

BUSIA MUNICIPALITY

COUNTY ASSEMBLY OF BUSIA
P.O. PRIVATE BAG, BUSIA.
06 JUN 2018
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MUNICIPAL CHARTER

Municipal Charter for Busia Municipality

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WHEREAS

The Busia County Assembly upon receipt of the request by the Governor Busia County for grant of the Municipality status to Busia Town.

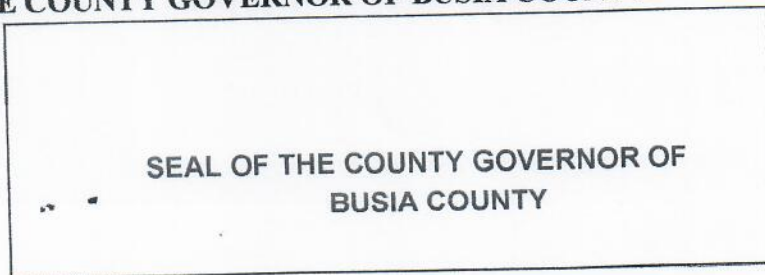
NOW THEREFORE IN EXERCISE of the powers conferred by section 9 (1) of the Urban Areas and Cities Act, (No. 13 of 2011) as complemented by section 72 of the Interpretations and General Provisions Act (Chapter 2) and all other enabling provisions of law, the Governor County Government of Busia **HEREBY GRANTS** by this Charter the Municipal status to Busia Town on this day of 2018.

[SIGNATURE OF COUNTY GOVERNOR]



H.E SOSPETER ODEKE OJAAMONG

THE COUNTY GOVERNOR OF BUSIA COUNTY



1. INCORPORATION, NAME AND BOUNDARIES

1.1. Incorporation and name

1.1.1 The inhabitants of the Busia Town within the corporate limits as now established or as hereafter established in the manner provided by law, shall be a municipal body politic and corporate in perpetuity, under the name of the Municipality of Busia in Busia County, Kenya

1.1.2 All processes affecting the Municipality shall be served on the Municipal Manager or acting Municipal Manager, in the absence of both of said officers, on the Secretary of the Board of the Municipality.

1.2. Boundaries

1.2.1. The boundaries of the Municipality of Busia as now existing covering the locations, in part or whole, Alupe, Central Mjini, Maenje and Bugengi or as may subsequently be altered shall be the boundaries of the Municipality of Busia.

2. POWERS, OBJECTS AND FUNCTIONS OF THE MUNICIPALITY

2.1. Powers of the municipality

2.1.1. The Municipality of Busia shall have all the powers, general and special, governmental or proprietary, expressed or implied, which may be possessed or assumed by municipalities under the Urban Areas and Cities Act, the County Government Act and the Municipality of Busia By-laws.

2.1.2. No enumeration of specific powers in this Charter shall be held to be exclusive. All such powers shall be exercised in the manner prescribed in this Charter, or, if not prescribed herein, in such manner as Board of the Municipality may determine, or, unless a contrary intent appears in this Charter or in the By-laws and Resolutions of the Board of the Municipality, in such manner as may be provided by the County of Busia By-laws.

2.2. Objects of the municipality

2.2.1. The objects of the Municipality of Busia are to:-

- (i) Provide for efficient and accountable management of the affairs of the Municipality.
- (ii) Provide for a governance mechanism that will enable the inhabitants of the Municipality to:
 - a. Participate in determining the social services and regulatory framework which will best satisfy their needs and expectations.
 - b. Verify whether public resources and authority are utilized or exercised, as the case may be, to their satisfaction.
 - c. Enjoy efficiency in service delivery.
- (iii) Vigorously pursue the developmental opportunities which are available in the Municipality and to institute such measures as are necessary for achieving public order and the provisions of civic amenities, so as to enhance the quality of life of the inhabitants of the Municipality.

- (j) Regulation of outdoor advertising;
- (k) Construction, maintenance and regulation of municipal markets and abattoirs;
- (l) Construction and maintenance of fire stations; provision of fire-fighting services, emergency preparedness and disaster management;
- (m) Promotion, regulation and provision of municipal sports and cultural activities;
- (n) Promotion, regulation and provision of animal control and welfare;
- (o) Development and enforcement of municipal plans and development controls;
- (p) Municipal administration services (including construction and maintenance of administrative offices);
- (q) Promoting and undertaking infrastructural development and services within municipality;
- (r) Any other functions as may be delegated by the County Executive Committee.

