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By Dept. of the Corporation Counsel at 10:35 am, Nov 12, 2020

REQUEST FOR LEGAL SERVICES


Date: November 10, 2020
From: Keani N.W. Rawlins-Fernandez, Chair
Economic Development and Budget Committee

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

Subject: COUNTY PROPERTY TAX REFORM EDB-37

Background Data: Please review the attached proposed bill.

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

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|--|---|
| Requestor's signature  Keani N.W. Rawlins-Fernandez | Contact Person <u>Lesley Milner</u> (Telephone Extension: 7886) |
|--|---|

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): November 12, 2020

REASON: For posting on the November 20, 2020 Council agenda.

FOR CORPORATION COUNSEL'S RESPONSE

| | | |
|------------------|--------------------------|---------|
| ASSIGNED TO: KCT | ASSIGNMENT NO. 2019-0098 | BY: maa |
|------------------|--------------------------|---------|

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 11/12/2020

By /s/Kristina C. Toshikiyo

(Rev. 7/03)

edb:ltr:037acc03:ljcm

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE 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 real property. A. Except as otherwise provided in subsection B, real property must be classified, upon consideration of its highest and best use, into the following general classes:

1. Owner-occupied.
2. Non-owner-occupied.
3. Apartment.
4. Hotel and resort.
5. Time share.
6. Short-term rental.
7. Agricultural.
8. Conservation.
9. Commercial.
10. Industrial.
11. Commercialized residential.
12. Long-term rental.

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

1. Real property that is used as the owner's principal residence and has been granted either a home exemption in accordance with sections 3.48.410 and 3.48.450 or an exemption in accordance with sections 3.48.410 and 3.48.475 must be classified as "owner-occupied" without regard to its highest and best use.

2. Real property improved with a dwelling, as defined in the comprehensive zoning ordinance, that would not be classified as "owner-occupied," "hotel and resort," "time share," "short-term rental," "commercial," "industrial," [or] "commercialized residential," or "long-term rental," must be classified as "non-owner-occupied."

3. Multi-dwelling-unit improvements containing five or more dwellings that would not be classified "short-term rental" must be classified "apartment."

4. Real property that serves as the owner's principal residence and has been granted a bed and breakfast home permit, a short-term rental home permit, or a conditional permit allowing a transient vacation rental use in accordance with the comprehensive zoning ordinance, must be classified "commercialized residential" without regard to its highest and best use, and cannot qualify for a home exemption.

5. Real property that is subject to a time share plan as defined in section 514E-1, Hawaii Revised Statutes, as amended, must be classified as "time share."

6. Unless classified as "time share," "hotel and resort," or "commercialized residential," lodging or dwelling units, as defined in the comprehensive zoning ordinance, occupied by transient tenants for periods of less than six consecutive months, including real property that does not serve as the owner's principal residence and has been granted a short-term rental home permit or a conditional permit allowing transient vacation rental use in accordance with the comprehensive zoning ordinance, must be classified as "short-term rental" without regard to its highest and best use, and cannot qualify for a home exemption.

[7. 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, must be classified in accordance with subsection 3.48.305(C)(2)(a). The planned development must form an entity that will 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 must 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 the

director determines that the actual use differs from the use reported, the director may reclassify and reassess the unit.]

[8.] 7. Unless classified as "time share" or "commercialized residential," properties occupied by transient tenants for periods of less than six consecutive months, have eight or more lodging or dwelling units as defined in the comprehensive zoning ordinance, and employ more than twenty full-time persons, must be classified as "hotel and resort."

8. Lodging or dwelling units as defined in the comprehensive zoning ordinance occupied by long-term tenants for periods of twelve consecutive months or more to the same tenant and have been granted a long-term rental exemption in accordance with sections 3.48.410, 3.48.425, and 3.48.466 must be classified as "long-term rental," unless the property also qualifies for a homeowner exemption pursuant to section 3.48.450, in which case the property must be classified "homeowner." The real property owner must report any change in actual use of a property with a long-term rental exemption within thirty days of that change. The director may investigate any real property and, if the director determines that the actual use differs from a long-term rental, the director may reclassify and reassess the real property.

[C. When property is subdivided into condominium units, each condominium association or any entity filing a condominium property regime must 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 will prescribe the form of the list and any supporting evidence as necessary. The list must include whether the unit is vacant, occupied by the owner, or rented long term or short term, by month.

