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OFFICE OF THE  
COUNTY COUNCIL

MEMO TO: PEA-93 File

F R O M: Councilmember Yuki Lei Sugimura



SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO  
COMMUNITY FACILITIES DISTRICTS** (PAF 18-258)

The attached legislative proposal pertains to Item 93 on the Committee's agenda.

paf:ske:18-258e

Attachment

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

BILL NO. \_\_\_\_\_ (2018)

A BILL FOR AN ORDINANCE AMENDING TITLE 3, MAUI COUNTY CODE,  
RELATING TO COMMUNITY FACILITIES DISTRICTS

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

SECTION 1. Title 3, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“Chapter 3.75**

**COMMUNITY FACILITIES DISTRICTS**

Sections:

**Article I. General Provisions**

- 3.75.010 Definitions.
- 3.75.020 Provision of alternate method of financing special improvements.
- 3.75.030 Superiority over conflicting provision of other ordinance.
- 3.75.040 Limitations on challenges.
- 3.75.050 Types of special improvements.
- 3.75.060 Payment of existing assessments, special taxes, or debt service.
- 3.75.070 Advances of funds, work, or property in-kind.
- 3.75.080 Construction of chapter.
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- 3.75.270 Special tax levy.
- 3.75.280 Minimum special taxes for payment of bond principal and interest.
- 3.75.290 Prepayment of special taxes.
- 3.75.300 Exemptions.
- 3.75.310 Special tax maximum for residential parcel.
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- 3.75.330 Special tax lien.
- 3.75.340 Special tax notice to owners of land.
- 3.75.350 Special tax notice to prospective buyer or lessee of parcel of land.
- 3.75.360 Special tax obligation for parcel acquired by County.

**Article IV. Changes in Term of District, Authorized Special Improvement, and Special Tax**

- 3.75.370 Authorization to change term, special improvement, or special tax.
- 3.75.380 Ordinance of consideration.
- 3.75.390 Petition for changes in term, special improvement, or special tax.
- 3.75.400 Reserved.
- 3.75.410 Contents of proposed ordinance of consideration.
- 3.75.420 Notice of hearing on proposed ordinance of consideration.
- 3.75.430 Protests against the proposed ordinance of consideration.
- 3.75.440 Protest by more than 55 percent.
- 3.75.450 Duration of hearing; determination.
- 3.75.460 Filing of notice.

**Article V. Early Termination of District**

- 3.75.470 Authorization to terminate district before expiration of term specified in ordinance of formation.
- 3.75.480 Ordinance of early termination.
- 3.75.490 Petition for early termination.
- 3.75.500 Director's recommendation on early termination.
- 3.75.510 Contents of proposed ordinance of early termination.
- 3.75.520 Notice of hearing on proposed ordinance of early termination.
- 3.75.530 Protests against the proposed ordinance of early termination.
- 3.75.540 Protest by more than 55 percent.
- 3.75.550 Duration of hearing; determination.
- 3.75.560 Construction of article.

**Article VI. Annexation of Territory**

- 3.75.570 Authorization to annex; contiguity not required.
- 3.75.580 Ordinance of annexation.
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- 3.75.610 Protests against proposed ordinance of annexation.
- 3.75.620 Protest by more than 55 percent.
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**Article I. General Provisions**

**3.75.010 Definitions.** The following definitions shall apply for the purposes of this chapter.

“Applicable land” means land in the existing district, land in the area proposed to be annexed, or land in both the existing district and area proposed to be annexed.

“Bond ordinance” means an ordinance which authorizes the issuance of community facilities district bonds.

“Bonds” means community facilities district bonds (including refunding bonds) issued pursuant to this chapter.

“Community facilities district” or “district” means a district of land established by the County pursuant to this chapter for financing special improvements.

“Cost of a special improvement” means the following:

1. Cost of acquiring, constructing, installing, improving, or rehabilitating a special improvement.

2. Cost of acquiring real property or right-of-way for a special improvement.

3. Payment of water, sewer, or other utility connection fee necessary for a special improvement.

4. Payment of a planning, architectural, engineering, inspection, legal, financial, or other consultant fee for a special improvement.

