

REQUEST FOR LEGAL SERVICES

D a t e: October 4, 2021
F r o m: Keani N.W. Rawlins-Fernandez, Chair
Budget, Finance, and Economic Development Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Kristina Toshikiyo, Esq.

Subject: COUNTY PROPERTY TAX REFORM ('ĀINA KŪPUNA) (BFED-78)

Background Data: Please see attached bill. Please send response to bfed.commitee@mauicounty.us.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Keani N.W. Rawlins-Fernandez	Contact Person <u>Lesley Milner</u> (Telephone Extension: <u>7886</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): October 13, 2021
REASON: For posting for October 22, 2021, Council meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

bfed:ltr:078acc01:ljcm

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE RELATING TO 'ĀINA KŪPUNA LANDS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Chapter 3.48, "Real Property Tax," Maui County Code, is amended by adding a section to read as follows:

"3.48.361 Parcels dedicated as 'āina kūpuna. A. For use in this section, the following definitions apply:

1. "Agriculture" means the production of plant and animal life for food and fiber, and for raw materials for processed products, and includes the following along with their accompanying services and facilities: fruit, vegetable, and flower growing; forestry; aquaculture; beekeeping; and grazing and dairying.

2. "Āina kūpuna" means those portions of real property that are owned in whole or in part by a lineal descendent of the person who held title to the property on June 30, 1940. 'Āina kūpuna may be considered owned by a lineal descendent when the owner is a trust, nonprofit organization, or similar entity where the majority of its trustees or board of directors are lineal descendants of the person who held title to the property on June 30, 1940. 'Āina kūpuna does not include real property owned by a corporation where the stock is sold to or owned by the general public.

3. "Commercial purposes" means the production, processing, manufacturing, warehousing, distribution, or sale of goods, or the provision of services for consideration and profit, including the operation of transient vacation rentals and bed and breakfast homes, but excludes agriculture and real property that does not serve as the owner's principal residence and was granted, prior to May 23, 2012, a conditional permit for transient vacation rental use in accordance with the comprehensive zoning ordinance and was classified as "commercialized residential" prior to May 23, 2012.

4. “Owner” means a fee simple owner of ‘āina kūpuna.

B. A special reserve is established to enable the owner of any parcel within any tax class to dedicate their parcel as ‘āina kūpuna and to have the dedicated parcel subject to the minimum tax when:

1. The parcel dedicated must qualify as ‘āina kūpuna.

2. The parcel dedicated must not be conveyed to a non-lineal descendent for a period of no less than ten years.

3. The real property dedicated must be limited to a parcel not used for commercial purposes.

C. If any owner desires to dedicate their real property as ‘āina kūpuna, they must petition the director and declare in the application that if the application is approved, no portion of the parcel will be conveyed to a non-lineal descendent or used for commercial purposes for no less than ten years following approval of the application. The owner is responsible for the cost of obtaining evidence in support of the application. If the applicant is not identified as an owner of the property in the records of the director, the director will require the applicant, at applicant’s expense, to obtain a deed or court order to verify ownership of the property. For purposes of determining whether the lineal descendancy requirement in section 3.48.361(B) has been satisfied, genealogy verification by the Office of Hawaiian Affairs or by court order will be deemed sufficient.

D. Following receipt of an application described in subsection C, the director must make a finding of fact as to whether the parcel described in the application qualifies. If the finding is favorable to the owner, the director must approve the application and declare the parcel to be dedicated.

E. To maintain the ‘āina kūpuna dedication on a parcel, the owner must apply for renewal during the ninth year of each dedication period, for an additional period of no less ten years subject to cancellation by the owner.

F. Failure to comply with the ‘āina kūpuna restrictions on real property use or the conveyance to a non-lineal descendant, beyond a period of two weeks after a notice and warning to the owner by the director, automatically cancels the special minimum tax privilege retroactive to the date of the dedication, or the commencement of the latest renewal period; and all differences in the amount of taxes that were paid and those that would have been due from assessment without the minimum tax privilege are payable with a ten percent penalty from the respective dates that these payments would have been due. The additional taxes and penalties, due and owing as a result of a breach of the dedication, constitute a

paramount lien upon the real property assessed. Nothing in this subsection precludes the County from pursuing any other remedy to enforce the covenant on the use of the real property.

G. The ‘āina kūpuna application must be filed with the director by December 31st of any calendar year, in a form prescribed by the director. If the applicant does not qualify for the ‘āina kūpuna dedication, the director must notify the applicant on or before March 1st preceding the tax year. If approved, the minimum tax takes effect the succeeding tax year.

H. The applicant may appeal any disapproved application as in the case of an appeal from an assessment.

I. To place prospective buyers on notice of the roll back liability, the applicant must, within thirty days of notice of approval, record the dedication in accordance with the procedures of the bureau of conveyances or land court. The director will prescribe the form of the dedication.”

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

bfed:misc:078abill02:ljcm