

THE NYERI COUNTY RATING BILL, 2020

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MEMORANDUM OF OBJECTS AND REASONS

THE NYERI COUNTY RATING ACT, 2020

A Bill for,

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

ENACTED by the County Assembly of Nyeri as follows;

PART I—PRELIMINARY

1. This Act may be cited as the Nyeri County Rating Act, 2020 *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 requires otherwise— *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 Nyeri County Assembly;
 - "**County Government**" means the Nyeri County Government;
 - "**Director**" means the Director of Valuation and Rating appointed under the Valuation for Rating Act;
 - "**Executive Committee Member**" means the member of the County Executive Committee for the time being responsible for land and urban housing development;
 - "**Improvement rate**" has the meaning assigned to it in clause 2 of Schedule 3;
 - "**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;
 - "**Ratable property**" has the same meaning as in the Valuation for Rating Act;
 - "**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**" has the meaning given by Section 5(a) of the Nyeri County Revenue Administration Act, 2014;
 - "**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;
 - "**Valuation Roll**" means any valuation roll prepared under the Valuation for Rating Act;
 - "**Year**" means a period of 12 months starting on 1 January or such other prescribed date.

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4. The objective and purpose of this Act is to-
- a) Provide a framework within which the County 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 to govern and deliver services effectively.
- Objective and purpose of the act*

PART II__ ADMINISTRATION

5. (1) There is established in the County, the office of the Director of valuation and rating which shall be an office in the county public service.
- Establishment of the Director of valuation and rating.*
- (2) The Director shall be responsible for:
- a) Value land for purposes of rating
 - b) Rating of land;
 - c) Prepare the valuation roll;
 - d) Alter or amend the valuation roll in accordance with this Act or any written law;
 - e) Prepare the schedule of rates;
 - f) Advise the Executive Member on the appropriate methods of rating applicable under this Act; and
 - g) Carry out any function related to better administration of this Act.
- Powers of the director*
6. The County Public Service Board shall ensure that the Directorate is resourced with adequate valuers and other necessary staff for effective carrying out of responsibilities under this Act.
- Staff*
7. (1) Pursuant to Section 5 of the Nyeri County Revenue Administration Act, 2014, the receiver of revenue in collaboration with the Director of valuation and rating shall:
- a) be responsible for the collection, receiving and accounting for all revenue payable to the County;
 - b) Advise the County Executive Secretary on all matters relating to the administration and enforcement of collection of county revenue; and
 - c) Provide quarterly statements to the County Treasury with copies to the National Treasury and the Commission on Revenue Allocation
 - d) Perform such other functions as the County Executive committee member directs.
- Receiver of revenue to be authorized officer*
- (2) The receiver of revenue, with the approval of the County Executive Committee member responsible for finance, in writing, may appoint and or delegate all or any of his or her functions or powers under this Act to a County public officer, except this power of delegation.
- Delegation of functions and powers*

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 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 anyplace as may be determined by the 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 property rates may be imposed under this Act are- *Forms of rating*
- (a) **an area rate** as provided for in the First Schedule;
 - (b) **an agricultural rental value rate** as provided for in the Second Schedule; or
 - (c) **a site value rate** or an improvement rate as provided for in the Third Schedule; and
 - (d) **An unimproved site value rate.**
- (2) The County Assembly shall, in each year adopt one or more forms of rating for 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 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 Section 10 subsection (3), the form of rating adopted for the purposes of imposing the rate under subsection (1) shall be the site value rate as provided in Clause 1 of Schedule 3.
- (3) The County Assembly may adopt one or more of the forms of rating referred to in section 10 and shall do so under the Finance Act in force for the time being 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

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amount as the rating authority shall determine provided it does not exceed 1% unless specifically provided for by another law.

(5) The county may adopt different forms of rating areas of the county.

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 deems appropriate. *Rates payable 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 rate payable for that year shall be deemed to be the amount of rate that was payable for the immediately preceding year. *Effects of default in determining annual rates*

14. (1) A rate determined and imposed under this Act shall become due on 1st 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. *Due dates for payment of rates*

(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 of nationwide circulation.

Provided that a notice of at least thirty (3) days shall be given of the date of payment published under this Section.

(3) For the purposes of this Act, the valuation roll or 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) The valuation roll shall be prepared in accordance to Section 7 of the Nyeri County Valuation of Rating Act. *Preparation of valuation rolls or supplementary valuation rolls*

(2) Regulations shall prescribe further requirements relating to preparation of the valuation rolls and the valuation for rating.