5. Reimbursement of an advance of funds for acquiring, constructing, installing, improving, or rehabilitating a special improvement or administrative proceedings to establish a district.

6. Contribution to a reserve fund for the payment of debt service on bonds issued for a special improvement.

7. Not more than two years' worth of interest on bonds for a special improvement.

8. Cost of issuance of bonds for a special improvement, including, but not limited to, payment of bond counsel or other legal fee, trustee fee, bond insurance premium, or letter of credit or other credit enhancement cost.

“County clerk” means the county clerk of the County of Maui.

“Debt” means any binding obligation to repay a sum of money, including obligations in the form of bonds, certificates of participation, long-term leases, or loans from government agencies, banks, other financial institutions, private businesses, or individuals.

“Designated costs of issuing the refunding bonds” means any of the following costs and expenses designated by the council in the bond ordinance authorizing the issuance of the refunding bonds:

1. All expenses incident to the calling, retiring, or paying of the bonds to be refunded and incident to the

issuance of refunding bonds, including the charges of any agent in connection with the issuance of the refunding bonds or the redemption or retirement of the bonds to be refunded.

2. The interest upon the refunding bonds from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

3. Any premium necessary in the calling or retiring of the bonds to be refunded.

4. Any insurance premium or fee payable to the issuer of a bond insurance policy or letter of credit insuring all or part of the principal and/or interest due on the refunding bonds.

5. Any other incidental expense related to the issuance or carrying of the refunding bonds or the redemption or refunding of the bonds to be refunded.

“Director” means the director of finance of the County of Maui, or an authorized representative.

“Financing special improvements by a district” or “financing special improvements” means paying for the following:

1. The costs of special improvements through the special taxes levied within a district or community facilities district bond proceeds.

2. The debt service on community facilities district bonds, the proceeds of which have been used to pay for special improvements.

“Improvement area” means an area within a district designated in accordance with section 3.75.240.

“Incidental expense of a district” means the following:

1. Administrative expense of the County associated with the proceedings undertaken pursuant to this chapter, collection of special taxes, or payment of debt service on bonds.

2. Any other expense incidental to the creation or operation of a district.

“Landowner” or “owner of land” means the following:

1. The owner of land as shown on the real property tax assessment list, except as otherwise provided under subdivisions (2) or (3). Each parcel of land shall be deemed to have one owner, even if owned by a corporation, partnership, joint tenancy, tenancy by the entirety, tenancy in common, or other group of persons.

2. The lessee of land who is not shown as the owner on the list, unless the fee simple owner files with the council either of the following before the close of the public hearing on

the establishment of a district or annexation of land to an existing district, as applicable:

a. A written statement that the lease does not require the lessee to pay any proposed special tax and a written undertaking by the owner to pay any special tax and to refrain from imposing the obligation to pay any special tax upon any successor lessee; or

b. A written waiver of any requirement in the lease that the lessee pay any special tax and a written undertaking by the owner to pay any proposed special tax and to refrain from imposing the obligation to pay any special tax upon any successor lessee. If the fee simple owner files either with the council, the fee simple owner shall be deemed the "landowner."

3. The term shall not include an entity of the federal, state, or county government. Such an entity shall have no right to petition under sections 3.75.100, 3.75.160, 3.75.190, 3.75.390, or 3.75.490 or to protest under sections 3.75.180, 3.75.440, 3.75.540, or 3.75.620. The entity and its land shall be disregarded when computing the total number of landowners and amount of land eligible for petition or protest purposes.

"Ordinance of annexation" means an ordinance which annexes additional land to a district.

"Ordinance of consideration" means an ordinance which changes the term of a district, special improvements to be financed, or rate or method of apportionment of a special tax or an ordinance which levies a new special tax within an existing district.

"Ordinance of early termination" means an ordinance which terminates a district before the expiration of the term specified in the ordinance of formation.

"Ordinance of formation" means an ordinance which establishes a district.

"Residential parcel" means a parcel classified as residential for real property tax purposes.

"Resolution of intention" means a resolution, the adoption of which institutes proceedings to establish a district.

