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BUSIA COUNTY GAZETTE SUPPLEMENT

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**THE BUSIA COUNTY REVENUE ADMINISTRATION
AND MANAGEMENT BILL, 2016**

A Bill for

AN ACT of the County Assembly of Busia to provide for effective administration of revenue raising and other taxation laws; the collection, receipt and management of county revenues; provide additional responsibilities for the County receiver of revenue and other public officers and entities; and for related and connected matters

ENACTED by the County Assembly of Busia as follows—

PART I— PRELIMINARIES

1. This Act may be cited as the Busia County Revenue Administration and Management Act, 2016 and shall into operation on the date that the County Executive Member may appoint and publish in the *Gazette*. Short title

2. In this Act, unless the context otherwise requires— Interpretation

“Head of County Revenue Collection” means the Head of County Revenue Collection in the County Executive department responsible for finance;

“County” means Busia County;

“County Assembly” means the Busia County Assembly;

“County Government” means the County Government of Busia County;

“County public officer” has the same meaning as in the County Government Act, 2012;

“County Revenue Fund” means the county revenue fund as established under Section 109 of the Public Finance Management Act;

“Executive Member” means the County Executive Committee Member responsible for matters relating to finance in the County;

“*Gazette*” means a *gazette* notice by the county of Busia;

“premises” include—

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- (a) any part of a building or structure;
- (b) any part of a vehicle or vessel; and
- (c) an area of land.

“prescribed” means prescribed by the rules made under this Act or any other Act of Busia County;

“rate” means a rate imposed under the Busia County Rating Act, 2016;

“receiver of revenue” has the meaning given by section 3 of this Act;

“revenue law” means—

- (a) this Act; or
- (b) the Busia County Rating Act, 2016
- (c) the Busia County Trade Licensing Act, 2016;
- (d) any other Act imposing an entertainment tax or any other tax that is payable to the County Government;
- (e) any Act or other law providing for the payment to the County Government of any fees or charges for services provided ; or
- (f) any other prescribed law.

“relevant person” means—

- (a) revenue payer; or
- (b) an employee or agent of the revenue payer: or
- (c) any other person whom the receiver of revenue believes on reasonable grounds may be able to assist in determining the liability (if any) of the revenue payer to pay a rate, tax, fee or charge payable under a revenue law;

“revenue payer” means a person liable to pay a rate, fee or charge to the county government under any revenue law.

3. The objectives and purposes of the Act are to establish a framework and mechanisms in the County to—

Objectives and purposes.

- (a) put into effect and implement the provisions of the

Public Finance Management Act in relation—

- (i) to the collection and receipt of county revenue by county public officers; and
 - (ii) administration and management of the taxes and revenues.
- (b) collect, receive and remit county revenues to the County receiver of revenue in accordance with this Act and the Public Finance Management Act;
 - (c) provide for waiver and reduction of taxes, fees, charges and other revenue to be collected by the county.

PART II—ADMINISTRATION OR REVENUE LAWS

4. (1) There is hereby established the office of Receiver of Revenue in the County.

Establishment of the office of the County Receiver of Revenue.

(2) The head of County Revenue Collection shall be the Receiver of Revenue in the County in respect of both taxation and other revenue under section 157 of the Public Finance Management Act, 2012.

(3) In addition to the qualifications for appointment of the head of County Revenue Collection, the head of County Revenue Collection in the County Executive department responsible for Revenue Collection appointed or designated to be the County Receiver of revenue shall be—

- (a) a qualified and experienced Accountant;
- (b) a member of a recognized professional accounting body;
- (c) experienced in public affairs.

5. (1) The receiver of revenue shall—

Functions of the receiver of revenue.

