

THE MANDERA COUNTY FINANCE ACT, 2020

No. 6 of 2020

Date of Assent: 3rd December, 2020

Date of Commencement: See Section 1

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title and commencement.
- 2—Interpretation.

PART II—CHARGES, FEES AND RATES

- 3—Property Rates.
- 4—House Rent.
- 5—Single Business License.
- 6—Stock Auction and Slaughter Fees.
- 7—Agricultural Produce Cess.
- 8—Building Plan Approval.
- 9—Royalties/Quarry.
- 10—Out Door Advertising.
- 11—Market Fees.
- 12—Health Charges and Fees.
- 13—Parking Fees.
- 14—Education and Social Facilities Charges.
- 15—Sale of Documents.
- 16—Fees for use of County Stadiums, Grounds and Halls.
- 17—Sale of Documents.
- 18—Water User Charges.

PART III—WIDENING OF TAX BASE

- 19—Air transport Fees.
- 20—Tax Waivers, Variations.
- 21—Amendments to the schedules.

PART IV—PAYMENTS

- 22—Payments to the County.
- 23—Appointment and duties of an agent.

PART V—OFFENCES AND PENALTIES

- 24—General penalty.
- 25—Offences by staff of the County.

PART VI—MISCELLANEOUS PROVISIONS

- 26—Measures to Prevent Non Remittance of Collected Revenue.
- 27—Tax Incentives and Reliefs.
- 28— Rationalization of Inter-County Taxation Provision.

THE MANDERA COUNTY FINANCE ACT, 2020

AN ACT of the County Assembly of Mandera to provide for the imposition or variation of various fees, charges, licenses, rents or rates for services and for connected purposes

ENACTED by the County Assembly of Mandera, as follows—

PART I — PRELIMINARY**Short title and commencement**

1. This Act may be cited as the Mandera County Finance Act, 2020 and shall come into operation upon publication in the *Gazette*.

Interpretation

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

“Authorized channel” means the manner in which a person may effect payment to the County, including but not limited to a person designated by the executive committee member pursuant to Section 157 of the Public Finance Management Act, 2012 to collect or receive revenue or any other mode of payment as may be prescribed from time to time;

“business” means—

- (a) trade, commerce or manufacture, profession, vocation or occupation;
- (b) any other activity in the nature of trade, commerce or manufacturing, profession, vocation or occupation;
- (c) any activity carried on by a person continuously or regularly, whether or not for gain or profit and which involves, in part or in whole, the supply of goods or services for consideration;

“County” means the County Government of Mandera;

“County Public Officer” means a county public officer within the meaning of Section 2 of the County Government Act, 2012;

“County receiver of revenue” means the persons appointed pursuant to Section 157 of the Public Finance management Act, 2012;

“County Revenue Collector” means the county public officer appointed pursuant to Section 158 of the Public Finance Management Act, 2012;

“Executive committee member” means the executive committee member for the time being responsible for matters relating to finance in the County;

No. 6

"Person" means a natural or juristic person.

(3) The provisions of the Finance Act, 2020 relating to taxes seeks to repeal and re-enact the Gazetted fees and charges and single business schedules, *inter alia*, in order to provide for—

- (a) the tax rates, fees and charges;
- (b) widening of tax base;
- (c) measure to prevent non remittance of collected revenue;
- (d) tax incentives and reliefs;
- (e) rationalization of inter-county taxation provisions;
- (f) general Anti-evasion Rule; and
- (g) Memorandum of reasons and objects.

(4) The Finance Act, 2020 seeks to prescribe the rates of taxes and charges for the assessment year 2020-2021; the rates at which taxes and other charges will be payable during the financial year 2020-2021 from properties (including land and buildings), businesses, Markets, Agricultural produce, outdoor advertisement, health services, vehicle parking, entertainment and extraction activities.

(5) The substance of the main provisions of the Act relating to taxes and charges is explained in the following paragraphs.

PART II—CHARGES, FEES AND RATES

Rates of Property

3. (1) In respect of properties of all categories of owners liable to tax for the assessment FY 2020-2021, the rates of property tax have been specified in Part X of the First Schedule to the Act.

(2) These are the same as those laid down in the draft valuation roll in force at the date of this Act for the purposes of computation of property tax due.

