



NORWEGIAN
REFUGEE COUNCIL

Legal Memo

Applying for a Building Permit in East Jerusalem

OBJECTIVE:

This fact sheet describes the procedures involved in applying for a building permit in occupied East Jerusalem. Numerous documents and procedural obligations are required in order to receive a building permit under Israeli planning regulations in effect in East Jerusalem. Detailed here are the particular constraints Palestinian residents face in undertaking these application procedures, which make obtaining a building permit almost impossible. A prerequisite to the authorisation of any building permit is the existence of an approved planning scheme. Therefore, this fact sheet also details the planning process and provides an overview of the steps involved in submitting both planning schemes and building permit applications.

Background

Under the Israeli *Planning and Building Law 1965*, a building permit issued by the Jerusalem Local Planning and Building Committee is a mandatory prerequisite for any construction within the municipal borders of Jerusalem, including annexed East Jerusalem. The law stipulates that any construction of a building without a permit is a criminal offence. Consequently, the building can be subject to a demolition order and the builder will be subject to an indictment.

According to international law and the consensus of the international community on the matter, East Jerusalem is occupied territory and subject to the relevant laws of occupation.¹ However, Israel, which unilaterally annexed East Jerusalem in 1967 and formally codified the annexation in 1980, considers East Jerusalem as Israeli territory and subjects it to Israeli jurisdiction.²

According to Israeli authorities, therefore, Israeli planning and building laws apply identically to East and West Jerusalem and elsewhere in Israel. In practice, however, Israeli authorities have adopted planning policies specific to East Jerusalem that do not enable Palestinian residents to build structures in accordance with the law. Moreover, the manner in which the Jerusalem Municipality enforces the planning and building laws in East Jerusalem ignores the inherently dissimilar situation in East Jerusalem, in particular regarding land under settlement, land registration and applicable planning schemes. In East Jerusalem the land settlement procedures (not to be confused with Israeli settlements) have been effectively frozen since 1967. Without final settlement of land, final registration cannot usually be completed. This, in addition to the procedures that have been put into force by the Jerusalem Municipality, makes it almost impossible for Palestinian residents of East Jerusalem to obtain a building permit. On top of that, there are procedural obstacles that were added to the process of licensing in East Jerusalem. Especially, the requirement to make an analytic survey

¹ See ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 43 IL M 1009 (2004), para. 78.

² Basic Law: Jerusalem, Capital of Israel, *Laws of the State of Israel*, No. 34, 209 (1980).

of the land for registration purposes.³ Consequently, Palestinian residents of East Jerusalem have largely refrained from commencing Israeli land registration procedures. As a result, very few new licensing files have been opened for East Jerusalem and very few building permits are issued for Palestinian residents in the area.

This state of affairs has been recently reaffirmed by the Israeli State Comptroller and Ombudsman in its annual report on local government published in November 2016.⁴ The chapter devoted to the review of the Jerusalem municipality, focuses specifically on the deficiencies in planning and authorization of building permits in East Jerusalem Palestinian neighborhoods. The report criticizes the lack of an up-to-date master plan for the city and the small quantity of building permits authorized for Palestinian neighborhoods in East Jerusalem (including exact numbers of permits granted, in comparison with those granted to Jewish neighborhoods).

In this respect the report concludes that (unofficial translation):

"In light of the fact that the Arab neighborhoods make up almost 40% of the city's population, these numbers point to a vast gap between the Arab and the Jewish neighborhoods. The reasons for this gap are structural difficulties in the application for and approval of building permits in the Arab neighborhoods; in particular lack of zoning plans on the basis of which building permits may be authorized; lack of municipal infrastructure (including water and sewerage infrastructure); and absence of land settlement, resulting in uncertainty of property ownership.

In its recommendations, the report addresses both the municipality and the government: "the municipality and the local committee should use the means at their disposal to increase the number of building permits in the Arab neighborhoods in East Jerusalem. The Ministry of Justice should explore alternatives to the settlement of lands in Jerusalem and bring the matter to the government for discussion and decision."

