

SPECIAL ISSUE

Busia County Gazette Supplement No. 13 (Bills No. 9)



REPUBLIC OF KENYA

***BUSIA COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2016

NAIROBI, 2nd August, 2016

CONTENT

Bill for Introduction into the County Assembly of Busia—

PAGE

The Busia County Rating Bill, 2016..... 1

The Busia County Rating Bill, 2016
THE BUSIA COUNTY RATING BILL, 2016
ARRANGEMENT OF CLAUSES

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 00200
NAIROBI, KENYA

Clause

PART I — PRELIMINARIES

- 1— Short title.
- 2— Application and commencement.
- 3— Interpretation.
- 4— Objective and purpose of the Act.

PART II—ADMINISTRATION

- 5— Establishment and functions of the rating authority.
- 6— Officers of the rating authority.
- 7— Receiver of revenue to be authorized officer.
- 8— Rates to be paid to the rating authority.

**PART III—FORM, DETERMINATION AND PAYMENT
OF RATES**

- 9— Forms of rating.
- 10— Imposition of rates and adoption of a form of rating.
- 11— Adoption of forms and methods in existence.
- 12— Payable rates to be determined annually.
- 13— Effects of default in determining annual rate.
- 14— When rates are due.
- 15— Person liable to pay rate.
- 16— County executive to determine discount rates.
- 17— Power to allow discount.
- 18— Unpaid rate to be recoverable as summary debt.
- 19— Notice and its effect where rate is unpaid.
- 20— Unpaid rate to constitute a charge on land.
- 21— Statement on rates.
- 22— Officers to value land.
- 23— Service of documents.

PART IV—MISCELLANEOUS

24—Rules and regulations

25—Transitional provisions

SCHEDULES

First Schedule - Area rates

Second Schedule – agricultural rental value

Third schedule - Site value rate or improvement rate

Fourth schedule – payable rates



THE BUSIA COUNTY RATING BILL 2016

COUNTY ASSEMBLIES FORUM (CAF)
B2/7852 - 00200,
NAIROBI, KENYA

A Bill for

AN ACT of the County Assembly of Busia to give effect to the provisions of Article 187 and 209 (3) of the Constitution and provide for the imposition of rates on land, buildings and other immovable property in the Busia County and for related and connected purposes

ENACTED by the County Assembly of Busia, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Busia County Rating Act, 2016. Short title

2. Save as stated otherwise in this Act or other written law, this Act shall apply to all rateable property in the County and shall come into operation on such day as the Executive Committee Member shall appoint and publish in the *Gazette*. Application and commencement.

3. In this Act, unless the context otherwise requires— Interpretation.
“agricultural rental value rate” has the meaning assigned to it in accordance with clause 1 of Schedule 2;

“area rate” has the meaning assigned to it in accordance with clause 1 of Schedule 1;

“County Assembly” means the Busia County Assembly;

“County Government” means the Busia County Government;

“Executive Committee Member” means the member of the County Executive Committee for the time being responsible for land and urban housing development;

“Gazette” means the Busia County Gazette;

“Improvement rate” has the meaning assigned to it in clause 2 of Schedule 3;

“Land” includes any improvement on, in or under the land;

“Prescribed” means prescribed by the rules made under this Act;

“Rate” means a rate imposed under this Act;

“Ratable owner” has the meaning assigned to it by section 7 of the Valuation for Rating Act (Cap. 266);

“Ratable property” has the same meaning as in the Valuation for Rating Act (Cap. 266);

“Rating area” means an area for which a form or method of rating is or may be adopted or an area for which a rate is or may be imposed;

“Rating Authority” has the meaning assigned by Clause 5 of this Act;

“Receiver of Revenue” has the meaning given by the Busia County Revenue Administration Act 2016;

“Site value rate” has the meaning assigned to it in clause 1 of Schedule 3;

“Supplementary Valuation Roll” means any supplementary valuation roll prepared under the Valuation for Rating Act (Cap. 266);

“Valuation Roll” means any valuation roll prepared under the Valuation for Rating Act (Cap. 266);

“Year” means a period of 12 months starting on 1st January or such other prescribed date.

4. The objective and purpose of this Act is to—

Objective and purpose of the Act

- (a) provide a framework within which the County Government may perform and exercise its constitutional functions and powers under Article 187 and 209 of the Constitution;
- (b) provide an objective and equitable mechanism for taxation of property in the County; and
- (c) establish a mechanism to reliably raise revenue in the County to enable the County Government to govern and deliver services effectively.