Penalties on Outstanding Rates

4. Penalties shall be levied in respect of property liable to tax for the assessment year 2020-2021, in the following cases—

- (a) in the case of a property having total outstanding rates at the turn of the calendar year the amount of property tax computed shall be increased by a penalty calculated at 2% cumulative per month, subject to the accrued penalties not exceeding the principal sum.

- (b) in the case of properties, owned by national government the property- tax computed, in this case the contribution in lieu of rates outstanding shall be increased by a penalty of 4% for the purpose of such property tax.

However, marginal relief shall be allowed in cases where the amount is cleared by the turn of the year to ensure that annual amount of the property tax payable does not accrue penalties until after 31st of march in each calendar year.

- (c) Further, in the case of every property with a registered title deed total property tax under this section (herein referred to as property tax) and where such properties having been registered for more than seven years preceding the year of notification, marginal relief shall be provided to exclude any charges beyond seven years.

House Rent

5. In the case of housing units, the rate of rental charges has been specified in Part XII of the First Schedule to the Act. This rate will continue to be the same as that specified for assessment of financial year 2020-2021. A surcharge shall be levied for rental default at a cumulative rate of 5% per month.

Single Business License

6. (1) In respect of businesses of all categories of owners liable to tax for assessment of financial year 2020-2021, the rates of single business permits have been specified in Part I of the Second Schedule to the Act. These are the same as those laid down in Column 1, 2 and 3 of the Second Schedule, for the purpose of assessment of business tax due.

(2) In addition, a person shall not carry out any business or provide the services specified in this Act without a valid licence issued by the county.

(3) A person who contravenes any of the provision of this section has committed an offence.

(4) A person who intends to carry out any business listed in the scheduled shall apply for licence or permit from sub county offices where the business is located.

(5) A person who applies for licence under this act shall be issued upon payments of the specified fees.

(6) A licence or permit issued shall be visibly displayed at the business premises at all times.

(7) A person who contravenes any of the provision of this section commits an offence.

(8) However, marginal relief shall be allowed in cases where the amount is cleared by the turn of the year to ensure that annual amount of single business permit payable does not accrue penalties until after 31st of March in each calendar year.

Stock Auction and Slaughter Fees

7. In respect of specified stock auction and slaughter fees for the assessment for financial year 2020–2021, the rates of fees have been specified in Part II of the First Schedule to the Act.

Agricultural Produce Cess

8. In respect of specified agricultural produce, cess charges for the assessment of financial year 2020–2021, the rates of cess charges have been specified in Part III of the First Schedule to the Act. These are the same as laid down in the Agricultural Produce Act of 1998, for the purpose of computation of cess charges due on cessable produce.

Building Plan Approval

9. In respect of building as defined in the Physical Planning Act of 1996, the approval charges for the assessment year 2020–2021, the rates of charges have been specified in Part XI of the First Schedule to the Act.

Royalties/Quarry

10. Provides that tax payable by way of royalty in respect of extraction of natural resources is deemed to be accruing or arising in the county, the term “royalty” is defined as consideration received or receivable for extraction of all or any right in respect to certain natural resources for the purpose of this Act. In respect of extraction activities of certain categories owners liable to tax for the assessment year 2020–2021, the rates of charges have been specified in Part VI of the First Schedule to the Act.

Outdoor Advertising

11. In respect of Advertisements as defined in the Physical Planning Act of 1996 Interpretation 2 of 2007, 5th Schedule, for the assessment year 2020–2021, the rate of advertisement charges has been specified in Part XIII of the First Schedule to the Act.

Market Fees

12. In respect of designated county markets traders operating within the markets are liable to fees and charges for assessment year 2020–2021, the rates of fees and charges have been specified in Part XVI of the First Schedule to the Act.

Health Charges and Fees

13. In respect of designated county dispensaries and health facilities patients visiting the facilities are liable to fees and charges for assessment year 2020–2021, the rates of fees and charges have been specified in Part VIII of the First Schedule to the Act.

Parking Fees

14. In respect of designated county Central business district, street and bus parks the owners of vehicle parking their vehicle in designated areas are liable to fees and charges for assessment year 2020–2021, the rates of fees and charges have been specified in Part XV of the First Schedule to the Act.

Education and Social Facilities Charges

15. In respect of use of county public amenities and registration of educational and social organization for assessment year 2020–2021, the rates of fees and charges have been specified in Part IX of the First Schedule to the Act.