- (a) be responsible for the administration and enforcement of revenue laws in the County;
- (b) ensure the assessment and collection of and accounting for all rates, taxes, fees and other charges payable by or under any law in the County;
- (c) receive and account for all County Government revenues in accordance with this Act and the

Public Finance Management Act;

- (d) except as may be provided otherwise in this Act or other written law, ensure that all monies raised or received by or on behalf of the County Government are paid into the County Revenue Fund;
- (e) prepare the County Government revenue accounts and those of its entities and report thereon in accordance with the relevant laws and procedures;
- (f) advise the County Government on all matters relating to the administration and enforcement of County revenue laws, assessment and collection of rates, taxes, fees and other charges under the laws; and
- (g) perform such other functions as the County Executive Member may direct.

(2) Without limiting the functions and powers of the receiver of revenue under the Public Finance Management Act, 2012, the receiver of revenue shall have such other powers and functions as may be provided for by or under the revenue laws of the County.

6. (1) Save for the power to delegate under this Act, the receiver of revenue may after consultation with the Executive Committee Member, by instrument in writing, delegate all or any of his or her functions or powers under any revenue law to and authorize a public officer or officers in the county or any of its entities to perform such functions or exercise such powers.

Delegation by the receiver of revenue.

(2) A public officer appointed under subsection (1) should be qualified to be appointed as a receiver of revenue under Section 4 of this Act.

(3) Without prejudice to the generality of subsection (1), the County Government may enter into an agreement authorizing the Kenya Revenue Authority or any other person to collect rates, taxes, fees or charges payable under the revenue laws on such terms and conditions as may be specified in the agreement.

(4) Where the person authorized under subsection (3) is a natural person, such person shall be qualified for

appointment as the County receiver of revenue under this Act.

(5) A person to whom a function or power has been delegated or who is otherwise authorized by the receiver of revenue to collect and or receive any County revenue shall remit to the receiver of revenue all the revenue collected and or received as soon as practicable but not later than three days after such collection or receipt.

7. The County government may enter into an agreement authorizing a person or body to collect rates, taxes, fees and charges payable under revenue laws on such terms and conditions as are specified in the agreement.

Agreement in relation to revenue collection.

8. (1) The receiver of revenue shall prepare an annual report through the Chief Officer responsible for finance, on the operation and administration of revenue laws in the County and provide to the Executive Committee Member quarterly statements thereon or otherwise ensure that the statements are so provided.

Annual report by receiver of revenue.

(2) Within ninety days after the end of the County financial year, the receiver of revenue shall furnish Executive Committee Member through the Chief Officer responsible for Finance, with an annual report of the operations and administration of the revenue laws in the County for that year.

(3) Upon receipt of the annual report under subsection (2), the Executive Committee Member shall, as soon as practicable, transmit the same to the County Assembly for tabling and debate.

PART III—RECORDS AND INFORMATION OF REVENUE PAYERS

9. (1) For a period of not less than seven years after the completion of a transaction to which rates, taxes, fees or charges under a revenue law relate, to revenue payer of a County tax or revenue in respect thereof shall make and keep such books, accounts and records as may be reasonably necessary to determine the revenue payer's liability to pay such rates, taxes, fees or charges.

Preservation of accounts.

(2) By notice in writing given to a revenue payer the County receiver of revenue may direct the revenue payer as to the books, accounts and records the revenue payer shall

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be required to make and keep.

(3) A revenue payer who fails to comply with the requirement in subsection (1) or the notice under subsection (2) commits an offence and, on conviction, shall be liable to a fine not exceeding Kenya shillings five hundred thousand or to imprisonment for a term not exceeding three years or to both such fine and term of imprisonment.

10. (1) For the purposes of determining the liability (if any) of a revenue payer to pay a rate, cess, fee or charge payable under a revenue law, the receiver of revenue may, by notice in writing, given to a relevant person require the relevant person to do either or both of the following—

Providing
information and
evidence

- (a) provide the receiver of revenue with such information as the receiver of revenue requires;
- (b) attend and give evidence before the receiver of revenue, including on oath administered by an Advocate of the High Court.

