy of the property deed with the original for verification.

Completion of all requirements and conditions for building licenses notified to engineering offices"¹⁰.

Through the aforementioned texts, it is evident to the researcher that the administrative authority in granting a building license is a restricted authority from three aspects: First: The regulator has set a specific period for the

administrative entity to decide on the licensing application. Second: The administrative entity is obliged to ensure its decision to refuse the license is in writing and reasoned. Third: The granting of the license depends on the fulfillment of the statutory conditions for the licensing application.

The Ministry of Municipal and Rural Affairs and Housing is obligated to grant the building license to the applicant within the specified deadline, in accordance with the conditions stipulated by the law, and its authority in this regard is restricted, not absolute.

This was affirmed by a series of judicial rulings issued by the administrative courts in the Kingdom of Saudi Arabia, including: the ruling in the case registered under number 854/4/Q for the year 1436 AH, which stated that the defendant's refusal to grant the plaintiff a building license for his property and depriving him of benefiting from it is considered contrary to Sharia and the law. The Basic Law of Governance, issued by Royal Order No. (A/90) on the date 27/8/1412 AH, in its Article (18), states: "The state guarantees the freedom and sanctity of private property...". Moreover, what the defendant did is contrary to the state's regulations, which are concerned with preserving individuals' rights as they apply Sharia law; therefore, the panel concludes to annul the defendant's negative decision represented in its refusal to grant the plaintiff a building license for his property.

From the aforementioned rulings, it is clear that the entities responsible for granting building licenses do not possess discretionary authority in their issuance or refusal but rather their authority is restricted by fulfilling the statutory conditions. If the conditions in the grant request are met, it is obligatory to issue it, and if these conditions are not met or are incomplete, the concerned entity must also refrain from issuing it, all of which aligns the individual's private interests with the community's public interests.

Thus, the researcher finds that the administrative authority's power in granting a building license is restricted upon the fulfillment of the conditions stipulated by the law, just as the administrative authority is also restricted in case the statutory conditions for granting the license are not met, thereby necessitating its refusal to issue a building license.

Section Four: Scope of Application of the Building License in the Saudi System

The Saudi regulator has not precisely defined the scope of application for the building license, due to the vast and varied nature of construction activities, making it challenging to comprehensively enumerate these activities. However, the regulator has established a general rule that prohibits construction activities without obtaining a license, stating that: "No activity may be practiced without obtaining a municipal license and a license from the competent governmental authority, according to the nature of each activity and in accordance with the regulations and bylaws"¹¹ , This implicitly includes expanding, modifying, raising buildings, reinforcement, demolition, and external finishes as activities requiring a license.

These activities can be detailed as follows:

Firstly, Building Construction: Construction refers to the act of creating and establishing buildings for the first time. The Saudi system defines construction as: "Any new structure including the digging of foundations or any construction work using one or more construction materials, regardless of their known or unknown usage, or the erection of balconies, projections, or canopies"¹².

The regulator did not specify the materials used for construction, implying that materials could be wood, iron, lime, gypsum, stone, or a combination thereof, or other construction materials¹³ .

Legal scholars believe that buildings covered by construction licenses must meet the following conditions:

The construction must be made of cohesive materials of any kind, such as red bricks, white stones, or reinforced cement, as these materials are considered movable before construction and only become part of the real estate when built with cohesive materials, thereby becoming fixed and integrated into the land.

Human intervention in construction: The construction process must involve human effort, even if modern technological means are employed, as humans are the workforce using these machines. Thus, walls and barriers

formed by weather or geological factors are not considered construction subject to the building license scope unless made by human effort.

The construction must be stable and permanent: The building should be stable, permanent, and integrated into the land in such a way that it cannot be separated, detached, or moved without demolition or causing damage. Hence, merely placing bricks on top of each other or stacking stones in the form of a wall does not constitute construction due to the lack of permanent connection to the land and the instability of such a structure¹⁴.

If these conditions are met, the structure is subject to the building license application, and construction may not commence without obtaining it.

Secondly, Building Modification: Building modification includes horizontal expansion, such as increasing the area of an existing building, removing a partition wall between two small rooms to make one large room, or removing a partition wall between two apartments to make them a single apartment. It also encompasses building elevation by constructing new structures on top of existing ones.

Thirdly, Restoration: Restoration refers to repairing defective parts of a building and its annexes, whether due to construction errors, misuse, wear and tear, or ordinary use requirements¹⁵.

As for the geographical scope of the building license, the regulator has made it applicable to all regions of the Kingdom, stating that "The secretariats and municipalities are responsible for issuing building licenses for all types of buildings"¹⁶.