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

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

i. Owner-occupied. Only those units owned and occupied as a principal home and for which a home exemption claim was filed and granted will be classified as "owner-occupied."

ii. Non-owner-occupied. Only those units occupied by the owner for personal use or by a lessee for a term of six consecutive months or more will be classified as "non-owner-occupied."

iii. Commercial. Only those units occupied by the owner or a lessee for business or mercantile activities will be classified as "commercial."

iv. Hotel and resort. Unless classified as "time share" or "commercialized residential," properties that are occupied by transient tenants for periods of less than six consecutive months, have eight or more lodging or dwelling units as defined in the comprehensive zoning ordinance, and employ more than twenty full-time persons, will be classified as "hotel and resort."

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 514E-1, Hawaii Revised Statutes, as amended, will be classified as "time share."

vi. Commercialized residential. Units that serve as the owner's principal residence and that have been granted a bed and breakfast home permit, a short-term rental home permit, or a conditional permit allowing transient vacation rental use in accordance with the comprehensive zoning ordinance, will be classified as "commercialized residential."

vii. Short-term rental. Unless classified as "time share," "hotel and resort," or "commercialized residential," lodging or dwelling units, as defined in the comprehensive zoning ordinance, occupied by transient tenants for periods of less than six consecutive months will be classified as "short-term rental," including properties granted a short-term rental home permit or conditional permit allowing transient vacation rental use.

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, the condominium association, or any entity filing a condominium property regime must 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, real property that does not serve as the owner's principal residence and was, prior to May 23, 2012, granted a conditional permit for bed and breakfast or transient vacation rental use in accordance with the comprehensive zoning ordinance, and was classified as "commercialized residential" prior to May 23, 2012, will retain the "commercialized residential" classification."

SECTION 2. Section 3.48.410, Maui County Code, is amended to read as follows:

"3.48.410 [Claims—Filing] Claims—filing required. None of the exemptions from taxation granted in sections 3.48.450 through [3.48.465] 3.48.466, 3.48.475 through 3.48.500, 3.48.552, 3.48.554, 3.48.557, and 3.48.558 [shall] will be allowed in any case, unless the claimant [shall have] has filed with the department of finance, on or before December 31 preceding the tax year for which such exemption is claimed, a claim for exemption in such form as [shall be] is prescribed by the department. The exemption from taxation granted in section 3.48.556 [shall] must not be allowed in any case, unless the claimant [shall have] has filed with the department of finance, on or before June 30 of the tax year for which such exemption is claimed, a claim for exemption in such form as [shall be] is prescribed by the department."

SECTION 3. Section 3.48.425, Maui County Code, is amended by amending subsection A to read as follows:

"A. Any person who has been allowed an exemption under sections 3.48.450 through [3.48.465,] 3.48.466, 3.48.475 through 3.48.500, 3.48.552, 3.48.554, 3.48.557, and 3.48.558 has a duty to report to the assessor within thirty days after ceasing to qualify for such an exemption for one of[, but not limited to,] the following reasons:

1. Ceasing to be the owner, lessee, or purchaser of the exempt premises;
2. A change in the facts previously reported has occurred concerning the occupation, use, or renting of the premises, buildings, or other improvements thereon; or

3. Some other change in status has occurred which affects the exemption.”

SECTION 4. Section 3.48.430, Maui County Code, is amended to read as follows:

“3.48.430 [Disallowance—Certificate.] Disallowance—certificate. If the assessor is of the view that, for any tax year, the exemption should not be allowed, in whole or in part, [he] they may at any time within five years of January 1 of that year disallow the exemption for that year, in whole or in part, and may add to the assessment list for that year the amount of value involved, in the manner provided for by ordinance for the assessment of omitted property; provided, that if an assessment or addition under this section is made after April 9 preceding the tax year, the taxes on the amount of value involved in the assessment or addition so made [shall] must be made a lien as provided for by ordinance by recording a certificate setting forth the amount of tax involved, penalties, and interest.”

SECTION 5. Section 3.48.435, Maui County Code, is amended to read as follows:

“3.48.435 Recordation of report or certificate. In any case of recordation of a certificate for the amount of the civil penalty under section 3.48.425, or for the amount of tax, penalties and interest assessed or added under section 3.48.430, a person [shall be] is deemed to have an interest arising before the recordation of the certificate only if and to the extent that [he] the person acquired [his] their interest in good faith and for a valuable consideration without notice of a violation of the requirements of section 3.48.425 having occurred.”