Planning Schemes

The Israeli *Planning and Building Law 1965* prohibits the authorisation of building permits for areas that are not zoned for construction, or that lack an approved local planning scheme. Furthermore, a building permit may only be issued in areas where the applicable planning scheme allows the type of structure sought. Building permits must also be issued in accordance with the scheme's construction requirements.

Jordanian planning and development schemes for East Jerusalem, which were implemented after Jordan took control of the area in 1948, were cancelled by the Israeli authorities following Israel's occupation and annexation of East Jerusalem in 1967. For many years thereafter, Israeli planning authorities in Jerusalem failed to prepare any new planning schemes for the Palestinian areas of East Jerusalem. Additionally, the approval process for schemes that were submitted, but not yet approved at the time of the Israeli occupation, was delayed, sometimes indefinitely. Instead of contributing to the development of these communities and easing housing shortages, the few areas in East Jerusalem that had planning schemes approved after 1967 featured plans that, in practice, served as an

³ Bimkom, *The Planning Deadlock: Planning Policy, Land Regularization, Building Permits and House Demolitions in East Jerusalem*, December 2004, pp. 9-66 [Hebrew]; OCHA, *The Planning Crisis in East Jerusalem: Understanding the Phenomenon of "Illegal" Construction*, April 2009, pp.7-14.

⁴ The report (in Hebrew and Arabic) is available at: <http://www.mevaker.gov.il/he/Reports/Pages/554.aspx> (published on 22.11.16).

additional means to limit development, reduce the areas designated for building, and strengthen Jewish presence and control throughout the city.⁵

At present, there remain large areas in East Jerusalem, populated and unpopulated, that do not have approved planning schemes. The prolonged absence of planning by authorities in these areas has caused some of the residents, who wish to build in the area, to draft planning schemes themselves that they then submit to the planning authorities for approval. Residents meeting very strict criteria in areas where there is an approved planning scheme may also initiate a detailed planning scheme seeking to alter the existing scheme – a measure typically employed in an effort to designate certain areas for construction.



*Reviewing a planning scheme for a West Bank community.
Photo: JC Tordai, 2010.*

In addition, in cases where a particular building is at risk of demolition for being constructed in contravention to a planning scheme, the building's residents may submit alternative planning schemes, essentially seeking to legalise the building retroactively. In reality, however planning in East Jerusalem has become a mission impossible, since it is almost impossible to draft a plan that can address the needs on the ground while meeting the planning requirements. Consequently, the East Jerusalem neighbourhoods have been developed and continue to develop sporadically, without a planning scheme.

Procedure for Submitting a Planning Scheme Application

In order to lodge an application, an applicant must provide the following documents, in Hebrew:⁶

1. A **map** showing the roads, residential and public zones in the area in question;
2. A **written description** of permitted building percentages, types of construction, and other details pertinent to the execution of the proposed scheme; and
3. A **statement concerning the owners of the land**, which should specify the particulars of all the land within the boundaries of the proposed scheme. The owners of the land in question must sign the statement. It should be noted that this requirement puts those owners that are considered by Israeli authorities to be "absentees" in danger of losing their ownership rights (For more on the issue, in the context of East Jerusalem, see: NRC Fact Sheet 'The Absentee Property Law and its Application to East Jerusalem'.)

For unregistered land and land under settlement⁷ the applicant must also provide the following:

4. **Confirmation from the Israel Land Administration** that the land is not held by the state or any other official authority (including the Custodian of Absentee Property);

⁵ B'Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, May 1995, p. 73.

⁶ Documents in Arabic must be translated to Hebrew and notarized. A specification of all the requirements can be found on the Municipality's website: <https://www.jerusalem.muni.il/en/Residents/CityPlanning/LicensingSupervision/Pages/BuildLicenseDept.aspx>

⁷ For a detailed explanation regarding the land registration process see: Haim Sandberg, *Land Title Settlement in Eretz-Israel and the State of Israel*, Israel, 2000 [Hebrew]. With regard to East Jerusalem see: Haim Sandberg, "Jerusalem: Land Title Settlement and Expropriation", *Journal of Israeli History*, Volume 23(2), pp. 216-231, 2004; Ronit Levine-Schnur, "Privatization, Segregation, Discrimination: The Cessation of Land Settlement in East Jerusalem", *Tel Aviv University Law Review*, Vol. 34, p. 183 at 210-220, 2011 [Hebrew].