By mentioning the secretariats and municipalities without exception and affirming that the license applies to all types of buildings, all regions of the Kingdom are subject to the building license requirement without exception. Whenever the construction to be undertaken meets the previously mentioned conditions within the substantive scope, obtaining a building license is necessary due to the construction's association with various public and private interests, all contributing to the state's overall urban public interest.

The regulator also defined a temporal scope for the building license, which is three years within which all construction works must be completed. If the building is not completed within this period, the building license must be renewed to finish the works¹⁷.

CONCLUSION

The building license serves as an administrative restriction on the property owner's freedom to construct on their property without first obtaining a construction permit from the authority responsible for building oversight. This is contingent upon meeting the conditions required for the license issuance, and the regulator has stipulated that this license must be in writing. It is evident from the regulatory texts and the rulings of the Administrative Court that the administrative authority's power to grant the license is restricted; the authority cannot refuse to issue it to the applicant if all required conditions are met, nor can it grant the license to someone who has not fulfilled those conditions. Furthermore, as explored in the scope of application for the building license, it encompasses construction, modification, restoration, and elevation.

ACKNOWLEDGMENT

The researcher express their profound gratitude to the Deanship of Scientific Research for funding this work through a grant from the Research Groups Program at Najran University under the code: (NU/RG/SEHRC/12/4).

REFERENCES

- "Administrative Licenses," Mohammed Gaber Osman, a comparative study, Cairo University, Faculty of Law.
 The Municipal Licensing Procedures System issued under Royal Decree No: (M 51) on 23/9/1435 AH.
 The Executive Regulation of the Saudi Building Code System issued by Ministerial Decision No: (1213/A/39) on 14/10/1439 AH, and amended by Ministerial Decision No: (56) on 03/03/1441 AH.
 The Executive Regulation of the Municipal Licensing Procedures System issued by Ministerial Decision No: 10459, on 02/05/1438 AH.
 "Sources of Obligation," Dr. Abdel Nasser Tawfiq Al-Attar, Al-Bustani Printing Establishment, 1990.

"The Mediator in Explaining the New Civil Law," Dr. Abdel Razzaq Al-Sanhuri, Dar Al-Nahda, 1968.

"The Legal System of Building Licenses in Algerian Legislation," Dr. Azri Al-Zein, Journal of Human Sciences - Mohamed Khider University of Biskra, Issue Eight, 2005.

"Municipal Licenses," Dr. Khaled Mohammed Al-Masaad, PhD Dissertation, Islamic University, Faculty of Sharia and Islamic Studies.

The administrative license is one of the most effective administrative tools for controlling individual activity. Through it, administrative bodies intervene by imposing suitable conditions and precautions necessary for engaging in such activities to prevent potential harm. Therefore, the administrative license is defined as: (A permit for action granting the licensee the right to engage in the licensed activity, or a legal administrative document granting the licensee the right or eligibility to undertake a specific activity). (Refer to: "Administrative Licenses," Mohammed Gaber Osman, a comparative study, Cairo University, Faculty of Law, pp. (65, 73).

According to the Municipal Licensing Procedures System issued under Royal Decree No: (M 51) on 23/9/1435 AH.

Article (1) of the Municipal Licensing Procedures System issued under Royal Decree No: (M 51) on 23/9/1435 AH.

The Executive Regulation of the Saudi Building Code System issued by Ministerial Decision No: (1213/A/39) on 14/10/1439 AH, and amended by Ministerial Decision No: (56) on 03/03/1441 AH.

Refer to: Circular of the Ministry of Municipal and Rural Affairs and Housing No: 45805 on 1/9/1440 AH regarding the executive mechanism concerning not issuing building permits for lands not within an approved plan, issued under Circular of His Excellency the Minister of Municipal and Rural Affairs and Housing No: (43529) on 06/09/1439 AH.

Housing projects were exempted by the Royal Order No: 36929 on 13/8/1439 AH from the condition of the land being within the development boundaries to obtain a building permit, to meet the needs of the beneficiaries.

Article (2/2) of the Executive Regulation of the Municipal Licensing Procedures System.

"Administrative Licensing," previous reference, p. (151).

The survey decision is a technical document showing the geographical location, boundaries, dimensions, area, and coordinates of the property corners. It aids administrative oversight on construction activities and helps prevent the issuance of building permits on others' properties, potentially subjecting them to litigation and compensation.

Elfeky, A. I. M., Najmi, A. H., & Elbyaly, M. Y. H. (2023). The effect of big data technologies usage on social competence. *PeerJ Computer Science*, 9, e1691.

Elfeky, A. I. M., & Elbyaly, M. Y. H. (2023). THE EFFECT OF E-TUTORIAL PROGRAMS ON IMPROVING THE PRODUCING DIGITAL CONTENT SKILL. *European Chemical Bulletin*, 12, 6581-6587.