PART II—ADMINISTRATION

5. (1) There shall be, in the County Government department responsible for matters relating to land in the County, a rating authority who will be a public officer designated by the Executive Committee Member in consultation with the member of the County Executive Committee responsible for finance.

Establishment and functions of the rating authority

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NAIROBI, KENYA

(2) A person designated and/ or appointed as a Rating authority shall be—

- (a) qualified and experienced in matters relating to land, economics, business administration or other related field;
- (b) a member of Institution of Surveyors of Kenya (ISK), Royal Institute of Chartered Surveyors (RICS), International Federation of Surveyors (FIG) or any other related and recognized professional body;
- (c) experienced in public affairs.

(3) The rating authority will be responsible for the administration of this Act and shall—

- (a) administer this Act in accordance with this Act and the regulations and guidelines promulgated by the Executive Committee Member;
- (b) establish and manage a valuation roll or rolls and registers in the County.

6. There shall be seconded to the rating authority such number of public officers as may be necessary to enable the rating authority to effectively perform its functions under this Act.

Officers of the rating authority.

7. (1) The Receiver of Revenue shall be responsible for collecting and receiving revenue under this Act.

Receiver of revenue to be authorized officer.

(2) The receiver of revenue may appoint officers to collect and receive revenue under this Act and such officers shall be deemed to have been appointed by the Receiver of revenue pursuant to this Act.

8. (1) All and any rates due and payable together with any interest and or penalties thereon shall be paid to the receiver of revenue or any other person authorized under Section 7 above to collect rates.

Rates to be paid to the rating authority.

(2) Rates may be paid—

- (a) by electronic transfer of funds or such other means as may be approved by the receiver of revenue; or
- (b) at the offices of the rating authority; or

- (c) at any other place as may be determined by the COUNTY ASSEMBLIES FORUM (CAF) receiver of revenue.



(3) The rating authority or any other person receiving payment of a rate shall issue a receipt for the payment to the person making payment at the time of such payment.

PART III—FORM, DETERMINATION AND PAYMENT OF RATES

9. (1) The forms of rating in accordance with which Forms of rating.
property rates may be imposed under this Act are—

- (a) area rate as provided for in Schedule 1;
- (b) agricultural rental value rate as provided for in schedule 2; and
- (c) site value rate or an improvement rate as provided for in Schedule 3.

(2) The County Assembly shall, in each year, adopt one or more forms of rating for the purposes of imposing a rate under section 10.

(3) Where a new form of rating is not adopted in a financial year, the forms of rating adopted in the previous financial year shall be applicable.

10. (1) The County Government may impose a rate on all or any ratable property in the county in respect of each year. Imposition of rates and adoption of a form of rating.

(2) Subject to subsection (3), the form of rating adopted for the purposes of imposing a rate under subsection (1) shall be site value rate.

(3) The County Assembly may adopt one or more of the other forms of rating referred to in section 9 and shall do so under the Act of the County Assembly providing for annual county finances or such other Act as the County Assembly may determine.

(4) Where there is in force a Valuation Roll or a supplementary valuation roll which does not include the value of land or where no improvement rate is valued, the Rating Authority may levy site value rate at such an amount as the Rating Authority shall determine provided it does not exceed 1% unless specifically provided for by another law (5) The County Government may adopt

different forms of rating for different **COUNTY ASSEMBLIES FORM (CAF)**
County areas of the
County. P. O. Box 73552 - 00200,
NAIROBI, KENYA

11. The County Assembly may, with such modifications as may be necessary, adopt and continue to apply in the County or part of the County, any form or method of rating under any law or rule in force immediately before the coming into operation of this Act.

Adoption of forms and methods in existence.

12. (1) The County Assembly shall, for each year, determine the amount of the rate payable and may do so under the Act providing for annual county finances or such other Act as it deem appropriate.

Payable rates to be determined annually.

(2) Without prejudice to subsection (1), the County Assembly may, in determining the amount of a rate payable, use the wording set out in Schedule 4 of this Act.

13. Where the County Assembly does not determine the amount of a rate payable for a particular year in accordance with section 12, then the amount of the rate payable for that year shall be deemed to be the amount of the rate that was payable for the immediately preceding year.

Effects of default in determining annual rate.

14. (1) A rate determined and imposed under this Act shall become due on 1 January in the financial year in which it is levied or such other date of each year prescribed by the County Assembly and shall become payable on such a day in the financial year as shall be fixed by the Rating Authority through a notice in the *Gazette*.