"Special improvement" means a special improvement referred to in section 3.75.050.

**3.75.020 Provision of alternate method of financing special improvements.** This chapter is established pursuant to section 46-80.1, Hawaii Revised Statutes. The council may use the provisions of this chapter in addition to, in combination with, or instead of any other law for or related to the creation of improvement districts, the levying, assessment, and collection of special

assessments, the financing of improvements, the issuance of bonds, or other matters covered by this chapter.

**3.75.030 Superiority over conflicting provision of other ordinance.** When any provision of this chapter conflicts with any other provision of ordinance, the provision of this chapter shall prevail.

**3.75.040 Limitation on challenges.** Pursuant to section 46-80.1, Hawaii Revised Statutes, no action or proceeding to question the validity of or enjoin any ordinance, action, or proceeding undertaken pursuant to this chapter (including the determination of the amount of any special tax levied with respect to any property or the levy or assessment thereof) or any bonds issued or to be issued under this chapter shall be maintained, unless begun within thirty days of the effective date of the ordinance, determination, levy, assessment, or other act, as the case may be.

**3.75.050 Types of special improvements.** A district may be established to finance the acquisition, planning, design, construction, installation, improvement, or rehabilitation of any real property or structure with a useful life estimated by the council to be five years or longer. Special improvements may be physically located within or outside a district and may benefit land within or outside the district. Improvements may also be funded on a "pay-as-you-go" basis without borrowing. Special improvements which may be financed by a district include, but are not limited to, the following:

1. Streets, roads, highways, bikeways, pedestrian malls, sidewalks, or alleyways, including grading, paving, or otherwise improving the foregoing.
2. Public parking facilities.
3. Lighting systems, including traffic signals, for any public right-of-way.
4. Local park, recreation, child care, parkway, and open-space facilities.
5. Libraries, museums, and other cultural facilities.
6. The undergrounding of natural gas pipeline facilities, telephone lines, facilities for the transmission or distribution of electrical energy, cable television lines, and other utility facilities. The County may enter into an agreement with a public utility to utilize those facilities to provide a service and for the conveyance of those facilities to the public utility. If the facilities are conveyed to the public utility, the agreement may provide for a refund by the public utility to the district or improvement area thereof for the cost of the facilities. Any reimbursement made to the district shall be utilized to reduce the special tax levied within the district or



improvement area or construct or acquire additional special improvements within the district or improvement area, as specified in the ordinance of formation. For the purposes of this subdivision only, a cable television company shall be deemed a "public utility."

7. Water systems.

8. Police, criminal justice (including jails), fire suppression (including fire stations), and paramedic facilities.

9. Wastewater, storm drainage, sewage removal or treatment, solid waste disposal, and recycling or resource recovery systems or facilities.

10. Transit or transportation systems.

11. Telecommunications systems.

12. Shoreline restoration and beach nourishment projects.

13. Any other facilities which the County is authorized by law to contribute revenue to or construct, own, maintain, or operate.

**3.75.060 Payment of existing assessments, special taxes, or debt service.** The district may pay in full all amounts necessary to eliminate or reduce any assessment liens, repay or defease in whole or in part any indebtedness secured by any tax, fee, charge, or assessment levied within a district, or pay debt service on that indebtedness.

**3.75.070 Advances of funds, work, or property in-kind.** Prior to or after the formation of a district, the County may accept advances of funds, work, or property in-kind from any source. The council may enter into an agreement, by resolution, with the person or entity advancing the funds, work, or property in-kind to repay all or a portion of the funds advanced or to reimburse the person or entity for the value or cost, whichever is less, of the work or property in-kind, as determined by the council, with or without interest; provided that, the proposal to repay the funds or reimburse the value or cost of the work or property in-kind is included in the ordinance of formation for the district. Any such agreement shall not constitute a debt or liability of the County or be payable from sources other than the proceeds of the special taxes levied or proceeds of bonds issued pursuant to this chapter.