Elfeky, A. I. M., & Elbyaly, M. Y. H. (2023). MANAGING DRILL AND PRACTICE PROGRAMS WITH A MOTIVATIONAL DESIGN AND THEIR EFFECTS ON IMPROVING STUDENTS' ATTITUDES TOWARD INFORMATION AND COMMUNICATION TECHNOLOGY COURSES. *European Chemical Bulletin*, 12, 6567-6574.

Elfeky, A. I. M., & Elbyaly, M. Y. H. (2023). THE IMPACT OF PROJECT-BASED LEARNING ON THE DEVELOPMENT OF COGNITIVE ACHIEVEMENT IN THE COURSE OF APPLICATIONS IN EDUCATIONAL TECHNOLOGY AMONG STUDENTS OF THE COLLEGE OF EDUCATION AT NAJRAN UNIVERSITY. *European Chemical Bulletin*, 12, 6643-6648.

Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE EFFECT OF A SIMULATION PROGRAM ON STUDENTS AT THE COLLEGE OF EDUCATION'S ACQUISITION OF HAND EMBROIDERY SKILLS. *European Chemical Bulletin*, 12, 6575-6580.

Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). FLIPPED CLASSROOM: ENHANCING FASHION DESIGN SKILLS FOR HOME ECONOMICS STUDENTS. *European Chemical Bulletin*, 12, 6559-6566.

Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE IMPACT OF PROBLEM-SOLVING PROGRAMS IN DEVELOPING CRITICAL THINKING SKILLS. *European Chemical Bulletin*, 12, 6636-6642.

Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). COLLABORATIVE E-LEARNING ENVIRONMENT: ENHANCING THE ATTITUDES OF OPTIMAL INVESTMENT DIPLOMA STUDENTS TOWARDS THE DIGITAL SKILLS COURSE. *European Chemical Bulletin*, 12, 6552-6558.

Elfeky, A. I. M., & Elbyaly, M. Y. H. (2023). THE IMPACT OF MOBILE LEARNING ON DEVELOPING THE SKILLS OF INTEGRATED SCIENCE OPERATIONS AMONG STUDENTS OF THE OPTIMUM INVESTMENT DIPLOMA. *European Chemical Bulletin*, 12, 6629-6635.

Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE EFFECTIVENESS OF USING ADVANCED ORGANIZATIONS WITHIN THE VIRTUAL CLASSROOM TO ENHANCE THE ACCEPTANCE OF TECHNOLOGY DURING DISASTERS. *European Chemical Bulletin*, 12, 6603-6612.

Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE EFFICIENCY OF ONLINE LEARNING ENVIRONMENTS IN FOSTERING ACADEMIC MOTIVATION. *European Chemical Bulletin*, 12, 6622-6628.

Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE EFFICIENCY OF INSTRUCTIONAL GAMING PROGRAMS IN STIMULATING CREATIVE THINKING. *European Chemical Bulletin*, 12, 6613-6621.

Elfeky, A. I. M., & Elbyaly, M. Y. H. (2023). THE EFFECT OF SIMULATION PROGRAMS ON ENHANCING SKILLS OF DIGITAL APPLICATIONS. *European Chemical Bulletin*, 12, 6588-6594.

Elbyaly, M. Y. H., & Elfeky, A. I. M. (2023). THE EFFECTIVENESS OF EMPLOYING MOTIVATIONAL DESIGNED E-LEARNING SITUATIONS ON DEVELOPING ACHIEVEMENT IN COMPUTER SCIENCE CURRICULA FOR OPTIMAL INVESTMENT STUDENTS. *European Chemical Bulletin*, 12, 6595-6602.

Article (5) of the Municipal Licensing System.

Refer to: Article (2/2) of the Executive Regulation of the Municipal Licensing Procedures System.

Refer to: Article (2) of the Municipal Licensing Procedures System.

Article (3/1) of the Roads and Buildings System issued on 1/1/1360 AH.

"Sources of Obligation," Dr. Abdel Nasser Tawfiq Al-Attar, previous reference, p. (316).

Refer to: "The Mediator in Explaining the New Civil Law," previous reference, (1/1072), "Sources of Obligation," previous reference, p. (316), "The Legal System of Building Permits in Algerian Legislation," Dr. Azri Al-Zein, *Journal of Human Sciences - Mohamed Khider University of Biskra*, Issue Eight, 2005, p. (7).

"Commentary on the Texts of the Premises Rent Law," Dr. Ahmed Abu Al-Wafa, quoted from "Municipal Licenses," PhD Dissertation, previous reference, p. (48).

Refer to: Article (2/2) of the Municipal Licensing Procedures System.

Regarding this, the second paragraph of Article Eight of the Executive Regulation of the Municipal Licensing Procedures System states that "the duration of the municipal license related to construction is three years, renewable."