When rates are due

(2) The rating authority shall, upon determination and imposition of a rate, by notice in the *Gazette*—

- (a) specify the date on which the rate shall become payable; and
- (b) publish that date in a newspaper circulating in the County.

Provided that a notice of at least thirty (30) days shall be given of the date of payment published under this section.

(3) For the purposes of this Act, the Valuation Roll or any Supplementary Valuation Roll in force on the day on which any rate becomes payable shall be conclusive evidence of all matters included in such Roll.

15. (1) Any person who is the owner of rateable land at the time when a rate is determined and imposed on that land becomes liable for the payment thereof.

COUNTY ASSEMBLIES FORUM (CAF)
Person liable to pay rate.
00200
NAROK KENYA

(2) Where land is registered either jointly or as a tenancy in common, then the co-owners of the land so registered shall be jointly and severally liable for the payment of the rate.

(3) A person receiving the rent or who is in charge or control of the land the rateable owner of which is absent from Kenya shall be liable for the payment of the rate.

16. The County Executive, in accordance with the Revenue Administration and Management Act, shall determine the rate—

County executive to determine discount rates.

- (a) of discount that may be given by the rating authority where a rate payable is paid in full;
- (b) at which the rating authority may charge interest on any amount payable that remains unpaid.

17. The rating authority may, on or before the day on which a rate determined by the County Assembly becomes payable—

Power to allow discount.

- (a) allow a discount on any rate paid in full;
- (b) charge interest at a rate on any amount of a rate remaining unpaid after the day on which the rate became payable.

18. (1) Any rate or part thereof that remains unpaid after it has become due and payable, together with interest thereon, shall be recoverable as a summary debt by the rating authority and/or the receiver of revenue from the person liable for payment.

Unpaid rate to be recoverable as summary debt.

(2) The receiver of revenue may institute proceedings to recover the debt on behalf of the rating authority.

(3) A certificate signed by the receiver of revenue and certifying that—

- (a) an amount of rates is or was due and payable on or before a certain date; and
- (b) the amount or a part of the amount has not been paid on or before that date shall be admissible and

prima facie evidence against the defendant in proceedings under this section.

COUNTY ASSESSOR (CAF)
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NAIROBI, KENYA

19. (1) Where any rate or part thereof remains unpaid after the day on which it became payable, the rating authority may serve a written notice under subsection (2) upon any person paying rent to the owner of the land in respect of which such rate was imposed.

Notice and its effect where rate is unpaid

(2) The notice shall indicate and state—

- (a) the amount of arrears payable, which may include interest calculated in accordance with section 12; and
- (b) that all future payments of rent (whether already accrued, due or not) by the person paying the rent shall be made directly to the rating authority until such arrears and interest have been made in full.

(3) The notice served under this section shall operate as a transfer to the rating authority the right to recover, receive and give a discharge in respect of such rent.

20. (1) Any rate due and unpaid, together with interest thereon calculated in accordance with section 12, shall be a charge against the land on which the rate was imposed.

Unpaid rate to constitute a charge on land.

(2) The rating authority may, in the prescribed form, deliver a notification of a charge to a registrar of land under which such land is registered and the registrar shall register the notification against the title to the land.

(3) Upon its registration, the charge shall take priority in accordance with the law under which the land is registered.

21. On payment of the prescribed fee by any person, the rating authority shall furnish to that person a statement of the current status of the payment of rates for an area of land.

Statement on rates

22. (1) For the purposes of preparing a Draft Valuation Roll or Draft Supplementary Valuation Roll under the Valuation for Ratings Act (Cap. 266), the County Executive Member responsible for lands may appoint a qualified and duly authorized valuer from the county public service or other person or persons to value land in the County.

Officers to value land.

(2) Any person who obstructs prevents or refuses to do so to a public officer or other person authorized to do so commits an offence.

23. Where any document is required to be published, sent or served for the purposes of this Act, the provisions of section 12 of the Busia County Revenue Administration and Management Act, 2014, shall apply.

Service of documents.

PART IV—MISCELLANEOUS

24. (1) The County Executive member may make rules generally for the better carrying out of the provisions and purposes of this Act and different rules may be made in respect of different forms of rating or different ratings areas.

Rules and regulations.