5. **Confirmation from the Israeli Mapping Centre** stating that the land is not registered with the Israeli Land Registry/*Tabo*;
6. **Confirmation from the Israeli Ministry of Justice** stating that there are no additional claims to the land appearing in the Jordanian Table of Claims; and,
7. **Confirmation from the Israeli Ministry of Finance** stating that the applicant is registered in the files of the tax authorities and that the property taxes for the land in question have been paid.⁸
8. **If the land is in Beit Hanina and Shua'fat:** A confirmation of the approval of the ownership from the local committee at the public center of Beit Hanina and from the municipality officers.
9. Confirmation from neighbours of the land for the ownership.
10. Confirmation of town Mukhtars of the Neighbourhood for the ownership.

Steps in the Approval Process of a Planning Scheme

The procedure for approving planning schemes is elaborated in the third section of the Israeli *Planning and Building Law 1965*, which details different approval processes for schemes submitted to the Local and District Planning and Building Committees. The Local Planning and Building Committee ('the Local Committee') derives its jurisdiction from Article 62A of the *Planning and Building Law 1965*, and may, in general, only approve small and limited planning schemes. All the other schemes are under the jurisdiction of the District Planning and Building Committee ('the District Committee').

The approval process regarding planning schemes submitted to the **District Committee** is as follows:

1. A planning body (e.g. the municipality or other state authority) or the landowner initiates a planning scheme and communicates it to the relevant Local Committee.
2. The Local Committee discusses the scheme. Within 60 days, the Local Committee should provide its recommendation to the relevant District Committee to either deposit the scheme for the submission of objections, reject the scheme, or compel the initiator of the scheme to make certain specified changes.
3. The initiator of the scheme may appeal the Local Committee's recommendations to the District Committee within 15 days. The District Committee may approve the appeal; reject the appeal and submit the scheme under certain conditions; or reject the scheme altogether.
4. The District Committee discusses the scheme following approval by the District Planner.
5. The District Committee should decide, within 60 days of receiving the scheme,⁹ whether to deposit it, reject it or set conditions to depositing the scheme. In the event that the District Committee rejects the planning scheme, the initiator of the scheme may commence with appeal proceedings, as elaborated below.

If the District Committee decides to deposit, or approve, the scheme, the process continues as follows:

6. The District Committee must then announce that the scheme has been deposited for objections in the Israeli Official Gazette, in three newspapers (one in Hebrew, one in Arabic and in a local magazine), on the relevant municipality's website and on public bulletin boards in the municipality. During the following two months, anyone who believes s/he may be

⁸ This tax is paid by the landowner, for every tax year. The tax is imposed on a non-agricultural land that has not been developed (or that has only been developed in small part) in order to encourage building.

⁹ According to Article 85(B)(1) of the Planning and Building Law 1965, the Chairmen of the Planning and Building Committees may extend this period by an additional 30 days.

adversely affected by the scheme may submit objections to the District Committee. A copy of the objections should also be sent to the relevant Local Committee.

7. The District Committee discusses the objections to the scheme, often requesting the opinion of the relevant Local Committee.
8. The District Committee renders a decision, rejecting the scheme, approving it under certain conditions or approving it as submitted.
9. In the event that the Minister of the Interior decided that a particular scheme requires his/her approval, the scheme is then submitted to the Minister who should render a decision within 30 days.