3. THE BOARD OF THE MUNICIPALITY

3.1. Establishment of the board

3.1.1. There shall be a Board of the Municipality of Busia¹.

3.1.2. The Board of the Municipality shall be a corporate body with perpetual succession and a common seal and shall in its own corporate name, be capable of²:

- (a) Suing and being sued;
- (b) Taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) Borrowing money or making investments within the limits imposed by law
- (d) Entering into contracts; and

¹ Section 12 (1) of the UACA

² Section 12 (2) of the Urban Areas and Cities Act (UACA)

- (g) ensure participation of the residents in decision making, its activities and programs; and
- (h) exercise such other powers as may be delegated by the County Executive Committee of the County of Busia.

3.2.2. Notwithstanding any other provision of law or this Charter, the Board of the Municipality shall exercise such executive authority as may be delegated by the County Executive Committee for the necessary performance of its functions.

3.2.3. The Board of the Municipality shall perform the following functions:

- (a) oversee the affairs of the Municipality;
- (b) develop or adopt policies, plans, strategies and programs and set targets for service delivery;
- (c) formulate and implement an integrated development plan;
- (d) control land, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centers, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the Municipality as delegated by the County Government of Busia.
- (e) promoting and undertaking infrastructural development and services within Municipality as delegated by the County Government of Busia.
- (f) developing and managing schemes, including site development in collaboration with the relevant national and county agencies;
- (g) maintaining comprehensive database and information system of the administration;
- (h) administering and regulating its internal affairs;
- (i) implementing applicable national and county legislation;
- (j) entering into contracts, partnerships or joint ventures as it may consider necessary for the

- b. Four members shall be competitively appointed by the county governor, with the approval of the county assembly;
- c. Four members shall be nominated and appointed by the county governor, with the approval of the county assembly;
- d. The chief officer responsible for urban development; and
- e. The municipal manager appointed under section 28 who shall be the secretary of the board and an ex officio member of the board.

3.3.3 The four members of the board of a municipality specified under subsection (3.3.2) (c), shall be nominated by-

- a) An umbrella body representing professional associations in the area;
- b) An association representing the private sector in the area;
- c) A cluster representing registered associations of the informal sector in the area; and
- d) A cluster representing registered neighborhood associations in the area.

3.3.4 The county governor shall, while appointing the members of the board, ensure gender equity, representation of persons with disability, youth and marginalized groups.

- a) The county governor shall while considering the nominated members identified by the organizations specified under subsection (2), require the organizations to produce-
- b) Signed minutes as evidence of an accountable process of nomination; his
- c) Evidence of compliance with statutory obligations; and
- d) Vetting form to establish that the nominee has complied with the prescribed criteria for appointment as a member of the board.

3.3.5 The term of the members of the Board of the Municipality shall be five (5) years on a part-time basis.

- e) is ordinarily resident or has a permanent dwelling in the municipality; and
- f) carries on business in the municipality or has lived in the municipality for at least five years.

3.5.3. The Chairperson of the Board shall hold office for a term of five (5) years.

3.6. Powers and functions of the chairperson

3.6.1. The Chairperson of the Board of the Municipality shall have the following powers and shall perform the functions set out below:

- (a) The Chairperson shall be the head of the Board of the Municipality;
- (b) Chairing the meetings of the Board of the Municipality; and
- (c) Perform such other duties as may be delegated by the Board of the Municipality.

3.7. Vice-chairperson of the board of the municipality

3.7.1. At the first regular meeting of the Board of the Municipality, members of the Board of the Municipality shall elect from amongst themselves, a Vice-Chairperson of the Board of the Municipality.

3.7.2. The Chairperson and the Vice-Chairperson of the Board of the Municipality shall at all times be of different gender.

3.7.3. The Vice-Chairperson shall, in the absence of the Chairperson, perform the functions of the Chairperson and shall perform such other functions as may be delegated by the Chairperson.

3.8. Removal of the chairperson and vice-chairperson

3.8.1. The Chairperson and the Vice-Chairperson of the Board of the Municipality may be removed by:

- (a) a majority decision of the members of Board of the Municipality at a duly convened meeting where quorum is present; or
- (b) upon petition by a resident of the Municipality.

3.11.1. The Board of the Municipality shall not be entitled to a salary.

3.11.2. However, members of the Board of the Municipality shall be paid such allowances as the County Executive Committee shall, with the approval of the County Assembly, and on the advice of the Salaries and Remuneration Commission, determine.