**3.75.080 Construction of chapter.** This chapter shall be liberally construed to effectuate its purposes. No error, irregularity, or informality and no neglect or omission of any officer in any procedure taken under this chapter which does not directly affect the jurisdiction of the County to order the provision of a special improvement shall void or invalidate such proceeding or any levy for the costs of such improvement.

**3.75.090 Validity of proceedings.** The failure of any person to receive a notice, resolution, ordinance, order, or other matter shall not affect in any way whatsoever the validity of any proceedings taken under this chapter or prevent the council from proceeding with any hearing so noticed or other action.

**Article II. Proceedings**

**3.75.100 Institution of proceedings.** A. Proceedings for the establishment of a district may be instituted by the council on its own initiative.

B. Proceedings for the establishment of a district shall be instituted by the council after receipt by the county clerk of a petition requesting the institution of the proceedings signed by the owners of at least 25 percent of the land in the proposed district.

The County may also require a fee which the County determines is necessary to compensate the County, including legal and consultant fees, for the costs of proceedings to form the proposed district and may enter into a deposit agreement with the owners for such purpose. The County may also require additional fees as appropriate later in the proceedings.

When required to institute proceedings after the receipt of a petition and any required fee and deposit agreement, the council shall do so at the first regular meeting for which notice of a resolution of intention may be posted pursuant to chapter 92, Hawaii Revised Statutes. Any fee shall be nonrefundable, even if the council does not establish the proposed district.

**3.75.110 Petition requesting institution of proceedings.**

A petition requesting the institution of proceedings for the establishment of a district shall include the following:

1. A request that the council institute proceedings to establish a district pursuant to this chapter.
2. A description of the boundaries of the proposed district.
3. A description of the special improvements to be financed by the proposed district.
4. The signatures of the owners of land comprising at least the minimum percentage required under section 3.75.100.

If the council finds that the petition is signed by the owners of the requisite percentage of land, the finding shall be final and conclusive.

**3.75.120 Adoption of resolution of intention.**

Proceedings for the establishment of a district shall be instituted by the adoption of a resolution of intention to establish the district. The resolution shall do all of the following:

1. State that a district is proposed to be established under the terms of this chapter.

2. State the name of the proposed district in substantially the following form: "County of Maui Community Facilities District No. \_\_\_\_\_." One or more additional descriptive words may be used in the name of the proposed district to indicate its geographic area.

3. State the term of the proposed district. The term shall be a specified calendar period and shall not expire until all debt service on bonds and incidental expenses related thereto are due to be fully paid.

4. Describe the boundaries of the proposed district. The boundaries may be described by reference to a map on file with the county clerk showing the proposed district.

5. Identify the special improvements to be financed by the proposed district. If the purchase of completed special improvements or the incurring of incidental expenses is proposed, the resolution shall identify the improvements or expenses, as the case may be.

6. Identify the incidental expenses to be paid from special taxes.

7. State that, except when funds are otherwise available, a special tax sufficient to pay for the costs of the special improvements and incidental expenses shall be annually levied within the proposed district. The resolution shall describe the estimated rate and proposed method of apportionment of the special tax in sufficient detail to allow each landowner within the proposed district to estimate the maximum annual amount that the landowner will have to pay.

8. Specify the principal amount of bonds proposed to be issued to finance the special improvements.

9. Fix a time and place for a public hearing on the establishment of the proposed district, which shall not be less than thirty or more than sixty days from the adoption of the resolution of intention.

10. Describe the protest procedure. If an improvement area is proposed to be established, the resolution of intention shall also so state and describe the boundaries of the proposed improvement area, the name proposed for the improvement area, the special improvements proposed to be financed by the improvement area, and whether and to what extent it is proposed that special taxes shall be levied in the improvement area for purposes of financing such improvements.

**3.75.130 Report on special improvements.** At the time of the adoption of the resolution of intention to establish a district, the council shall direct the appropriate administrative head or heads to

study the proposed district. The council shall also request the appropriate administrative head to hire a special tax consultant recognized in the area of special tax district formation and file with the council a community facilities district report from such special tax consultant at least ten days before the public hearing on the proposed district. The report shall include, but not be limited to, a description of the special improvement project, an estimate of the cost of providing the proposed special improvements and a rate and method of apportionment of the special taxes. In preparing the report, which may be general and preliminary and need not be based on detailed plans and specifications, the special tax consultant may consult with or rely on reports and materials prepared by other county or state officers or any financial feasibility or other consultant retained by the County or any landowner to assist in the proceeding.

