

# REQUEST FOR LEGAL SERVICES


**Date:** August 3, 2017  
**From:** Riki Hokama, Chair  
Budget and Finance Committee

TRANSMITTAL  
**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Jeffrey Ueoka, Esq.

**Subject:** REAL PROPERTY CLASSIFICATION OF LAND AND BUILDING (PLANNED DEVELOPMENTS AND CONDOMINIUM PROPERTY REGIMES (BF-45))

**Background Data:** Revise proposed bill as indicated on attached marked-up copy. Please provide an original hard copy of the bill.

**Work Requested:**  FOR APPROVAL AS TO FORM AND LEGALITY  
 OTHER: Revise proposed bill as indicated on marked-up copy

Requestor's signature 	Contact Person  (Telephone Extension: )
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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): Tuesday, August 8, 2017  
REASON: For posting on Wednesday, August 9, 2017 for Budget and Finance Committee meeting of Tuesday, August 15, 2017.

### 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)

bf:ltr:045acc01:mmy

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2017)

A BILL FOR AN ORDINANCE AMENDING  
SECTION 3.48.305, MAUI COUNTY CODE, RELATING  
TO THE CLASSIFICATION OF LAND AND BUILDING

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

SECTION 1. Section 3.48.305, Maui County Code, is amended to read as follows:

**“3.48.305 Classification of land and building.** A. ~~Except~~ as otherwise provided in subsection 3.48.305(B), ~~land~~ land and building shall be classified, upon consideration of the real property's highest and best use, into the following general classes:

1. Residential.
2. Apartment.
3. Hotel and resort.
4. Time share.
5. Commercial.
6. Industrial.
7. Agricultural.
8. Conservation.
9. Homeowner.
10. Commercialized residential.

B. In assigning land to one of the general classes, the director shall give major consideration to the districting established by the land use commission pursuant to chapter 205 of the Hawaii Revised Statutes, the districting established by the County in its general plan and zoning ordinance, use classifications established in the general plan of the State, and such other factors that influence highest and best use, except that:

1. A parcel that is used exclusively as the owner's principal residence and has been granted a home exemption in accordance with sections 3.48.410 and 3.48.475, shall be classified as "homeowner" without regard to its highest and best use[;].

2. A parcel that serves as the owner's primary residence and has been granted a bed and breakfast permit, a transient vacation rental permit, or a conditional permit allowing a transient vacation rental use pursuant to title 19 of

this code, shall be classified "commercialized residential" without regard to its highest and best use[;].

3. A parcel that is subject to a time share plan as defined in section 514E-1, Hawaii Revised Statutes, as amended, shall be classified as "time share"[;].

4. A parcel that does not serve as the owner's primary residence and has been granted a short-term rental home permit, a transient vacation rental permit, or a conditional permit allowing transient vacation rental use pursuant to title 19 of this code shall be classified as "commercial" without regard to its highest and best use[; and].

[5. A unit and its appertaining common interest that are part of a planned development where transient vacation rentals are permitted, in accordance with chapter 19.32 of this code, shall be classified in accordance with subsection 3.48.305(C)(2)(a). The planned development shall form an entity that shall annually report to the director on a form prescribed by the director, the actual use of each unit in the planned development along with any information deemed relevant by the director to determine the actual use of each unit. If the required annual report is not filed on or before December 1, the director may classify all units in the planned development in accordance with subsection 3.48.305(A) for the following assessment year. The entity shall report any change in actual use of a unit in the planned development within thirty days of that change. The director may investigate any unit and, if it is determined by the director that the actual use differs from the use reported, reclassify and reassess the unit.

C. When property is subdivided into condominium units, each condominium association or any entity filing a condominium property regime, shall file an annual report with the director of all units in the association, by tax map key number, before December 1 of each calendar year.

1. The director shall prescribe the form of the list and any supporting evidence as necessary. The list shall include whether the unit is vacant, owner occupied, or rented long term or short term, by month.

2. Each unit and its appertaining common interest shall be:

a. Classified upon consideration of its actual use into one of the general classes as follows:

i. Homeowner. Only those units owned and occupied as a principal home and for which a home exemption claim was filed and granted shall be classified as "homeowner."

ii. Apartment. Only those units occupied by the owner for personal use or by a lessee for a

term of six consecutive months or more shall be classified as "apartment."

iii. Commercial. Only those units occupied by the owner or a lessee for business or mercantile activities; or those units that do not serve as the owner's primary residence, and have been granted a short-term rental home permit, a transient vacation rental permit, or a conditional permit allowing transient vacation rental use pursuant to title 19 of this code shall be classified as "commercial."

iv. Hotel and resort. Unless classified as "time share," "commercial," or "commercialized residential," units occupied by transient tenants for periods of less than six consecutive months, excluding properties granted a short-term rental home permit, transient vacation rental permit, conditional permit allowing transient vacation rental use, or bed and breakfast permit, shall be classified as "hotel and resort." In addition, unless classified as "time share," "commercial," or "commercialized residential," units advertised for occupancy by transient tenants for periods of less than six consecutive months for any period during the course of any assessment year, shall be reclassified to "hotel and resort" and the real property tax shall be adjusted to taxes at the "hotel and resort" tax rate for the applicable tax year.

v. Time share. Units occupied by transient tenants for periods of less than six consecutive months that are subject to a time share plan as defined in section 514E1, Hawaii Revised Statutes, as amended, shall be classified as "time share."

vi. Commercialized residential. Units that serve as the owner's primary residence and that have been granted a bed and breakfast permit, a transient vacation rental permit, or a conditional permit allowing transient vacation rental use pursuant to title 19 of this code, shall be classified as "commercialized residential."

b. Deemed a parcel and assessed separately from other units.

3. The director may, after investigation, reclassify and reassess any unit in a condominium association found to be in violation of the owner's certification of actual use.

4. A condominium owner and/or the condominium association or any entity filing a condominium property regime shall notify the director of any change in a unit's classification within thirty days of that change.

5. If the required annual report is not filed on or before December 1, the director may classify all units in the project in accordance with subsection B for the following assessment year.]

[D.]C. Notwithstanding the foregoing, a parcel that does not serve as the owner's primary residence and was, prior to May 23, 2012, granted a conditional permit for bed and breakfast or transient vacation rental use pursuant to title 19 of this code, and was classified as "commercialized residential" prior to May 23, 2012, shall retain such "commercialized residential" classification [until after the Council has otherwise provided, after its review of this section as provided in subsection E.

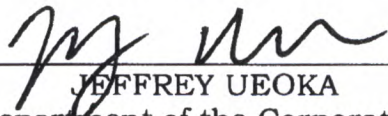
~~[E.]D.~~ The Council shall review this section by December 31, 2015.]

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This ordinance shall take effect <sup>for the tax year beginning</sup> upon its approval.

January 1, 2018.

APPROVED AS TO FORM AND  
LEGALITY:



JEFFREY UEOKA  
Department of the Corporation  
Counsel

County of Maui  
2017-0093

2017-03-08 Ordinance Section 3.48.305, Removing  
Actual Use for Condos