(2) Without limiting subsection (1), rules may be made for the following purposes—

- (a) collecting rates;
- (b) prescribing cases in which rates may be reduced or remitted;
- (c) exempting any person or class of persons from the payment of rates;
- (d) prescribing the cases or circumstances under which the rating authority is to or may grant exemption from the payment of rates or of any rate or classes of persons who may be exempted;
- (e) prescribing the extent to which any land is to be exempted from the payment of area rates; and
- (f) prescribing fees.

25. (1) Subject to such modifications that may be necessary to bring them into conformity with provisions and requirements of this Act and the rules and or regulations made hereunder—

Transitional provisions

- (a) the form or method of rating in force in the County immediately before the coming into operation of this Act is hereby adopted by reference and shall continue to apply under this Act;
- (b) the rules in force immediately before the coming into operation of this Act that apply to any form or method of rating which is continued under

subsection (1) shall continue to ~~be in force for the~~ purposes of this Act;

COUNTY ASSEMBLY FOR BUSIA (CAF)
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NAIROBI, KENYA

- (c) any rules in force immediately before the coming into operation of this Act that exempt any charitable institution from the payment of rates in respect of any area in the County are adopted by reference under this Act and shall continue in force for the purposes of this Act.

(2) A valuation roll or supplementary valuation roll that, but for the operation of the Valuation for Rating Act (Cap. 266), would have been in force immediately before the coming into operation of this Act in respect of the County or a part of the County is deemed to be in force for the purposes of this Act as if that valuation roll or supplementary valuation roll were made in compliance with the Valuation for Rating Act (Cap. 266).

SCHEDULE I—Area Rate

COUNTY ASSEMBLIES FORUM (CAF)
P.O. Box 73552 - 00200,
NAIROBI, KENYA

Section 9 (1)(a)

1. An area rate is a rate imposed on an area of land and, the County Assembly may adopt one or more of the following methods of rating for an area rate—

- (a) A flat rate upon the area of land;
- (b) A graduated rate upon the area of land;
- (c) A differential flat rate or a differential graduated flat rate, according to the use to which the land is put, capable of being put or reserved;
- (d) An industrial rate upon the area of land used for other than agricultural or residential purposes;
- (e) A residential rate upon the area of land used for residential purposes; or
- (f) Such other method of rating upon the rate of land or building or other immovable property as the county assembly may approve.

2. The county may adopt different forms of rating for different rating areas and may from time to time vary the method or methods of area rating referred to in clause 1 above.

SCHEDULE II —Agricultural Rental Value*Section 9 (1)(b)*

An agricultural rental value rate is rate imposed on the annual value of agricultural land.

Agricultural land is land used for agriculture pursuant to Section 2 of the Agriculture, Fisheries and Food Authority Act.

SCHEDULE III—Site value rate or improvement rate*Section 9(1)(c)*

“A site value rate” is a rate imposed on the value of unimproved land as appearing in a valuation roll or supplementary valuation roll.

“An improvement rate” is a site value in combination with a rate on the assessment for improvement rate as appearing in a valuation roll or supplementary roll.

Application of Valuation For Rating Act (Cap 266)

If a site value rate or improvement rate is adopted, the Valuation for Rating Act (cap266) including relevant deductions shall apply to the form of rating so adopted.

SCHEDULE IV—Determining the Amount of rate payable

Section 12

For the purposes of **section 6** of the Busia County Rating Act 2016, the amount of a rate payable for a ratable property for 2015 is 0.3 percent of the unimproved value of the ratable property.

MEMORANDUM OF OBJECTS AND REASONS

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73332-00200,
NAIROBI, KENYA

Article 175 of the Constitution of Kenya requires county governments established there-under to reflect the principles of devolved government that include the principle that they shall have reliable sources of revenue to enable them to govern and deliver services effectively. A major and principle source of government revenue is taxation and levying of fees and charges for the services delivered.

Article 209 (2) of the Constitution empowers the national government, by law, to impose any tax or duty except the property rates and entertainment taxes under Article 209 (3). Accordingly, county governments have exclusive constitutional power and authority to impose property rates.

This Bill gives effect to that exclusive county taxing power by providing for the imposition and collection of property rates. The Bill relies on the property valuations in place under the national Valuation for Rating Act (Cap. 266).

The power to impose rates on immovable property in the County will constitute a reliable and sustainable source to raise County revenue for services delivery.

The enactment of this Bill into law does not occasion additional expenditure of public funds.

This Bill does not infringe on any fundamental rights and freedoms of the people of Busia County.

Dated 20th July, 2016

SYLVESTER OYULA,
Chairman, Budget and Appropriations Committee.