**3.75.140 Notice of public hearing on proposed district.**

A. The county clerk shall publish a notice of the public hearing on a proposed district twice, at least one week apart, in a newspaper of general circulation in the County. Publication shall be completed at least ten days prior to the date of the hearing.

B. The notice shall contain the following information:

1. The full text of the resolution of intention to establish the district and the name, address, and telephone number of a County department or officer from whom a copy of the resolution of intention can be obtained.

2. The time and place of the hearing on the establishment of the district.

3. A statement that, at the hearing, the testimony of all interested persons and landowners for or against the establishment of the district, the extent of the district, the financing of specified special improvements, or the levy of a special tax will be heard. The notice shall also summarize the protest procedure, including the respective rights of an owner and the effect of protests against the establishment of the district, the extent of the district, the financing of specified special improvements, or the levy of a specified special tax.

**3.75.150 Mailed notice of hearing.** In addition to publishing notice as provided in section 3.75.140, the county clerk shall give notice of the hearing by first-class mail to each owner of land within the proposed district which the county clerk has identified. The notice shall be mailed at least fifteen days before the hearing and shall contain the same information as required in the published notice pursuant to section 3.75.140. Failure to give notice to any owner or failure of any owner to receive such notice shall not

affect the validity or effectiveness of the hearing or any other proceedings taken under this chapter or any special tax levied under this chapter if the council determines that a reasonable effort was made to give such notice. The council's determination shall be final and conclusive.

**3.75.160 Waiver of hearing.** The owners of land proposed to be included in a district may petition for the waiver of the public hearing required under this article on the establishment of a district. Waiver petitions shall be submitted in writing to the county clerk. If the owners of 100 percent of the land proposed to be included in a district submit waiver petitions at least ten days before the hearing, the council shall not hold the hearing. If a hearing is not held because of the petitions, the owners shall be deemed to have waived the right to protest under section 3.75.170.

**3.75.170 Protests against establishment of district.** Protests against the establishment of the district, the extent of the district, the financing of specified special improvements, or the levy of the special tax may be made in writing by landowners. All written protests shall be filed with the county clerk before or at the hearing. The council may waive any irregularities in the form or content of any written protest. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

**3.75.180 Protest by more than 55 percent.** If the owners of more than 55 percent of the land or if more than 55 percent of the owners of the land proposed to be included in the district file written protests with the council before or at the hearing against the establishment of the district and if protests are not withdrawn so as to reduce the amount of the protests to 55 percent or less, the proceedings to create the specified district shall cease. No proceedings to create the district shall again be undertaken for a period of one year from the close of the hearing. If the more than 55 percent protests are only against the furnishing of a specified special improvement or against levying a specified special tax, then proceedings to create the district may continue, but the specified special improvement or special tax shall not be part of the applicable ordinance of formation (if approved).

**3.75.190 Duration of hearing; determination.** The hearing may be continued from time to time, but shall be completed within thirty days; except that, if the council finds that the complexity of the proposed district or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed six months. The council may eliminate

proposed special improvements, change the rate or method of apportionment of the proposed special tax, or remove land from the proposed district. The council may add land to the proposed district, but only upon petition of the owners of 100 percent of the additional land. After the hearing, the council may abandon the proposed establishment of the district or, after considering all protests and such other relevant factors (such as the general plan or development plan) as it deems appropriate, may proceed with establishing the district.