Fees for use of County stadium, Grounds or Halls

16. (1) A person shall not use the County Stadium, grounds or hall specified in Part IX of the Third Schedule without permission from the relevant county authority.

(2) A person who wishes to use the County Stadia, ground or hall specified in Sub Section 1 above, shall apply for a permit to the relevant county authority.

(3) The relevant county authority may grant the permit referred to in subsection (2) upon payment of fees prescribed in the last column of the relevant part of that Schedule.

(4) A person who contravenes any of the provisions of this section commits an offence.

Sale of Documents

17. In respect of County generated documents, gazettes, and books for assessment year 2020–2021, the rates of charges have been specified in Part I of the first schedule to the Act and a surcharge for bouncing cheque as set out in Part I of the first schedule.

Water user Charges

18. In respect of the use of water by humans and Livestock at all the major bore holes in the County for assessment year 2020–2021, the rates of fees and charges have been specified in Part V of the First Schedule to the Act.

PART III—WIDENING OF TAX BASE**Air transport Fees**

19. (1) In respect of Air transport—

- (a) The rates of fees and charges for Air ticket fees have been specified in Part XV of the First schedule.
- (b) The rates of fees and charges for Landing fees shall only apply to planes landing in Elwak airstrip and have been specified in Part XV of the First schedule.
- (c) The rates of fees and charges for contract charges have been specified in Part 1A of the First schedule.
- (d) The rates of fees and charges for burial permit fees have been specified at a flat rate of Kshs. 1,500 per person.

Tax waivers, variations

20. The Executive Committee Member may exempt, waive or vary fees or charges payable under this Act in accordance to the criteria prescribed in the regulations.

Amendments to the schedules

21. (1) The executive committee member may by order published in the gazette amend any of the Schedules.

(2) Any order made under subsection (1) shall be laid before the County Assembly without unreasonable delay, and unless a resolution approving the order is passed by the County Assembly within the next twenty-one days on which it next sits after the order is so laid, the order shall lapse, but without prejudice to anything previously done there under.

PART IV — PAYMENTS**Payments to the County**

22. (1) All payments to the County shall be paid through an authorized channel.

(2) A County Revenue Collector or enforcement officer enforcing this Act shall have an identification card issued by the County.

(3) The identification card issued under subsection (2) shall be worn visibly by the officer when carrying out any of the functions under this Act.

(4) An official receipt shall be issued for all payments made to the County.

(5) Any payment made to the County shall be evidenced by an official receipt.

(6) A person shall not receive or collect any money on behalf of the County unless he has been authorized to do so.

(7) A person who contravenes the provisions of this Section commits an offence.

Appointment and duties of an agent

23. (1) In this section—

“agent” means a person appointed as such under subsection (2);

“a notice” means a notice issued by the executive committee member appointing an agent.

(2) The executive committee member may by written notice—

(a) appoint a person to be an agent of the County for the purposes of collection or recovery of charges, permit fees, license fees, rent, cess and such other fees, as may be necessary for carrying out the purposes of this Act;

(b) Specify the amount of charges, permit fees, license fees, rent, cess and such other fees to be collected or recovered by the agent.

(3) An agent appointed under this section shall enforce, ensure due compliance with the provisions of this Act and remit all revenue collected to the county receiver of revenue or as may be otherwise instructed in the appointment notice.

(4) Where an agent claims to be, or to have become unable to comply with subsection (2), such agent shall, within seven working days, notify the executive committee member in writing, setting out fully the reasons for his inability to comply, and the executive committee member shall accept the notification and cancel or amend the appointment notice accordingly.

(5) Unless and until a notification is given by an agent under subsection 4, sufficient monies for the payment of charges, permit fees, license fees, rent, cess and such other fees specified in the agent's appointment notice shall be presumed to be held by the agent and this money shall be due and payable to the County.

(6) For the purposes of this section, the executive committee member may, by notice in writing, at any time, require any person to furnish county executive member, within reasonable time not being less than seven days from the date of service of the notice, with information showing any moneys which may be held by the agent for, or due to the County Government.

(7) Where an agent fails to pay an amount of money collected under this section within the time specified in the notice, the provisions of this Act

relating to the collection and recovery of revenue shall apply to the collection and recovery of that amount as if it were revenue due and payable by the agent, the due date for the payment of which was the date upon which that amount should have been paid to the County Government under this Subsection.

