

REQUEST FOR LEGAL SERVICES

D a t e: November 22, 2023
F r o m: Yuki Lei K. Sugimura, Chair
Budget, Finance, and Economic Development Committee

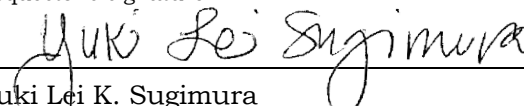
TRANSMITTAL

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

Subject: REAL PROPERTY TAX EXEMPTION FOR PROPERTIES IMPACTED BY NATURAL DISASTERS OR WILDFIRES (BFED-35)

Background Data: Please review and, if appropriate, approve as to form and legality Bill 95, CD1 (2023), recommended for passage on first reading by the Committee at its reconvened meeting of November 21, 2023. Please also respond prior to the Council's December 1, 2023, meeting on whether the ordinance may permissibly distinguish property classified as owner-occupied or long-term rental from other real property classifications in section 1.

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

Requestor's signature  Yuki Lei K. Sugimura	Contact Person <u>James Krueger</u> (Telephone Extension: <u>7761</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): November 29, 2023
REASON: For the December 1st 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)

ORDINANCE NO. _____

BILL NO. **95, CD1** (2023)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, RELATING TO THE AUGUST 2023 FIRES DISASTER EXEMPTION

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

SECTION 1. Section 3.48.230, Maui County Code, is amended to read as follows:

“3.48.230 Damage or destruction by disaster. A. [In any case of the damage or destruction of] When real property [as the result] is damaged or destroyed because of a tidal wave, earthquake, volcanic eruption, hurricane, fire, or other disaster as defined in Section 127A-2, Hawaii Revised Statutes, or [as the result] because of floodwaters overflowing the banks or walls of a river or stream, the director [is authorized to] may remit taxes due on [such] the property, to the extent and in the manner set forth as follows:

[A.] 1. The director [shall] must determine whether the property was wholly destroyed, or was partially destroyed or damaged, and in the latter event [shall] must determine what percentage of the value of the whole property was destroyed or otherwise lost by reason of the disaster.

[B.] 2. If the property was wholly destroyed, the amount remitted [shall] must be [such] the portion of the total tax on the property for the tax year in which [such] the destruction occurred [as shall constitute] constituting the portion of the tax year remaining after [such] the destruction.

[C.] 3. If the property was partially destroyed or was damaged, the percentage of the value destroyed or otherwise lost, determined as provided in subsection A [of this section], [shall] must be applied to the total tax on the property, and of the amount of tax so determined there [shall] must be remitted [such] the portion [as shall constitute] constituting the portion of the tax year remaining after [such] the partial destruction or damage.

[D.] 4. [Application] An application for a remission of taxes [pursuant to] under this section [shall] must be filed with the director on or before June 30th of the tax year involved, or within sixty days after the occurrence of the disaster, whichever is [the]

later. Any amount of taxes authorized to be remitted by this section, which has been paid, [shall] must be refunded upon proper application [therefor] out of real property tax collections.

B. Real property that was completely destroyed by the August 2023 Maui wildfires, as determined by the director, are exempt from real property taxes, including the minimum real property tax, through June 30, 2025.

C. Real property classified as owner-occupied or long-term rental for the January 1, 2023 assessment that is located in a red or yellow reentry zone in Lahaina, as established by the County following the August 2023 Maui wildfires in its reentry map of impacted areas, or for which local access was only allowed from 8:00 a.m. to 4:00 p.m. as of November 15, 2023, are exempt from real property taxes, including the minimum real property tax, for the period July 1, 2023, through June 30, 2024.

D. Real property classified as owner-occupied or long-term rental for the January 1, 2023 assessment that is located in a red or yellow reentry zone in Lahaina, as established by the County following the August 2023 Maui wildfires in its reentry map of impacted areas, or for which local access was only allowed from 8:00 a.m. to 4:00 p.m., as determined by the director as of January 1, are exempt from real property taxes, including the minimum real property tax, for the period July 1, 2024, through June 30, 2025.”