However, in the event that the District Committee rejects a planning scheme, appeals to the Committee's decision may be submitted as follows:

1. The initiator of the scheme, or anyone whose objection to the scheme was rejected, may submit an application (to the District Committee's chairman) to appeal within 15 days of the District Committee's decision. If the chairman decides to allow the appeal, it is submitted to the State Planning and Building Committee (State Committee) within 30 days. The State Committee may then approve the appeal in its entirety, approve part of the appeal, approve it under certain conditions or dismiss it. The State Committee may also return the scheme for a hearing in front of the District Committee.
2. The State Committee publishes the final decision regarding the appeal in the same manner in which the deposition of the scheme was published.
3. In the event that the planning scheme appeal or appeal following a failed objection is rejected, the appellants may submit a petition to the relevant Court of Administrative Affairs.
4. If the relevant Court of Administrative Affairs denies the appeal, the appellants may appeal to the Supreme Court of Israel.

If a planning scheme is approved by any of the above bodies, it will come into effect 15 days after the approval of the scheme was published in the manner detailed above.

By comparison, the approval process for schemes under the jurisdiction of the Local Committee is similar to the procedures detailed above, save the following key differences:

- The Local Committee may discuss and decide whether to deposit the scheme only upon receiving opinions from the Committee's engineer and legal advisor confirming that the scheme falls within the Committee's jurisdiction.
- Objections to proposed schemes under the jurisdiction of the Local Committee are submitted to the Local Committee, with a copy of the objection also sent to the District Committee.
- The discussions regarding any objections will be held in front of the Local Committee.
- An appeal against a decision by the Local Committee should be submitted to the District Appeal Committee within 15 days of the Local Committee's decision. An application to appeal against the decision of the District Appeal Committee should be submitted to the Committee's chairman within 15 days of the Committee's decision. In the event that the chairman decides to allow the appeal, the appeal should then be submitted to the relevant District Committee within seven days of the chairman's decision.

Obtaining a Building Permit

The process of obtaining a building permit commences with the submission of an application to the Licensing Authority. The application should be prepared by a certified engineer or an architect. In order to lodge an application for a building permit, all applicants must provide the following documents, in Hebrew:¹⁰

- **A completed “Application for a Building Permit and Use of the Property” form.** This form should include a detailed description of the property and the planned structure (*e.g.* whether it is a new building, or an addition to an existing building); the nature of the planned structure (*e.g.* residential, business, etc.); and a declaration by all contractors who will be responsible for the building’s construction specifying the building materials to be used. This form should be signed by everyone who possesses rights to the land.
- **Maps and charts.** The applicant(s) must provide maps and charts, signed by a certified surveyor, illustrating the area of the planned structure; the borders of the plot in question; the external and internal designs of the planned structure; and the nearby infrastructure. This map has to be approved and confirmed by the National survey institute.
- **Inheritance deed.** When the owner of a property dies, his or her heirs must apply for a certificate of succession which divides the inheritance into interests according to religious or civil law. This certificate is issued by a religious court or the civil inheritance office and must specify the particular parcel of land at issue. Only the lawful successor is authorised to sign the application (a) once it is registered at the Land Registry for registered land; or (b) once it is registered with the Land Settlement Officer when the land is under settlement procedures.

Upon filing the application with the Licensing Authority, the applicant is also required to pay 20% of the estimated building fees as a deposit. If the permit application is refused, the Licensing Authority must return this deposit to the applicant.

Documents Proving Land Ownership

Building permit applicants must also provide documentation proving their ownership of the land on which they wish to build. In most cases, this requirement is the main obstacle for Palestinian residents of East Jerusalem to obtain a building permit.

Since late 2001, the requirements for proving land ownership in Jerusalem have become much more stringent. These requirements differ according to the status of the land. Since Israel froze the land settlement process in East Jerusalem, which had initially commenced under Jordanian rule (1948-1967), the registration situation in East Jerusalem has remained relatively unchanged since 1967. Accordingly, more than 75% of the land in East Jerusalem is either unregistered (*i.e.* areas where no registration process had been initiated prior to 1967) or “under settlement” (in areas where the settlement of title and registration process had started but had not been completed prior to 1967).¹¹

Registered Land

In applications for a permit to build on registered land in East Jerusalem, a registered landowner must also provide a document from the Israeli Land Registry/*Tabo* that identifies him or her as the owner. Until 2000, in cases where the current owner of the land was not the person registered with the Israeli Land Registry/*Tabo*, such as a successor or a buyer, it was sufficient to provide an inheritance deed or a purchase deed. However, under current procedures, in place since 2000, by seeking to register with

¹⁰ See footnote 6, above.