**3.75.200 Approval of ordinance of formation.** A. If the council determines to establish the district, it shall approve an ordinance of formation. The ordinance of formation shall contain the following, but no provision which was successfully protested pursuant to section 3.75.180 shall be included:

1. The name of the district.
2. The term of the district.
3. The boundaries of the district.
4. The special improvements to be financed by the district.
5. The incidental expenses to be paid from the special tax.
6. The rate and method of apportionment of the special tax levied within the district. In accordance with section 46-80.1, Hawaii Revised Statutes, there is no requirement that the special tax imposed be fixed in an amount or apportioned on the basis of special benefit to be conveyed on property by the special improvement, or that the special improvement convey a special benefit on any property in the district. It shall be sufficient that the council determines that the property to be subject to the special tax is improved or benefited by the special improvement in a general manner or in any other manner. The special improvement may also benefit property outside the district. The rate and method of apportionment may include a formula that is based on assessed values of property as appropriate (subject to the advice of counsel).
7. The principal amount of bonds to be issued for financing the special improvements of the district.
8. Any other information required by this chapter.

B. When the ordinance of formation is passed on second reading, the council shall determine whether all proceedings were valid and in conformity with the requirements of this chapter. If the council so determines, it shall make a finding to that effect. The finding shall be final and conclusive.

**3.75.210 District boundaries.** A. A community facilities district may include areas of land that are not contiguous.

B. Land may be included in more than one community facilities district.

**3.75.220 District term.** The term of a district shall be a specified calendar period. Under an ordinance of formation, the expiration of the term shall not be earlier than the date on which all outstanding debt service on bonds and incidental expenses for the district are due to be fully paid.

**3.75.230 Financing of special improvements and payment of incidental expenses identified in ordinance of formation.** A. Only the special improvements identified in the ordinance of formation for a district may be financed by the district under the authority of this chapter.

B. Only the incidental expenses identified in the ordinance of formation may be paid from the special taxes levied within a district.

**3.75.240 Designation of improvement area.** For the purpose of financing specified special improvements, the council may designate a portion of a district as an improvement area. The designation shall be made in the ordinance of formation for the district. An improvement area shall be known as "Improvement Area No. \_\_\_\_\_ of the County of Maui Community Facilities District No. \_\_\_\_\_." After the designation of an improvement area, all proceedings to levy special taxes for the financing of the specified special improvements shall apply only to the improvement area, except to the extent otherwise provided in the ordinance of formation.

**3.75.250 Property owners' election to perform work.** A. Subsection B shall not apply to any contract for the acquisition of special improvements, and shall apply to contracts other than contracts for the acquisition of special improvements only if permissible under the Hawaii Public Procurement Code, chapter 103D, Hawaii Revised Statutes.

B. The owners of three-fourths of the area of land subject to a special tax shall not be required to present sealed proposals or bids when the director calls for bids preparatory to letting a contract to do work financed pursuant to this chapter, but may, within ten days after the publication of the notice of the award of the contract, elect to perform the work and enter into a written contract to do the whole work at a price not exceeding the bid price of the bidder to whom the contract would otherwise have been awarded. All work done under the contract shall be subject to any conditions as may

be prescribed by the council. If, within the ten-day period, the owners elect not to perform the work, a contract may be entered into by the director with the bidder to whom the contract was awarded at the price specified in the bid. If, in the opinion of the council, the public interest will not be served by allowing the landowners to enter into a contract in accordance with this subsection, the council may prohibit such a contract in the applicable ordinance of formation.

**Article III. Special Tax**

**3.75.260 Special tax apportionment.** A. There is no requirement that the special tax levied pursuant to this chapter be fixed in amount or apportioned on the basis of special benefit to a parcel of land in the district or that the special improvement financed convey a special benefit to the parcel. The only requirement is that the special tax benefit the parcel in a general manner or in any other manner.

B. A special tax levied pursuant to this chapter may be based on benefit received by a parcel, the cost of making a special improvement available to a parcel, the stage or type of development or use of a parcel, the happening of one or more specified events related to the development or improvement of all or certain parcels, or any other reasonable basis or formula as determined by the council. The rate and method of apportionment may include a formula that is based on assessed values of property as appropriate (subject to the advice of counsel). Any determination of the reasonableness of any special tax or the rate or method of the apportionment thereof by the council shall be final and conclusive. Special taxes shall be levied and apportioned pursuant to the rate and method specified in the ordinance of formation. The director shall be delegated the authority to:

1. Determine the annual amount due from each landowner subject to the special tax.
2. Make an adjustment to the annual amount due when required by the special tax base or formula in the applicable ordinance of formation or as required by bond documents.