(2) If a person fails to comply with a notice under subsection (1), the person is guilty of an offence punishable on conviction by a fine not exceeding one hundred thousand shillings.

11. (1) For the purpose of determining the liability, if any, by a revenue payer to pay a rate, tax, fee or charge payable under a revenue law, the receiver of revenue and all public officers authorized by him or her—

Access, inspection
and other powers
of a receiver of
revenue.

- (a) shall have full and free access to any premises of or in custody or control of a relevant person and may at all reasonable times, exercise all or any of the following—
 - (i) enter and inspect those premises and any goods in or on those premises;
 - (ii) obtain, copy and print information or data from any computer system in or those premises and retain all information and data that is obtained, copied or printed;
 - (iii) take extracts from or copies of any books, accounts, records and other documents in or on those premises and retain all extracts or copies taken.

- (b) may give notice in writing to the payer to provide the receiver of revenue and or public officers authorized under him or her with such information as he or she may require or attend and give evidence before the receiver of revenue either on oath or otherwise.

(2) Every person required to do so shall give to the receiver of revenue or other authorized officer all reasonable assistance so as to allow him or her to exercise his or her powers under this section.

- (3) Any person who—

- (a) fails or refuses to—

- (i) comply with the notice under subsection (1);
 - (ii) provide access to premises required by the county receiver of revenue; or

- (b) obstructs or hinders the county receiver of revenue or public officer in the discharge of his or her duties under subsection (1), commits an offence and, upon conviction, is liable to a fine not exceeding Kenya shillings one hundred thousand (KSh.100,000/=) or to imprisonment for a term not exceeding twelve months or to both such fine and term of imprisonment.

12. (1) The receiver of revenue or his or her authorized public officer may take into his or her possession any property, other than land, that may be required as evidence in a court for proceedings that may be brought under this Act or any other revenue law.

Possession of property for purposes of proceedings.

(2) Where property taken into the possession of the receiver of revenue is no longer required under subsection (1), it shall be returned to the person entitled or disposed of in accordance with the law as soon as practical.

13. (1) The county executive committee member responsible for finance may on a recommendation made under subsection (3) waive or reduce a rate, cess, fees and charge that is imposed or payable under a revenue law.

Waiver or reduction of taxes, fees and charges.

(2) An application to waive or reduce a rate, cess, fees and charge that is imposed or payable under a revenue law must be made in writing to the county executive committee member responsible for finance.

(3) The county executive committee member referred to in subsection (2) may recommend that the rate, cess, fees and charge the subject of the application be waived or reduced if he or she is satisfied that:

- (a) the applicant would suffer severe financial hardship if the tax, fee or charge were not waived or reduced; or
- (b) it is not cost effective to take action to recover the rate, cess, fees and charge; or
- (c) the waiver or reduction is for the purpose of encouraging the applicant to pay amounts outstanding to the County Government; or
- (d) grounds of equity or other good cause exist that make it expedient to waive or reduce the rate, cess, fees and charge or
- (e) an order of a court is in force that specifies the imposition or payment of a rate, cess, fees and charge at a lower rate or amount than is provided for in the revenue law under which the rate, cess, fees and charge is imposed or payable; or
- (f) other compelling circumstances exist which make it expedient to waive or reduce the rate, cess, fees and charge

(4) A recommendation under subsection (3) must be in writing and must—

- (a) specify the rate, cess, fees and charge that is waived or the amount of the reduction of the rate, cess, fees and charge;
- (b) specify the person or body to whom the waiver or reduction applies; and
- (c) set out the reasons for the recommendation.

(5) Within 14 days after making a decision under subsection (1), the county executive committee member responsible for finance must cause a copy of the decision to be provided to the Governor and the applicant together with a statement of the reasons for the decision.

(6) A person or body granted a waiver or reduction of a rate, cess, fees and charge is not subject to any collection

or enforcement procedure in respect of the rate, cess, fees and charge that is waived or the part of the rate, cess, fees and charge that is reduced for the period which the rates, tax, charge, cess or fees has been waived.