(8) An agent who makes a payment to the County Government under this Section shall for all purposes be deemed to have acted under the authority of the County Government and shall be indemnified in respect of that payment against all proceedings, civil or criminal, and all processes, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

PART V — OFFENCES AND PENALTIES

General penalty

24. A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year.

Offences by staff of the County

25. A member of staff of the County or any other person having a duty to perform under this Act who—

- (a) makes, in any record, or document required to be kept or made by that person, an entry which he or she knows or has reasonable cause to believe not to be true or to be false;
- (b) wilfully refuses to do anything which that person knows or has reasonable cause to know is required to be done;
- (c) interferes with any other person or process under this Act, so as to defeat the provisions, requirements or purposes of this Act;
- (d) where required under this Act to do anything to give effect to the provisions of this Act, fails to do such thing;
- (e) without reasonable cause omits to do something in breach of his or her duty under this Act;
- (f) wilfully contravenes the provisions of this Act to give undue advantage or favour to another person; or
- (g) fails to prevent or report to the County Government or any other relevant authority, the commission of an offence committed under this Act,

Commits an offence and is liable on conviction, to a fine not exceeding hundred thousand shillings or to imprisonment for a term not exceeding year, or both.

PART VI—MISCELLANEOUS**Measures to Prevent Non-Remittance of Collected Revenue**

26. (1) Any charges, permit fees, license fees, rent, Savings infrastructure maintenance fee and such other fees payable to the County at the commencement of this Act but which are not included in any of the Schedules to this Act, shall continue to apply under the existing by-laws of the defunct local authority until such by-laws are specifically repealed or replaced by county legislation.

(2) All directions, resolutions, orders and authorizations on, or relating to financial management, including the collection and administration of fees and charges given or issued by the previous county councils, municipal councils, town councils or urban councils, before the commencement of this Act shall be deemed to have been given, issued or made by or under the authority of the County Assembly until the expiry or repeal of those directions, resolutions, orders and authorizations, and shall continue, with the necessary modifications, to apply, be paid and administered under this Act:

Provided that this sub-section shall also apply to such fees and charges levied by various ministries and departments of the National Government in respect of functions devolved to the county under Part 2 of the Fourth Schedule of the Constitution which fees and charges shall be levied by the County on performance of the devolved functions.

(3) All references to Councils shall include all Local Authorities as were defined under the now repealed Local Government Act, Cap. 265 of the Laws of Kenya.

(4) Unless otherwise provided in this Act, the rates for Cessation fees, charges, licenses, infrastructure maintenance fee or rent applicable to the goods, services or activities listed in the Schedules before the commencement on this Act shall cease to apply on coming into effect of this Act.

(5) The executive committee member may make regulations—

- (a) for the better carrying out of the purposes and provisions of this Act in respect of revenue collection;
- (b) to put in place measures to prevent non-remittance of collected revenue;
- (c) to provide for tax incentives;
- (d) to provide for administrative efficiency and other anti-evasive measures;

- (e) design the format for forms receipts, permits, invoices, licences, demand notice and registers for revenue collection; and
 - (f) to issue business codes in respect of all areas of revenue collection.
- (6) In order to augment the existing measures and to ensure all revenue is remitted it is proposed thus—
- (a) revenue automation; use of technology for revenue collection, administration, accounting and reporting. This includes the use of alternative payment option like M-PESA Pay bill, POS mobile hand-held collection tools;
 - (b) restructuring of revenue department to facilitate effective, efficient and economic revenue management and administration;
 - (c) digitize all the county land records to allow prompt identification and management of property liable to property tax;
 - (d) train and equip enforcement officers to ensure compliance with existing revenue legislation;
 - (e) develop comprehensive business map and registers for all business in Mandera County to facilitate realistic revenue forecasting and follow up on arrears.

Tax Incentives and Reliefs

- 27. (1) Waiver of land rates penalties including reduction of property tax struck rate as contemplated by Article 210 of the Constitution.
- (2) Easing of the business license acquisition through consolidation various charges.

Rationalization of Inter-County Taxation Provision

- 28. In respect to the power of the county to impose taxes and other revenue raising measures it is proposed that the mobility of goods from other counties be accompanied by movement permits to augment Article 209 (5) of the 2010 Constitution.