Special taxes shall only be used to pay for the costs of special improvements, debt service on bonds issued to pay the costs, and incidental expenses permitted under this chapter. Special taxes shall be levied only as long as needed to pay the costs, debt service, and incidental expenses.

**3.75.270 Special tax levy.** Special taxes shall be levied and apportioned pursuant to the rate and method specified in the ordinance of formation. The director shall be delegated the authority to:



1. Determine the annual amount due from each landowner subject to the special tax.

2. Make an adjustment to the annual amount due when required by the special tax base or formula in the applicable ordinance of formation or as required by bond documents.

Special taxes shall only be used to pay for the costs of special improvements, debt service on bonds issued to pay the costs, and incidental expenses permitted under this chapter. Special taxes shall be levied only as long as needed to pay the costs, debt service, and incidental expenses.

**3.75.280 Minimum special taxes for payment of bond principal and interest.** Annual special taxes from a district shall at least equal the required annual bond principal and interest payments for the district. In addition, the special taxes may generate an amount sufficient to accumulate or replenish bond reserve funds, reimburse credit enhancement expenses or prior debt service contributions, or pay other costs or incidental expenses related to the bonds.

**3.75.290 Prepayment of special taxes.** The council may allow or prohibit the prepayment of special taxes or specify conditions under which special taxes may be prepaid and permanently satisfied. The conditions may include periods during which prepayment shall not be permitted or a requirement that a premium be paid upon prepayment. If the council has specified conditions under which special taxes may be prepaid and permanently satisfied and if the special taxes are so prepaid and permanently satisfied as to a parcel of land, the director shall prepare a notice of cancellation of the special taxes for the parcel. The director shall transmit a copy of the notice to the owner, who may file it with the bureau of conveyances or land court. The director may charge a fee for preparation of the notice.

**3.75.300 Exemptions.** A. Properties of entities of the federal, state, or county governments shall be exempt from the special tax, except as otherwise provided by subsection B. No other properties or entities within a district shall be exempt from the special tax, unless expressly exempted in the ordinance of formation.

B. If a federal, state, or county entity owning property, including property held in trust for any beneficiary, grants a leasehold or other possessory interest in the property to a nonexempt person or entity, the special tax shall, notwithstanding subsection A, be levied on the leasehold or possessory interest and

shall be payable by the owner of the leasehold or possessory interest. When entering into a lease or other written contract creating a possessory interest for a nonexempt person or entity, the federal, state, or county entity shall include in the contract a statement that the property interest shall be subject to special taxation pursuant to this chapter. Failure to comply with the requirement shall not, however, invalidate the contract or affect the special tax or the obligation of the nonexempt person or entity to pay the special tax.

**3.75.310 Special tax maximum for residential parcel.**

The special tax on a residential parcel in a district shall be levied in a manner which complies with the following:

1. A maximum annual special tax amount for the residential parcel shall be established and expressed in dollars or if applicable a percentage of assessed value.

2. The special tax amount for the residential parcel may be increased as required to pay for necessary or appropriate uses as provided in this ordinance, including a change in use, development, improvement, subdivision, or consolidation of the parcel.

**3.75.320 Special tax collection.** Special taxes shall be collected by the director on a monthly, semiannual, or annual basis. Except as otherwise provided by the council, the same penalties provided for delinquent payment of improvement district assessments shall apply to special tax delinquencies. The director shall deduct from special taxes collected the administrative expenses incurred in collection.

**3.75.330 Special tax lien.** A. The special tax levied on a parcel shall be a lien against the land and improvements of the parcel. The lien shall attach from the effective date of the ordinance levying the special tax and shall be extinguished when the special tax is fully paid or terminated.

B. The lien of the special tax shall have priority over all other liens, except the lien of general real property taxes and the lien of assessments levied under section 46-80, Hawaii Revised Statutes. The lien of the special tax shall be on a parity with the lien of general real property taxes and the lien of assessments levied under section 46-80, Hawaii Revised Statutes, unless otherwise provided by law or ordinance. All liens of special taxes made pursuant to this chapter shall be on a parity without regard to when made or for what purpose.