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

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

B. Notwithstanding subsection A, the exemption from taxation granted in section 3.48.466(B) must not be allowed unless the claimant has filed with the department of finance, on or before January 31, 2024, for tax year 2025, a claim for exemption in a form prescribed by the department.”

SECTION 3. Section 3.48.415, Maui County Code, is amended to read as follows:

“3.48.415 Claims—effect. A. Except for child care facilities exemptions [as set forth in] under section 3.48.558, a claim for exemption once allowed shall have continuing effect until:

[A.] 1. The exemption is disallowed;

[B.] 2. The assessor voids the claim after first giving notice, either to the claimant or to all claimants in the manner provided for by ordinance, that the claim or claims on file will be voided on a certain date, not less than thirty days after [such] the notice;

[C.] 3. The five-year period for exemption, as allowed in section 3.48.500, expires; or

[D.] 4. The claimant makes the report required by section 3.48.425.

B. Exemptions that were in effect for tax year 2024, where improvements were destroyed, damaged, or made inaccessible by the August 2023 wildfires, must remain in effect through December 31, 2024, under the following circumstances:

1. The parcel does not sell in an arm’s length transaction;

2. The applicant for an exemption under sections 3.48.450 and 3.48.475 does not apply for another owner occupant exemption on any permanent place of abode;

3. The parcel qualified for the exemption between January 1, 2023, and August 8, 2023; and

4. The exemption is not subject to disallowance under section 3.48.430.”

SECTION 4. Section 3.48.425, Maui County Code, is amended by amending subsection B to read as follows:

“B. [Such] The report [shall have the effect of voiding] to the assessor voids the claim for exemption previously filed, as provided in section [3.48.415.D.] 3.48.415(A)(4). The report [shall be] is sufficient if it identifies the property involved, states the change in facts or status, and requests that the claim for exemption previously filed be voided.”

SECTION 5. Section 3.48.450, Maui County Code, is amended to read as follows:

“3.48.450 Homes—standards for valuation. A. Real property owned and occupied only as a principal home, 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 year ending June 30, 2023:
 - 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.
2. For tax years beginning on or after July 1, 2023:
 - 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 \$300,000.

B. The provisions of subsection A will apply, [provided, as follows:] subject to the following conditions:

1. That no such exemption will be allowed to any corporation, copartnership, or company.
2. That the exemption 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 must have been recorded on or before December 31 immediately preceding the year for which the exemption is claimed.
4. That married persons 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 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 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, will not be entitled to an exemption [with respect to such] for that portion, but will be entitled to an exemption [with respect to] for the portion [thereof] used exclusively as a home.
6. That no such exemption will be allowed for any real property that is classified as "commercialized residential" or "short-term rental."

C. Upon proper application, a taxpayer [shall be] is entitled to a home exemption[, provided] if the taxpayer:

1. Occupies the home in the County for which the exemption is being filed for more than two hundred seventy calendar days of a calendar year, does not rent the entire premises for any portion of the year, and files an 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. Non-resident and part-year resident State of Hawaii income tax returns do not qualify for the home exemption; or

2. Is stationed in the County under military orders of the United States.

D. The director may demand documentary evidence such as a tax clearance from the State of Hawaii indicating that the taxpayer filed an income tax return as a full-time resident for the year prior to the effective date of the exemption, from a property owner applying for an exemption, or from an owner as evidence of continued qualification for an exemption. Failure to respond to the director's demand in thirty days [shall be] is grounds for denial of a claim for an exemption.

E. [In the event] If the director obtains evidence that an individual resides in a home outside the County, [such] the evidence [shall serve as] is prima facie proof that the individual does not own and occupy real property in the County as a principal home, and the director [shall] must provide written notice to the individual by mail that the individual [shall] is not [be] qualified for an exemption or continued exemption under this section. [Such evidence shall] Evidence may include, but not be limited to,] documentation that 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.

F. If during the course of any tax year, the home exemption of a property is revoked, the taxes for the entire tax year [shall] must be recalculated without the exemption.