(7) The county executive committee member responsible for finance must cause: (a) a public record of each waiver or reduction to be maintained together with the reason for the waiver or reduction; and (b) within 90 days or such other prescribed period after the end of each year, the Auditor-General to be notified of any waiver or reduction made for that year.

(8) A county public officer within the meaning of the County Governments Act 2013 or any other prescribed office holder may not be excluded from the payment of a rate, cess, fees and charge by reason of his or her office or the nature of his or her work.

PART IV—MISCELLANEOUS

14. Whenever required to do so by any person and whenever exercising the powers under Section 11 of this Act, the receiver of revenue and or any person exercising powers or performing functions delegated by the receiver of revenue shall produce his or her identification or proof of authorization as the case may be.

Receiver of
revenue to produce
identification

15. (1) The receiver of revenue may approve and prescribe forms for the purposes of this Act or any other revenue law.

Forms.

(2) The receiver of revenue shall open and maintain a revenue register or registers for the different sources of revenue which shall contain such information and be in such a form or forms as may be prescribed.

16. (1) A document or other instrument required to be published under a revenue law may be published by advertisement in the *Gazette* and in one or more newspapers with wide circulation in the County.

Publication and
service of
documents

(2) Any document required or authorized to be sent or served under or for the purposes of this Act or any revenue law in the County may be sent or served by—

- (a) delivering it to the person to or on whom it is to be sent or served; or

- (b) leaving it at the usual or last known place of abode or business of that person or in the case of a company, at its registered office; or
- (c) ordinary or registered post; or
- (d) emailing it to the person; or
- (e) any method which may be prescribed.

(3) Despite subsection (2), where the receiver of revenue has unsuccessfully made attempts to send or serve a document by one of the methods and is satisfied that such notice has not been received by the person to whom it was addressed, the county receiver of revenue may publish an advertisement the general purport of such thereof in the manner provided in subsection (1) upon which the document shall be deemed to have been received by that person.

(4) An advertisement referred to in subsection (3) may refer to one or more documents and to one or more ratable owners.

(5) A document or instrument under a revenue law is required or authorized to be served on the owner or occupier of any premises it may be addressed to such owner or occupier by the description "owner" or "occupier" of the premises (naming the premises), without further name or description.

17. If a person contravenes or fails to comply with the provisions of this act, the person commits an offence under this act and is liable, unless another penalty is expressly provided for in this act, on conviction for a fine not exceeding Kenya Shillings Three Hundred Thousand or imprisonment of not less than 2 years or to both such fine and term of imprisonment.

General offences.

18. (1) The Executive Committee Member may make rules generally for the better carrying out of the provisions and purposes of this Act.

Regulations and guidelines.

(2) The receiver of revenue may issue guidelines for the purposes of a revenue law.

MEMORANDUM OF OBJECTS AND REASONS

A principal object of devolution under Article 174 of the Constitution of Kenya is to promote social and economic development. Sustainable development is a national value under Article 10 of the Constitution which binds all persons in 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 reserves to county governments the power to impose the taxes stated in Article 209(3).

Further, Article 209 (4) of the Constitution of Kenya, read together with Part 2 of the Fourth Schedule thereto, gives counties the power to impose fees and charges for services provided and for regulatory purposes in respect of certain licensed activities.

The taxes, fees and charges imposed and levied ought to be prudently used for service delivery through a transparent and accountable process.

This Bill provides a system for collecting, receiving and accounting for taxes, fees and charges in the County. It confers a general power and responsibility for the administration of county revenue laws on a public official who is to be held accountable for that administration.

To achieve the above purpose, the Bill sets out additional relevant administrative and enforcement provisions relating to revenue legislation.

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 the 20th July, 2016

SYLVESTER OYULA,
Chairman, Budget and Appropriations Committee.