¹¹ Bimkom, *The Planning Deadlock*, *supra* note 3, p. 61.

the Israeli Land Registry/*Tabo*, the landowner risks having the land transferred into the hands of the Custodian of the Absentee Property. This can happen if, for example, ownership documents indicate that one of the heirs is an “absentee” owner.¹² In these cases, the Custodian of Absentee Property may take over this share of the property and transfer it to his custody. For this reason, many Palestinians in East Jerusalem are very reluctant to register their land with the Israeli Land Registry.

Land “Under Settlement”

Building permit applicants who seek to build on East Jerusalem land classified as “under settlement” must provide the following documents:

- **A deed from the Land Settlement Officer:** Prior to late 2001, a combination of traditional and administrative proof adducing evidence of land ownership was sufficient. These types of proof could include: affidavits of the applicant and the local *mukhtar* regarding the ownership of the land; an affidavit, signed by a lawyer, asserting that the land is not under the control of the Israel Land Administration; and payment of property tax. However, according to requirements in place since 2001, the applicant for a building permit must be the same person who is registered in the Table of Claims or the Table of Rights under the land settlement.¹³ This requirement causes a similar problem as may occur in the procedure in cases of registered land (see above), as the applicant is obliged to register first with the Land Settlement Office and consequently face the risk that the land may end up being expropriated by the Custodian of the Absentee Property.
- **Confirmation from the Ministry of Finance:** This document should state that the applicant is registered in the files of the tax authorities and all relevant property taxes have been paid. In cases where the applicant is not registered in the files of the tax authorities, s/he must elaborate how the ownership was transferred from the individual listed in the relevant registry.
- **Confirmation from the Israeli Mapping Center:** This document should state that the land on which the applicant wishes to build has not been registered.
- **Affidavit from the landlord:** The affidavit, signed by the landlord(s) should specify the personal particulars of all the rights holders of the land. The affidavit should also include a confirmation signature from a lawyer or a judge.



A home in Wadi Yasul, East Jerusalem that was demolished by Israeli authorities. The residents are currently preparing a master plan for the area and the process has, to date, prevented further demolitions. Photo: JC Tordai, 2010.

¹² For the detailed definitions of “absentee” and “absentee property”, see Article 1 of the Absentee Property Law, 5710-1950.

¹³ The Table of Claims is a list issued as part of the land title settlement and registration process of all people who claim to have rights in the land concerned. Once the rights in the land are specified, they are portrayed in the corresponding Table of Rights.

- **Affidavit from the local *mukhtar*:** This affidavit should specify the individuals who hold rights in the land.
- **If the land is located in Beit Hanina or Shua'fat,** an approval of ownership has to be obtained from the local community administration center.

Unregistered Land and Land Not "Under Settlement"

Applications for a permit to build on land that is neither registered nor under settlement should include all the documents mentioned above with regard to applications submitted where the land is "under settlement", excluding a deed from the Land Settlement Officer. In addition, the applicant should provide the following:

- **Affidavit from the individual registered in the files of the tax authorities:** The affidavit should specify who this person is, whether it is the applicant or someone else. The affidavit should also specify how this person gained the rights in the land (e.g. inheritance, purchase, etc.) and provide the necessary evidence for this.
- **Plan for Registration Purposes:** Since the early 2000s, applicants for building permits in Jerusalem are required to submit, as a preliminary condition, a "Plan for Registration Purposes."¹⁴ In this process, which ends with the registration of the land in the Land Registry/*Tabo*, the boundaries of the relevant lot are marked. The process is based on an analytical survey using a national coordinates network, and the application should be signed by a surveyor listed in the Register of Surveyors. This plan costs several thousand US dollars and there are also legal fees, since a lawyer is required to personally register the plan at the Israel Land Administration.
- **Confirmation from the Israeli Mapping Center** stating that the land is not registered with the Israeli Land Registry/*Tabo*;
- Confirmation from neighbours of the ownership of the land.
- Confirmation of the ownership from Mukhtars of the neighbourhood.