3.12. Removal of members of the board of the municipality

3.12.1. A member of the Board of the Municipality shall cease to hold office if the member is:

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared or becomes bankrupt or insolvent;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) resigns in writing to the County Governor;
- (e) without reasonable cause, the member is absent from three consecutive meetings of the Board or Committee of the Board of the Municipality within one financial year;
- (f) is found guilty of professional misconduct by the relevant professional body;
- (g) is disqualified from holding a public office under the Constitution;
- (h) fails to declare his or her interest in any matter being considered or to be considered by the Board or Board Committees;
- (i) engages in any gross misconduct; or
- (j) dies.

3.12.2. A member of the Board of the Municipality may be removed from office by;

- (a) the County Governor;
- (b) a resolution of the Board of the Municipality supported by at least two-thirds of the members of the Board of the Municipality; or
- (c) petition by the residents of the Municipality.

3.15.1. The Board of the Municipality shall by resolution adopt rules to govern its meetings.

3.16. Record of information of the board

3.16.1. The minutes and other information of the Board of the Municipality shall be kept by the Secretary of the Board of the Municipality⁷.

3.16.2. Access to information on the activities and resolutions of the Board of the Municipality shall be as provided under the Urban Areas and Cities Act.

3.17. Citizen fora

3.17.1 Residents of Busia municipality have the right to-

- a) deliberate and make proposals to the relevant bodies or institutions on , the provision of services; issues for inclusion in county policies and county legislation;
- b) plan strategies for engaging the various levels and units of government on matters of concern to citizens;
- c) monitor the activities of elected and appointed officials of the urban areas and cities, including members of the board of an urban area or city; and
- d) receive representations, including feedback on issues raised by the county citizens, from elected and appointed officials.

3.17.2 All recommendations from the Citizen Fora of the Municipality of Busia shall be forwarded to the Board of the Municipality for resolution.

3.17.3 All recommendations on issues raised in the Citizen Fora and addressed by the Board of the Municipality shall be forwarded to the Municipal Manager for implementation.

7. This is equally not provided but is crucial for the continuity of the functions of the Board of the Municipality.

5.2. Approval of resolutions

5.2.1. Approval of a resolution or any other Board administrative decision requires approval by the Board of the Municipality at one meeting.

5.2.2. Any substantive amendment to a resolution must be read aloud or made available in writing to the public before the Board adopts the resolution at that meeting.

5.2.3. After approval of a resolution or other administrative decision, the vote of each member must be entered into the Board minutes.

5.3. Effective date of resolutions

5.3.1. Resolutions and other administrative decisions take effect on the date of approval, or on a later day provided in the resolution.

6. THE MUNICIPAL MANAGER

6.1 office of the municipal manager

6.1.1. There is established the office of the Municipal Manager⁸.

6.1.2. The Municipal Manager shall be the administrative head of the Municipality of Busia.

6.2. Appointment and term

6.2.1. The Municipal Manager shall be competitively recruited and appointed by the County Public Service Board⁹.

6.2.2. The Municipal Manager may be appointed for a definite or an indefinite term¹⁰.

6.3. Qualifications

6.3.1. The Municipal Manager shall:

(a) Be a citizen of Kenya

8. Article 6 of the Busia municipal charter

9. Section 29 of the UACA and Section 59 (1) (b) of the County Governments Act.

10. The term of the Municipal Manager is not provided for in the Act. The model Charter proposes that the appointment be contractual.

(b) Hold a degree from a university recognized in Kenya or its equivalent

public at least an annual report on the activities and accomplishments of the departments and agencies comprising the executive branch of the Municipality.

- (e) Act as an ex-officio member of all committees of the Board of the Municipality; and
- (f) Such other functions as the Board may, by order, confer upon the Municipal Manager.

6.4.3. The Municipal Manager shall be fully responsible for the proper conduct of the executive and administrative work and affairs of the Municipality. The Municipal Manager shall have the power and shall be required to:

- (a) Exercise supervision over all departments and agencies of the Municipality and provide for the coordination of their activities;
- (b) Enforce the provisions of this Charter, Municipal By-laws, and all applicable laws;
- (c) Exercise powers granted to the Municipal Manager in this Charter, By-laws and applicable laws concerning the appointment and removal of certain officers, employees, and members of committees of the Board of the Municipality;
- (d) Exercise such other powers as may be prescribed by this Charter, by-laws and applicable laws.

