

SPECIAL ISSUE

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THE KAKAMEGA COUNTY RATING BILL, 2016

A Bill for

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

ENACTED by the County Assembly of Kakamega County as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kakamega County Rating Act, 2016 and shall come into operation upon Publication.

Interpretation

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

“agricultural rental value rate” has the meaning assigned to it in accordance with clause 1 of the Second Schedule;

“area rate” has the meaning assigned to it in the First Schedule;

“county assembly” means the Kakamega County Assembly;

“county government” means the County Government of Kakamega;

“Executive Committee Member” means the County Executive Committee Member responsible for Land;

“Improvement rate” has the meaning assigned to it under the Third Schedule;

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

“Rate” means a rate imposed under this Act;

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

“Rateable 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;

“Receiver of Revenue” means the Kakamega County Revenue Agency established under section 4 of the Kakamega County Revenue Administration and Management Act, 2016;

“Site value rate” has the meaning assigned to it in the Third Schedule;

“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.

Object and Purpose

3. The object and purpose of this Act is to—
- (a) provide a framework within which the County Government may perform and exercise its constitutional functions and powers under Article 187 and 209(3) of the Constitution; and
 - (b) provide an objective and equitable mechanism for imposition of rates on land in the County.

PART II—ADMINISTRATION

4. (1) In addition to existing functions, the shall be responsible for the overall administration of rates in the County and shall—

- (a) administer this Act and regulations made there under;
- (b) establish and manage a valuation roll or rolls and registers in the County; and
- (c) cause the valuation roll to be reviewed once every ten years.

Determining Rateable Area

5. The Executive Committee Member shall, by notice in the gazette, determine the rateable areas within the County.

Receiver of Revenue to collect Rates

6. The Receiver of Revenue shall be responsible for collecting and receiving rates under this Act.

Rates to be paid to the Receiver of Revenue

7. (1) All rates, charges, fees, interest and penalties due under this Act shall be paid to the receiver of revenue.

- (2) Rates may be paid—
 - (a) by electronic transfer of funds or such other electronic means as may be approved by the receiver of revenue; or

(b) by banker's cheque or direct deposit at the offices of the receiver of revenue.

(3) The receiver of revenue shall issue a receipt for the payment to the ratepayer.

PART III—FORM, DETERMINATION AND PAYMENT OF RATES

Forms of rating

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

- (a) area rate as provided for in the First Schedule;
- (b) agricultural rental value rate as provided for in the Second Schedule; and
- (c) site value rate or an improvement rate as provided for in the Third Schedule.

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

Imposition of rates

9. (1) The County Government may impose a rate on all or any ratable property in the county in respect of each year.

(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 8.

(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 may levy site value rate at such an amount as it shall determine provided it does not exceed 1% unless specifically provided for by another law.

Adoption of Dorms and methods of rating

10. The County Executive Committee Member 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.

When rates are due

11. (1) A rate determined and imposed under this Act shall become due on 1st July 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 through a notice in the Gazette.

(2) The 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 with wide circulation in the County.

Provided that a notice 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.

Persons liable to pay rates

12. (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.

(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 who is in default shall be liable for the payment of the rate.

(4) A tenant of land the rateable owner who is in default shall be liable for the payment of the rate.

Determination of discount

13. The County Executive Committee Member responsible for Finance shall in consultation with the Receiver of Revenue determine the rate at which the may charge interest on any amount payable that remains unpaid.

Notice and its effect where rate is unpaid

14. (1) Where any rate or part thereof remains unpaid after the day on which it becomes payable, the may serve a written notice under

subsection (2) upon any owner of the land or person receiving rent in respect of which such rate was imposed.

(2) The notice shall indicate and state—

- (a) the amount of arrears payable, which includes interest calculated in accordance with section 15;
- (b) the time within which the payments should be made; and
- (c) that all future payments of rates by the owner or person receiving the rent shall be made directly to the Receiver of Revenue or any such authorized office until such arrears and interest have been made in full.

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

Unpaid rates to constitute a charge on land

15. (1) Any rate due and unpaid, together with interest thereon calculated in accordance with section 16, shall be a charge against the land on which the rate was imposed.

(2) The Receiver of Revenue 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 charge against the title to the land.

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

Rates clearance certificate

16. On payment of the prescribed fee by any person, the Chief Revenue Administrator shall furnish to that person a certificate of the current status of the payment of rates for an area of land.

Officers to value land

17. (1) For the purposes of preparing a valuation roll or draft supplementary valuation roll under the Valuation for Ratings Act Cap 266, the Executive Committee Member may appoint a qualified and duly authorized valuer from the county public service or other person or persons to value land in the County.

(2) Any person who obstructs, prevents or refuses a county public officer or other persons authorised to do so from carrying out functions specified in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months.

PART IV—MISCELLANEOUS

Service of Document

18. (1) Any document required or authorized to be sent or served under or for the purpose of this Act may be sent or served by—

- (a) delivering it to the person to or on whom it is to be sent or served;
- (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;
- (c) registered post; or
- (d) emailing it to the person;

(2) A document or instrument under this Act which is required or authorized to be served on the owner or occupier of any premises may be addressed to such owner or occupier by the description “owner” or “occupier” of the premises, naming the premises, without need for further details.

Regulations

19. (1) The Executive Committee member may make regulations generally for the better carrying out of the provisions and purposes of this Act.

Transitional Provisions

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

- (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 regulations in force immediately before the coming into operation of this Act that apply to any form or method of rating which is continued under this section shall continue to be in force for the purpose of this Act;
- (c) any regulations 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 and shall continue in force for the purpose of this Act.

(2) A valuation roll or supplementary valuation roll 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 purpose of this Act as if that valuation roll or supplementary valuation roll were made in compliance with this Act.

FIRST SCHEDULE

Section 8(1)(a)

Area Rate

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 for determining 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—
 - (i) put,
 - (ii) capable of being put; or
 - (iii) reserved.
- (d) an industrial rate upon the area of land used for purposes 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 land or building or other immovable property as the county assembly may approve.

The county assembly 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.

SECOND SCHEDULE

Section 8(1)(b)

Agricultural Rental Value

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

“Agriculture” means cultivation of land and “Agricultural Land” means land used (whether or not covered by water) for any purpose of husbandry, aquaculture and food production and includes—

- (a) cultivation of crops and horticultural practice within the meaning of the Crops Act;
- (b) breeding of aquatic animals and plants;
- (c) the use of land, meadow land, market gardens or nursery grounds;

- (d) fish harvesting;
- (e) the use of land for agro forestry; and
- (f) transgenic and microbial formulations for use and application in agricultural systems.

THIRD SCHEDULE

Section 8(1)(c)

A Site Value Rate Or An Improvement Rate

“A site value rate” is 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, CAP 266 including relevant definitions shall apply to the form of rating so adopted.

MEMORANDUM OF OBJECTS AND REASONS

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.

MUSA MUKHABILA,
Chairperson,
Physical Planning, Lands, Housing and Urban areas Committee.