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16. (1) The rateable areas in respect of land located within which property rates are imposed shall be demarcated in line with the county spatial plan. *Demarcation of rateable areas and determination of rateable property*
- (2) Regulations shall make further provisions relating to demarcation of rateable areas and determination of rateable property.
17. (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. *Person liable to pay rate*
- (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 rent or who is in charge or controls of the land the rateable owner of which is absent from Kenya shall be liable for the payment of the rate.
- (4) Where the rateable owner is deceased; the personal representatives of the deceased owner will be liable to payment of land rates. If the rateable owner of the land is absent from Kenya, any person receiving the rent or being in charge or control of the land is liable for the payment of the rate.

PART IV- DISCOUNTS AND WAIVERS ON RATES

18. The Valuation Committee in consultation with the County Executive Committee Member responsible for finance may where deemed necessary, 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 to be determined in the annual Finance Act
 - c) on any amount of a rate remaining unpaid after the day on which the rate became payable.
19. (1) The County Executive Committee, in accordance with the Revenue Administration and Management Act, shall, determine the rate- *County Executive to determine discount rates*
- a) Of discounts 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.
20. No tax may be waived except in the manner provided in the Nyeri County Tax Waivers Administration Act, 2014. *Authority to waive tax and administration of tax waivers*

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21. The County Executive Committee Member responsible for Finance may, where he or she deems it appropriate, waive or vary, the payment of any tax, fees or other payment due to the County Government. *Power to waive taxes to be exercised by the County Executive Committee Member responsible for finance*
22. Pursuant to Section 5(2) of the Nyeri County Tax Waivers Administration Act, 2014, the power of the County Executive Committee Member responsible to waive tax shall be exercisable, in respect of every transaction, but in any case, only in the circumstances outlined thereunder. *Circumstances where power to waive tax are exercisable*
23. 1) The County Executive Committee Member may make rules, subject to Section 7 of the Nyeri County Valuation for Rating Act, exempting properties from valuation for purposes of rating. *Certain properties exempted from valuation*
- (2) Pursuant to section 23 (1), the County Executive Committee Member may make rules—
- (a) determining the principles upon which any land shall be deemed to be used for any of the purposes specified;
- (b) Prescribing the principles for determining the circumstances in which any land shall be deemed to be *bona fide* intended to be used for any of the purposes specified.
24. (1) No area rate or agricultural rental value rate shall be imposed on any land which would, under the Valuation for Rating Act or any rule made thereunder, be land in respect of which no valuation for the purposes of any rate may be made. *Exemption from, and remission of, rates*
- (2) Subject to any rules made under section 23 of this Act, the County Executive Committee member responsible for finance may approve the, reduction or remission of payment of any rate levied under this Act on any land:
- Provided that the County Executive Committee member responsible for finance may, on the application of the Director of valuation and rating, dispense in writing with the need to seek his approval in respect of any class of case or in respect of any specific area of the municipality
25. On payment of the prescribed fee of Five Hundred shillings by any person, the director shall furnish to that person a statement of the current status of the payment of rates for an area of land. *Statement on rates*
26. (1) For the purposes of preparing a draft valuation roll or draft supplementary valuation roll under the Valuation for Rating Act, the Executive Committee member responsible for lands may appoint a *Officers to value land*

qualified and duly authorized valuer from the county public service or other persons to value land in the county.

(2) Any person who obstructs prevents or refuses a public officer or other person authorized to do so commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred and fifty thousand shillings or both.

(3) Any notice required to be published under this Bill by the County Government shall be published by advertisement in one or more newspapers circulating in the area of jurisdiction of the Nyeri County except where otherwise provided by this Act.

Service of documents

(4) Any notice, demand or other document required or authorized to be sent or served under or for the purposes of this Act may be sent or served either—

- (a) by delivering it to the person or to whom it is to be sent or served; or
- (b) by 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) by ordinary or registered post; or
- (d) by delivering it to some person on the premises to which it relates, or, if there is no person on the premises to whom it can be delivered, then by fixing it on or to some conspicuous part of the ratable property;
- (e) by use of e mail or an approved electronic means; or
- (f) by any other method which may be prescribed.

