

REQUEST FOR LEGAL SERVICES

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Date: May 29, 2019
From: Tasha Kama, Chair
Affordable Housing Committee


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

Subject: AMENDING CHAPTER 3.48, MAUI COUNTY CODE, RELATING TO LONG TERM DEDICATION FOR RESIDENTIAL WORKFORCE HOUSING (AH-18)

Background Data: Please review the proposed amendment, and if appropriate, approve as to form and legality. A hard copy of the revised proposed bill is requested with your response.

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

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OFFICE OF THE
COUNTY COUNSEL
2019 MAY 30 PM 3:45

Requestor's signature  Tasha Kama	Contact Person Alison Stewart/Leslee Matthews (Telephone Extension: 7661 / 7662)
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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): May 30, 2019 12:00 pm
REASON: To submit for posting on the June 7 Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>JTU</u>	ASSIGNMENT NO. <u>2019-0097</u>	BY: <u>jeo</u>
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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 5/30/19

By 

(Rev. 7/03)

ah:ltr:018acc01:ans

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2019)

A BILL FOR AN ORDINANCE AMENDING
CHAPTER 3.48, MAUI COUNTY CODE, RELATING
TO LONG TERM DEDICATION FOR RESIDENTIAL WORKFORCE HOUSING
RENTAL UNIT PROJECTS AND REPEALING THE EXEMPTION FOR LOW AND
MODERATE INCOME HOUSING

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

SECTION 1. Chapter 3.48, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

“3.48.367 Lands dedicated for use as residential workforce housing rental unit project. A. “Owner” as used in this section, means a person who is the fee simple owner of the real property, or who is the lessee of real property whose lease term extends ten years or more from the date of the petition.

“Residential workforce housing unit” means the same as the term is defined in section 2.96.020 of this code.

“Residential workforce housing rental unit project” means any project comprised of ten or more rental units where all of the units are residential workforce housing rental units that are subject to the restrictions set forth in section 2.96.070 of this code.

B. A special land reserve is established to enable the owner of a property utilized primarily for a residential workforce housing rental unit project to be exempt from real property taxes during the period of dedication.

C. The owner shall petition the director of finance and declare in the petition that if the petition is approved, the property shall be utilized for a residential workforce housing rental unit project.

D. Upon receipt of any such petition, the director of finance shall confer with the director of the department of housing and human concerns as to whether the property described in the petition will be utilized for a residential workforce housing rental unit project. If the finding is favorable to the owner, the director of finance shall approve the petition and declare the unit to be dedicated as a residential workforce housing rental unit project.

E. Upon approval of the petition by the director, the owner shall record the petition with the bureau of conveyances of the State of Hawaii or the land court of the State, whichever is appropriate. The petition shall be recorded so that the terms and conditions of the petition will run with the land and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in such property.

F. The approval of the petition by the director of finance to dedicate a property for use as a residential workforce housing rental project shall constitute a forfeiture on the part of the owner of any right to change the use of the property for a period of thirty years, automatically renewable thereafter for additional one year periods, subject to cancellation by either the owner or the director of finance.

G. Failure of the owner to observe the restrictions on the property relating to use as a residential workforce housing rental unit project shall cancel the special tax assessment privilege retroactive to the date of the dedication, or the most recent one-year renewal period; and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a ten percent penalty from the respective dates that these payments would have been due. Nothing in this subsection shall preclude the County from pursuing any other remedy to enforce the covenant on the use of the land.

H. In the event that the owner is unable to observe the restrictions on the property relating to use as a residential workforce housing rental unit project, such determination shall be in the sole and absolute discretion of the director, the director may authorize a designated period, not to exceed thirty-six months, where the owner shall not be required to observe the restrictions on the property. The designated period shall be in addition to the dedication period and shall not count towards the dedication.

I. The additional taxes and penalties, due and owing as a result of failure to observe the restrictions on the property or any other breach of the terms of dedication, shall be a paramount lien upon the property as provided for by ordinance.

J. The director of finance shall prescribe the form of the petition. The petition shall be filed with the director of finance by September first of any calendar year and shall be approved or disapproved by December fifteenth. If approved, the assessment based upon the use requested in the dedication shall be effective on January first of the next calendar year.

K. The owner may appeal any disapproved petition or disapproval of a request for a designated period set forth in subsection G, above, as in the case of an appeal from an assessment.

L. The director of finance shall provide a report to the Council on the status of all dedications on no less than a quarterly basis.

SECTION 2. Section 3.48.545, Maui County Code, is deleted in its entirety.

[3.48.545 Low and moderate income housing.

A. For the purposes of this section, "nonprofit or limited distribution mortgagor" means a mortgagor who qualified for and obtains mortgage insurance under Sections 202, 221(d) (3) or 236 of the National Housing Act as a nonprofit or limited distribution mortgagor.

B. Real property used for a housing project which is owned and operated by a nonprofit or limited distribution mortgagor or which is owned and operated by a person, corporation, or association regulated by federal and state laws or by a political subdivision of the state or agency thereof as to rents, charges, profits, dividends, development costs and methods of operation shall be exempt from property taxes.

C. Exemptions claimed under Section 53-38 of the Hawaii Revised Statutes shall disqualify the same property from receiving an exemption under this section.

D. The director of finance shall promulgate rules and regulations necessary to administer this section.]

SECTION 3. Section 3.48.550, Maui County Code, is deleted in its entirety.

[3.48.550 Claim for exemption.

A. Notwithstanding any provision in this chapter to the contrary, any real property exempt from property taxes under Section 3.48.545 shall be exempt from property taxes from the date the property is qualified for the exemption; provided, that a claim for exemption is filed with the director within sixty days of the qualification. As used in this section, the date of the qualification shall be the date when the mortgage made by a nonprofit or limited distribution mortgagor and insured under sections 202, 221(d)(3) or 236 of the National Housing Act is filed for recording with the registrar of the bureau of conveyances or the assistant registrar of the land court of the state, whichever is applicable.

B. After the initial year of the qualification, the claim for exemption shall be filed in the manner provided by applicable law or rule or regulation.

C. In the event property taxes have been paid to the County in advance for real property subsequently becoming qualified for the exemption, the director of finance shall refund to the nonprofit or limited distribution mortgagor owning

the property that portion of the taxes attributable to and paid for the period after the qualification.]

SECTION 4. 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 5. This ordinance shall take effect for the tax year beginning January 1, 2020.

APPROVED AS TO FORM AND LEGALITY:



JEFFREY UEOKA

Department of the Corporation Counsel

County of Maui

2017-1406

2019-05-17 Ordinance

ah:misc:018abill01