The Local Planning and Building Committee

Once a building permit application is submitted, the Licensing Authority reviews it to make sure it meets the requirements set out in law and the planning scheme in place for the particular area in question. The Licensing Authority may then ask the applicant to make changes to the application or to provide more documents prior to moving forward with the application procedure. If the Licensing Authority finds the application satisfactory, it will then be handed over to the Local Planning and Building Committee (the Local Committee) for consideration.

If the Local Committee approves the application, the applicant will typically then be required to provide further documentation specified by the Local Committee in order to continue the application process, including:

- **Maps and charts:** In some cases, the Local Committee will require the applicant to submit additional maps and charts to those provided when the permit application was originally submitted.
- **Approval documents** from:

¹⁴ Where the land in question is "under settlement," a "plan for registration purposes" may also be required. This is where the approved outline scheme for the property's area amended the borders of the plot as they were registered during the process of "land settlement."

- Rear-Area Headquarters of the Israeli military (regarding building of a bomb-shelter in the house);
- The Israel Land Administration;
- The telephone company;
- The electric company;
- The fire department;
- The Ministry of Health; and
- A laboratory report from an authorised laboratory regarding the quality of the concrete, sanitary system and gas system in the planned construction.

In addition, at this point the applicant must also pay the following fees:

- **Building fees** paid according to the planned size of the structure to be built.
- **Development fees** paid according to the size of the lot, including payments for roads and sidewalks, sewage, development of water mains and water mains connection.
- **Betterment levy**, a tax that the state collects from the landowner on a plot of land that was improved by an approved master plan, also calculated in accordance with the size of the lot.

Typically, these fees are high and constitute a heavy burden for Palestinians in East Jerusalem. There remains at present a sizable income gap between the Jewish Israeli and Palestinian populations in Jerusalem. It is worthy to note that the fees for development, namely fees for roads and sidewalks, have to be paid even if there are no developments done by the municipality.

Moreover, there are numerous other financial factors which raise the costs of building in East Jerusalem and thus constitute an additional burden on Palestinian residents. In Palestinian areas, houses are often built by one family who must itself meet the high costs of planning; whereas in Israeli areas, housing developments are built by construction companies who cover the costs of planning for the whole development. Additionally, the lack of infrastructure in Palestinian neighbourhoods in East Jerusalem means that the distance between the planned construction and the nearest municipal connection point for water and sewage is usually quite far. As a result, the fees for connecting the new structure to these systems are usually high for Palestinian East Jerusalemites. Further, in West Jerusalem the state often assists landowners building new properties by subsidizing development costs and providing additional benefits for both building managers and Jewish apartment buyers.¹⁵ Similar subsidies or benefits are rarely, if ever, provided to Palestinians in East Jerusalem.