(5) The director having attempted to send or serve a notice, demand or other document by one of the methods provided in sub-section (4), has reason to believe that the notice has not been received by the person to whom it was addressed, is may advertise, in the manner provided in sub-section (1), the general purport of the notice, demand or other document, and thereupon such notice, demand or other document shall be deemed to have been received by such person, and any such advertisement may refer to one or more notices, demands or other documents and to one or more ratable owners.

(6) Any notice, demand or other document by this Act required or authorized to be served on the owner or occupier of any premises may be addressed by the description “owner” or “occupier” of the premises, without further name or description.

(7) When any notice, demand or other document required or authorized to be sent or served under or for the purposes of this Act has been sent by ordinary or registered post, delivery or service thereof shall, unless the

contrary is proved, be deemed to have been effected at the time at which a letter would be delivered in the ordinary course of the post.

PART V- ENFORCEMENT OVER UNPAID RATES

27. (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 rates to be recovered 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 rate is or was due and payable on or before a certain date; and
- b) An amount or a part of the amount has not been paid on or before that date shall be admissible as evidence against the defendant in proceedings under this section, and is prima facie evidence as to the matters certified.
28. (1) Any rate due and unpaid, together with interest calculated in accordance with Sections 12 and 19 respectively, shall be a charge against the property on which the rate was imposed. *Unpaid rate to constitute a charge on land*
- (2) The director of revenue may, in the prescribed form, deliver a notification of a charge to the registrar of land under which the said 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.
- (4) Upon full settlement of the unpaid rate and interest and penalties, if any, the land shall be promptly discharged in favour of the owner thereof.
29. (1) Where any rate or any part of a rate remains unpaid after the day on which the rate became payable, the Receiver of revenue 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 of default and its effect where rates are required*
- (2) The written notice—
- a) Shall state the amount of such arrears, which may include interest calculated in accordance with section 19; and

b) Shall state that all future payments of rent by the person paying the rent are to be made directly to the receiver of revenue until such arrears and interest have been paid 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 for such rent.

(4) The protection of the right to property enshrined in Article 40 of the constitution shall be limited as specified under this section for the purposes of effectively implementing Article 209 (2) (a) of the Constitution.

30. (1) There shall be paid to the rating authority—
- Contribution in lieu of rates*
- (a) by the Government in respect of Government land; and
 - (b) by the community in respect of Land vested in the Community or any officer or authority of community,
 - (c) an annual contribution in lieu of any rates levied under this Act for each and every financial year.
- (2) The contribution in lieu of rates payable under this section shall be calculated in accordance with the Valuation for Rating Act and any rules or regulations made thereunder.
- (3) The amount of contribution in lieu of rates for public land shall be calculated in accordance with the method prescribed by regulations.
- (4) The amount of a contribution in lieu of rates for public land that is payable each year shall be set out in the Nyeri County Finance Act for the time being in force.
- (5) A contribution in lieu of rates for each year becomes due beginning of the financial year of that year and is payable for the year following the commencement of this Act and subsequent years.
- (6) The owner of public land is liable pursuant to subsection (1) for payment of the contribution in lieu of rates for the public land for that year.

PART VI_ MISCELLANEOUS

31. (1) The County Executive member responsible for lands 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 rating areas.
- Rules and regulations*

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

- a) the collecting of 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 extent to which any land is to be exempted from the payment of area rates;
- e) prescribing fees; and
- f) Prescribing or prohibiting any other thing required in this Act to be prescribed or prohibited.

32. Any person who fails to pay any of the fees, charges, taxes, rates provided for under this Act shall be guilty of an offence and shall be liable to such fines as provided for under the Nyeri County Revenue Administration Act, 2014.

*General Penalty
for offence*

33. (1) If, immediately before the coming into operation of this Act, there is under any law, a form or method of rating in force, in respect of any area of which the County Assembly is empowered to adopt under this Act, that form or method of rating continues to apply in respect of that area as if adopted by the County Assembly, subject to such modifications (if any) as may be necessary to bring such form or method of rating into conformity with the provisions and requirements of this Act and any rules made under this Act.

*Transitional
provisions*

(2) Any 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) are deemed to have been made under section 18 and are, except to the extent of any inconsistency with the provisions or requirements of this Act, to continue in force in respect of such form or method of rating until rules are made under this Act to replace them.

