

REQUEST FOR LEGAL SERVICES

Date: September 11, 2017
From: Riki Hokama, Chair
Budget and Finance Committee

RECEIVED

By Dept. of The Corporation Counsel at 2:05 pm, Sep 11, 2017


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: Review revised proposed bill and, if appropriate, approve as to form and legality. Submitted electronically with this request is a markup copy showing the revisions made to the prior bill approved as to form and legality on August 3, 2017. Please provide an original hard copy of the bill.

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

Requestor's signature  Riki Hokama, Committee Chair	Contact Person Michele Yoshimura (Telephone Extension: 7663)
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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): Monday, September 11, 2017
REASON: For posting on Wednesday, September 13, 2017 for Budget and Finance Committee meeting of Tuesday, September 19, 2017.

FOR CORPORATION COUNSEL'S RESPONSE

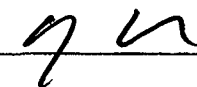
ASSIGNED TO: JTU	ASSIGNMENT NO. 2017-0093	BY: kku
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

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

DEPARTMENT OF THE CORPORATION COUNSEL

Date 9/11/17

By 

(Rev. 7/03)

bf:ltr:045acc02:mmy

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE AMENDING
CHAPTER 3.48, MAUI COUNTY CODE, RELATING
TO REAL PROPERTY TAX

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 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.] 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” and the real property tax shall be adjusted to taxes at the “hotel and resort” tax rate for the applicable tax year.

[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. The Council shall review this section by December 31, 2015].”

SECTION 2. Chapter 3.48, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

“3.48.370 Condominium units or planned developments dedicated for long-term residential use. 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.

“Long-term residential use” means use or occupancy of a dwelling or dwelling unit, as defined in title 19 of this code, by a lessee for one hundred eighty consecutive days or more per year.

“Planned development” as used in this section, means a group of units and their appertaining common interests that are part of a planned development where transient vacation rentals are permitted, in accordance with chapter 19.32 of this code.

B. A special land reserve is established to enable the owner of a condominium unit or a unit in a planned development to dedicate the unit to long-term residential use and have the unit be classified as “apartment.” Occupation of the unit by a lessee shall

be evidenced by a lease properly recorded with the bureau of conveyances or the land court of the State.

C. If any owner desires to have their unit classified as "apartment," the owner shall petition the director of finance and declare in the petition that if the petition is approved, the owner shall use the unit for long-term residential use.

D. Upon receipt of any such petition, the director of finance shall make a finding of fact as to whether the unit described in the petition is being used by the owner for long-term residential use. If the finding is favorable to the owner, the director of finance shall approve the petition and declare the unit to be dedicated for long-term residential use.

E. The approval of the petition by the director of finance to dedicate a property for long-term residential use shall constitute a forfeiture on the part of the owner of any right to change the use of the unit for a period of ten years, automatically renewable thereafter for additional periods of ten years, subject to cancellation by either the owner or the director of finance.

F. Failure of the owner to observe the restrictions on the long-term residential use of the unit shall cancel the special tax assessment privilege retroactive to the date of the dedication, or the most recent ten-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. Failure to observe the long-term residential use restrictions on the unit shall include, but not be limited to, advertising the unit for occupancy by transient tenants for less than one hundred eighty consecutive days during the long-term residential dedication period. Nothing in this subsection shall preclude the County from pursuing any other remedy to enforce the covenant on the use of the land.

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

H. 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.

I. The owner may appeal any disapproved petition as in the case of an appeal from an assessment.

SECTION 3. 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 4. This ordinance shall take effect for the tax year beginning January 1, 2018.

APPROVED AS TO FORM AND
LEGALITY:

A handwritten signature in black ink, appearing to read "Jeffrey Ueoka", is written over a horizontal line.

JEFFREY UEOKA
Department of the Corporation
Counsel

County of Maui
2017-0093
BF-45 2017-09-11 Ordinance