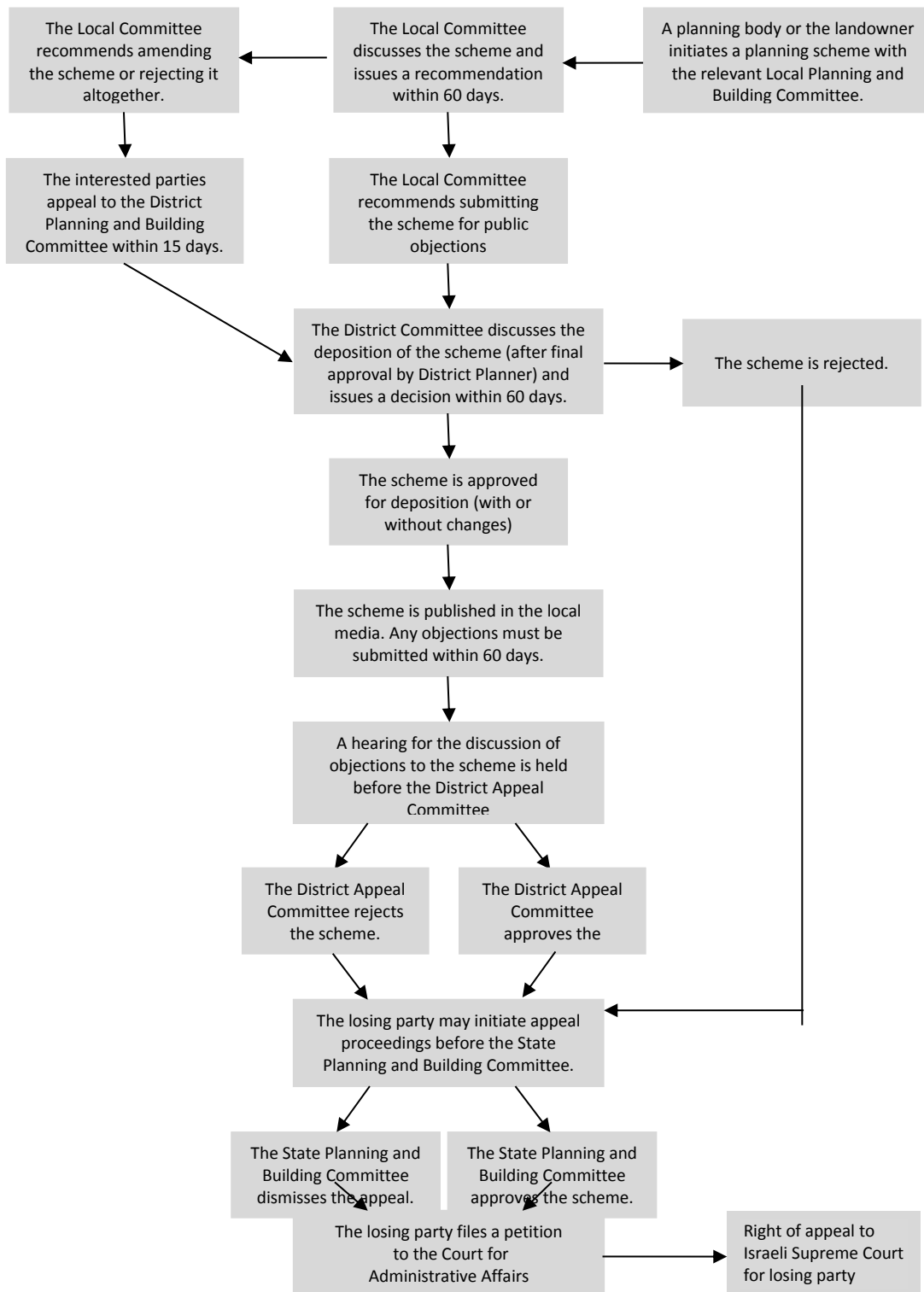
The District Appeal Committee

In the event the Local Committee rejects a building permit application, the applicant may appeal this decision before the District Appeal Committee within 30 days. The applicant may also appeal to the District Appeal Committee if the Local Committee fails to reach a decision on an application within three months of submission of the application. The District Appeal Committee should then issue its decision within 30 days.¹⁶ If the appeal is rejected by the District Appeal Committee, the applicant may submit a petition to the Court of Administrative Affairs. If the Court of Administrative Affairs then rejects the petition, the appellant may appeal to the Supreme Court of Israel.

¹⁵ Bimkom *The Planning Deadlock*, *supra* note 3, pp. 42-44.

¹⁶ Planning and Building Law 1965, Article 157.

Flowchart: Approval Procedures for Planning Schemes under the Jurisdiction of the District Planning and Building Committees¹⁷



¹⁷ Alternative procedures apply to schemes that are under the jurisdiction of the Local Planning and Building Committee (see p. 3, *supra*).