6.4.4. The Municipal Manager must:

- (a) Attend all Board of the Municipality meetings unless excused by the Chairperson of the Board or the Board of the Municipality;
- (b) Make reports and recommendations to the Board of the Municipality about the needs of the Municipality;
- (c) Administer and enforce all Municipality By-laws, resolutions, franchises, leases, contracts, permits, and other Municipality decisions;
- (d) Appoint, supervise and remove Municipality employees;

6.6.2. The Municipal Manager shall cease to hold office upon the lapse of the employment term of if he/she:

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared or becomes bankrupt or insolvent;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) resigns in writing to the County Governor;
- (e) without reasonable cause, is absent from three consecutive meetings of the Board of the Municipality;
- (f) is found guilty of professional misconduct by the relevant professional body;
- (g) is disqualified from holding a public office under the Constitution;
- (h) engages in any gross misconduct; or
- (i) dies.

6.6.3. The procedure for the removal of the Municipal Manager may be provided by the Regulations made under the County Government Act (No. 17 of 2012) and in the absence thereof in accordance with Kenyan law having regard to fair labour practices.

6.6.4. Any vacancy arising in the office of the Municipal Manager may be filled in the manner provided under Article 6.2 above.

6.7. Acting municipal manager

6.7.1. When the Municipal Manager is temporarily disabled from acting as Municipal Manager or when the office of the Municipal Manager becomes vacant, the County Governor shall appoint a qualified person to be an Acting Municipal Manager.

6.7.2. The County Governor shall inform the County Public Service Board of such appointment within seven (7) days.

7.3 Functions and powers of the municipality accounting officer

7.3.1. The Municipality Accounting Officer shall have all the powers and perform all the functions of accounting officers as provided under the Public Finance Management Act.

7.3.2. Without prejudice to the foregoing, the Municipality Accounting Officer shall be responsible for managing the finances of the Municipality.

7.4. Financial year

7.4.1. The Municipality shall operate on an annual budget.

7.4.2. The financial year of the Board of the Municipality shall be the period of twelve months ending on the thirtieth June in each year¹⁶.

7.5. Budget

7.5.1. The budget of the Board of the Municipality shall be developed in the manner provided under Section 175 of the Public Finance Management Act.

7.6. Management of municipality finances

7.6.1. The Board of the Municipality shall, with the approval of the County Executive Committee member for finance, open and maintain a bank account in the name of the Municipality.

7.6.2. All monies received by the Board of the Municipality shall be paid into the Municipality's bank account promptly and in accordance with the Public Finance Management Act¹⁷.

7.7. Borrowing by the municipality

7.7.1. The Board of the Municipality may only borrow from40:-

(a) from the County Government;

(b) through the County Government; or

(c) by way of a bank overdraft and subject to such terms as may be imposed by the County

Assembly or such terms as provided by law.

16. Section 44 of the UACA

17. Section 179 of the Public Finance Management Act

9.2. **Compulsory acquisition**

9.2.1. Whenever the Municipality deems it necessary to acquire private land for its purposes, it shall request the County Executive Committee Member to request the National Land Commission to acquire the land on its behalf¹⁸.

9.2.2. The provisions of the Land Act shall apply to any intended compulsory acquisition by the Municipality of property within the Municipality.

9.3. **Municipal buildings**

9.3.1. The Board of the Municipality may acquire, obtain by lease or rent, purchase, construct, operate, and maintain all buildings and structures it deems necessary for the operation of the Municipality.

9.4. **Protection of municipality property**

9.4.1. The Board of the Municipality may do whatever may be necessary to protect municipal property and to keep all municipal property in good condition.

10. **General provisions**

10.1 **Oath of Office**

10.1.1. Before entering upon the duties of their offices, the Municipal Manager, the Chairperson and Vice-Chairperson and the members of the Board, and all other persons elected or appointed to any office of profit or trust in the Municipality, as determined by Board, shall take and subscribe to the following oath or affirmation:

“I, [...], being called on to exercise the functions of [Municipal Manager/Chairperson, etc.] of the Municipality of Busia, do swear/solemnly affirm that that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold this Constitution of Kenya and all other laws of the Republic, that except with the authority of the Board of the Municipality of Busia, I will not directly

18. Section 107 of the Land Act

11. TRANSITIONAL PROVISIONS

11.1. Effective date of charter

11.1.1. The provisions of this Charter shall be in effect from and after

11.2. Rights and privileges preserved

11.2.1. Nothing in the Charter except as otherwise specifically provided shall effect or impair the rights or privileges of persons who are Town Officials, Officers or Employees at the time of its adoption.

11.3. Departments

11.3.1. All Town Departments shall continue to operate with the same powers, duties, activities, budgets, and employees as were in effect at the time this Charter becomes effective until changed by the Municipal Manager with the approval of the Board of the Municipality.