SECTION 6. Section 3.48.450, Maui County Code, is amended by amending subsection B to read as follows:

“B. The provisions of subsection A [shall] will apply, provided, as follows:

1. That no such exemption [shall] will be allowed to any corporation, copartnership, or company[;].
2. That the exemption [shall] will not be allowed on more than one home for any one taxpayer[;].

3. That where the taxpayer has acquired a home by a deed made on or after July 1, 1951, the deed [shall] must have been recorded on or before December 31 immediately preceding the year for which the exemption is claimed[;].

4. That married persons [shall] will not be permitted an exemption of separate homes, unless they are living separate and apart, and provide a copy of a decree of separation from the appropriate court having jurisdiction that [shall be] is in effect prior to the effective date of the exemption; and each file a separate income tax return as a resident of the State of Hawaii with a reported address in the County the year prior to the effective date of the exemption; in which case they [shall] will be entitled to one exemption, to be apportioned equally between each of their respective homes[;].

5. That a person living on premises, a portion of which is used for commercial purposes, [shall] will not be entitled to an exemption with respect to such portion, but [shall] will be entitled to an exemption with respect to the portion thereof used exclusively as a home[; and].

6. That no such exemption [shall] will be allowed for any real property that is classified as "commercialized residential[.]" or "short-term rental."

SECTION 7. Chapter 3.48, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"3.48.466 Long-term rentals—standards for valuation. A. Real property occupied as a long-term rental and under signed contract to lease for twelve consecutive months or more to the same tenant, as of the date of assessment, by an individual or individuals, will be exempt only to the following extent from property taxes:

1. For tax years beginning on or after July 1, 2022:

a. Totally exempt where the value of the property is not in excess of \$200,000; or

b. Where the value of the property is in excess of \$200,000, the exemption will be in the amount of \$200,000.

B. The provisions of subsection A will apply, provided, as follows:

1. That long-term rental exemptions may be allowed on more than one home for any one taxpayer, provided however, that the homes are located on different parcels.

2. That where a homeowner resides and in accordance with the requirements of 3.48.450 qualifies for a

homeowner exemption, and a long-term rental exemption, for tax years beginning on or after July 1, 2022:

a. Totally exempt where the value of the property is not in excess of \$300,000; or

b. Where the value of the property is in excess of \$300,000, the exemption will be in the amount of \$100,000.

3. That if a portion of the premises is used for commercial purposes, such portion of the premises will not be entitled to an exemption, but will be entitled to an exemption with respect to the portion thereof used exclusively as a long-term rental.

4. That no such exemption will be allowed for any real property that is classified as "commercialized residential" or as a "short-term rental."

C. Upon proper application, a taxpayer will be entitled to a long-term rental exemption, provided the taxpayer provides the director a copy of the signed lease and all required documentation requested by the director in order to confirm the long-term rental occupation, including contact information for the renter as evidence of continued qualification for an exemption. Failure to respond to the director's demand in thirty days will be grounds for denial of a claim for an exemption.

D. If the director obtains evidence that any use other than long-term rental use is occurring, such evidence will serve as prima facie proof that the individual does not qualify for a long-term rental exemption, and the director must provide written notice to the individual by mail that the individual does not qualify for an exemption or continued exemption under this section. Such evidence may include, but is not limited to, homes that are being advertised for occupancy by transient tenants for periods of less than six consecutive months for any period during the course of any assessment year.

E. If during the course of any tax year, the exemption of a property is revoked, the taxes for the entire tax year will be recalculated without the exemption.

F. No long-term exemption will be allowed if taxes on the property are delinquent for more than one year."

SECTION 8. 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 9. This ordinance takes effect January 1, 2022.

APPROVED AS TO FORM AND
LEGALITY:

/s/Kristina C. Toshikiyo

KRISTINA C. TOSHIKIYO
Department of the Corporation Counsel
County of Maui
2019-0098
EDB-37 2020-11-12 Ordinance
edb:misc:037abill10

EDB Committee

From: Melody Andrion <Melody.Andrion@co.maui.hi.us>
Sent: Thursday, November 12, 2020 3:52 PM
To: EDB Committee
Cc: Kristina Toshikiyo; Lesley J. Milner; Yvette Bouthillier
Subject: SUPER RUSH Approved EDB-37 Revised County Property Tax Reform
Attachments: EDB-37 2020-11-12 RAFL Closing Revised Property Tax Reform.pdf; EDB-37 2020-11-12 Ordinance.docx

See attached e-signed by Kristina Toshikiyo. Thanks!

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