G. No home exemption is allowed if taxes on the property are delinquent for a period of more than one year; except a home exemption is allowed for those tracts leased under section 207 of the Hawaiian Homes Commission Act, 1920, as amended, regardless of delinquency status.”

SECTION 6. Section 3.48.466, Maui County Code, is amended to read as follows:

“3.48.466 Long-term rentals—standards for valuation. A. Dwelling units occupied as a long-term rental and under a signed contract to lease for twelve consecutive months or more to the same

tenant, as of the date of assessment, by a natural person with no other place of residence, 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. Real property occupied as a long-term rental and under a signed contract to lease for six or more months but less than twelve consecutive months to the same tenant, as of the date of assessment, by an individual or individuals who were displaced by the August 2023 wildfires, will be exempt to the following extent from property taxes:

1. For tax years beginning on July 1, 2024, and July 1, 2025:
 - a. Totally exempt if the value of the property is not in excess of \$300,000; or
 - b. If the value of the property is in excess of \$300,000, the exemption will be in the amount of \$300,000.

[B.] C. The provisions of subsection A are subject to the following conditions:

1. [That long-term] Long-term rental exemptions may be allowed on more than one home for any one taxpayer if the homes are located on different parcels.
2. [That] If the property where a homeowner resides [and in accordance with the requirements of section 3.48.450] qualifies for a homeowner exemption under section 3.48.450, and a long-term rental exemption, for tax years beginning on or after July 1, 2023:
 - A. [Totally] The property is totally exempt [where] if the value of the property is not in excess of \$400,000; or
 - b. [Where] If the value of the property is in excess of [the] \$400,000, the exemption will be in the amount of \$100,000.
3. [That if] If a portion of the structure is used for commercial purposes, that portion of the structure will not be entitled to an exemption.
4. [That the] The exemption will not be allowed for any real property that is classified as “commercialized residential” or as a “TVR-STRH.”
5. [That if] If the term of the lease is greater than one year, one year of exemption will be granted. After the initial

year of the exemption, no exemption will be allowed unless the lease terminates after September 30 of any later assessment year.

6. [That if] If the long-term rental lease is granted to any of the following lessees, the exemption must not be allowed:

a. A natural person who has an ownership interest in the property including natural persons who are considered as owners under section 3.48.150.

b. An officer or member of a corporation that has an ownership interest in the property.

c. A partner in a partnership that has an ownership interest in the property.

d. [Business,] A business, corporation, partnership, or any entity other than a natural person.

7. [That if] If the tenant of the long-term lease maintains a permanent place of abode in addition to the dwelling unit, the exemption must not be allowed.

D. The provisions of subsection B apply, subject to the following conditions:

1. Long-term rental exemptions may be allowed on more than one home for any one taxpayer if the homes are located on different parcels.

2. If the property where a homeowner resides qualifies for a homeowner exemption under section 3.48.450, and a long-term rental exemption, for tax years beginning on or after July 1, 2024:

a. The property is totally exempt if the value of the property is not in excess of \$400,000; or

b. If the value of the property is in excess of \$400,000, the exemption will be in the amount of \$100,000.

3. If a portion of the premises is used for commercial purposes, that portion of the premises is not entitled to an exemption, but the portion used exclusively as a long-term rental will be entitled to an exemption.

[C.] E. Upon proper application, a taxpayer will be entitled to a long-term rental exemption[,] if 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.] F. 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] 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.] G. 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.] H. No long-term exemption will be allowed if taxes on the property are delinquent for more than one year.

[G.] I. If, during the course of the assessment year, any portion of the dwelling is used as a transient vacation rental or short-term rental home, the exemption must be revoked and the taxes for the entire year recalculated without the exemption.

[H.] J. The real property owner must report any change in use or occupancy 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, may reclassify and reassess the real property.

[I.] K. The director may adopt rules and prescribe forms to implement this chapter.”

SECTION 7. 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 8. This Ordinance takes effect on approval; except that section 1 of this Ordinance takes effect retroactive to July 1, 2023.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

bfd:misc:035abill02:cmn

INTRODUCED BY:

Tamara M. Paltin

TAMARA PALTIN