(3) 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 deemed to have been made under section 19 and are, except to the extent of any inconsistency with the provisions or requirements of this Act, to continue in force until rules are made under this Act to replace them

(4) A valuation roll or supplementary valuation roll that, would have been in force immediately before the coming into operation of this Act in respect of an area of the county, is deemed to be in force for the purposes of this Act until amended.

SCHEDULE 1_ Area rate

Section 9(1) (a)

1. Area rate

- 1) An area rate is a rate imposed on an area of land and the County Assembly may for an area rate adopt one or more of the following methods of rating:
 - (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 graduated rate upon the area of land according to the use to which the land is put, or capable of being put, or for which it is served;
 - (d) An industrial rate upon the area used for other than agricultural or residential purposes;
 - (e) A residential rate upon the area of land used for residential purposes;
 - (f) Such other method of rating upon the area of land or buildings or other immovable property as the county assembly may approve;
- 2) 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 clause 1 above.

SCHEDULE 2_ Agricultural rental value rate

Section 9 (1) (b)

1. Agricultural rental value rate

An agricultural rental value rate is a rate imposed on the annual value of agricultural land, being a rate to which the Valuation for Rating Act applies on being adopted.

2. Schedule 2 definitions

In this schedule, “**agricultural land**” and “**annual value**” have the same meaning as in the Rating Act;

SCHEDULE 3_ A site value rate or an improvement rate

Section 9 (1) (c)

1. Site value rate

A site value rate is a rate imposed on the value of unimproved land as appearing in a valuation roll or supplementary valuation, being a valuation roll or supplementary valuation roll that does not include the value of land.

2. Improvement rate

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

3. Schedule 3 definitions

In this schedule, “**assessment for improvement rate**”, “**value of land**” and “**value of unimproved land**” have the same meaning as in the Valuation for Rating Act.

SCHEDULE 4_ Wording to impose a rate

Imposition of rate

A rate is imposed on all rateable property in the county for the calendar year starting on 1st January 20[] and the amount of the rate is (**X**) percent of the (unimproved site value) of the rateable property.

MEMORANDUM OF OBJECTS AND REASONS

Statements of objects and reasons of the Bill.

The main objective of the Nyeri County Rating Bill is to provide for the imposition of rates on land and buildings in Nyeri County and for purposes connected therewith and incidental thereto.

The Bill seeks to ensure equity and fairness in land within Nyeri County.

The Bill further seeks to ensure efficient, accountable and transparent mechanisms for rating of land and property in Nyeri County.

The Bill also seeks to promote economic development and ensure compliance with payment of rates related to land within Nyeri County.

The principal object of this Bill is to enable the Nyeri County to govern and deliver services effectively in respect to matters relating to property.

Part I of the Bill deals with preliminary provisions including the short title, interpretations of the main terms used in the Bill, the application and objects of the Bill.

Part II of the Bill provides for the powers of the County Director of valuation and Rating which includes collection, receipt and accounting for all land rates within Nyeri County.

Part III of the Bill provides for the County Assembly to determine the amount of rates payable for each financial year in relation to every ratable property within the county in respect of which rates and the value of the land is, or is to be imposed or to be entered in a valuation roll. It also provides for the procedure for the enforcement of rates and the power to apply discounts and interest rates on unpaid property rates.

Part IV of the Bill provides for the waivers and discounts in relation to land and who is the authorizing officer. It also provides for the circumstances where the power to waive tax are exercisable. Further, it provides for the exemption of certain properties from valuation and how service of documents should be effected.

Part V of the Bill provides for enforcement mechanisms over unpaid rates which include recovery of unpaid rates as a summary debt as well as charging the property, it also provides for issuance of the notice of default by the director of valuation and rating where rates are required.

Part VI of the Bill provides for savings and transitional provisions in respect to the effects on previous operations, valuations and rolls. It also provides for offences and penalties.

The First Schedule provides for the imposition of area rates and the methods of rating to be applied. It also provides for the discretion to vary the method or methods of area rating, from time to time.

The Second Schedule provides the imposition of an agricultural rental value rate on the annual value of agricultural land which is the rate that is adopted by the Valuation for Rating Act.

The Third Schedule provides for the imposition of a site value rate as well as the improvement rate.

The Fourth Schedule provides for the wording to be used while imposing a rate.

Statements on the delegation of Legislative powers and limitation of fundamental rights and freedoms.

The Bill does not delegate legislative powers and limitation of fundamental rights and freedoms

Statements as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through estimates.

Dated, 2020