C. If any special tax is not paid when due, the director may, after not less than two months of delinquency, foreclose the lien of the special tax to collect the delinquent amount and any penalty,

interest, and costs. Foreclosure shall be by way of advertisement and sale without suit, and shall be made by the director in the same manner, except as otherwise approved by the council, under the same conditions and penalties, and with the same effect as provided by general law for sales of real property pursuant to default in payment of property taxes. In any event, the director shall foreclose the lien before the end of the sixth year of a delinquency or as otherwise provided in related bond documents.

**3.75.340 Special tax notice to owners of land.** Within thirty days after the effective date of the ordinance of formation levying a special tax, the director shall notify all owners of parcels of land subject to the special tax. Notices shall be sent by certified or registered mail with request for return receipt or delivery confirmation. Each of the notices shall set forth the amount of the special tax levied, the rate and method of apportionment of the special tax, and the date when the special tax is due. Failure to give or receive such notice to or by any landowner shall not affect the validity of the special tax nor entitle the landowner to an extension of time within which to pay the special tax.

**3.75.350 Special tax notice to prospective buyer or lessee of parcel of land.** Before entering into an agreement to sell or lease a parcel of land subject to a special tax levy and lien, the parcel owner shall notify in writing the prospective buyer or lessee of the existence of the special tax levy and lien, including a description of the applicable special tax formula and maximum rate.

**3.75.360 Special tax obligation for parcel acquired by County.** A. If a parcel subject to a special tax is acquired by the County through a negotiated transaction or eminent domain proceeding, the conveyer shall pay the special tax out of the purchase price or eminent domain award in an amount sufficient to pay the bond principal and interest that would have been payable from the special tax on the parcel.

B. If a parcel subject to a special tax is acquired by the county by foreclosure or gift or devise, the parcel shall be sold as soon as practicable, and either:

1. The special tax shall be paid from the sales price in an amount equaling the bond principal and interest that would have been payable from the special tax on the parcel.

2. The purchaser of the parcel shall take title subject to the lien of the special tax and shall be required to pay the special taxes becoming due from and after the sale date.

**Article IV. Changes in Term of District, Authorized Special Improvement, and Special Tax**

**3.75.370 Authorization to change term, special improvement, or special tax.** The council may change the term of an established district, the authorized special improvements, or the rate or method of apportionment of a special tax or require the levy of a new special tax. The change or new levy shall be accomplished in accordance with this article and in compliance with any applicable bond documents.

**3.75.380 Ordinance of consideration.** A. Except as provided in subsection B, if the council determines that the public convenience and necessity require a change permitted under section 3.75.370 or require the levy of a new special tax, the council may approve an ordinance of consideration to do so. The council shall have the full discretion to commence proceedings to make the change or new levy when deemed appropriate. The receipt of a petition under section 3.75.390 shall not require or obligate the council to commence the proceedings.

B. The council shall not approve an ordinance of consideration to reduce the term of a district, reduce the realization from a special tax, or terminate the levy of a special tax if doing so will jeopardize the payment of debt service on bonds issued for the district or impair the security for the bonds or violate any bond covenants.

C. An ordinance of consideration for a district shall be an amendment of the ordinance of formation for the district. The ordinance of consideration shall contain the pertinent information required by section 3.75.410.

**3.75.390 Petition for changes in term, special improvement, or special tax.** The council may commence proceedings to approve an ordinance of consideration if receiving the following:

1. A petition signed by the owners of at least 25 percent of the land within the district requesting a change permitted under section 3.75.370 or the levy of a new special tax.

2. A fee which the council determines is necessary to compensate the county for the costs of proceedings to review the requested change or new levy.

The fee shall be nonrefundable, even if the council does not make the change or levy.

**3.75.400 [Reserved.]**

**3.75.410 Contents of proposed ordinance of consideration.** A proposed ordinance of consideration shall:

1. State the name of the district.
2. Describe the boundaries of the district.
3. Specify the proposed change to the term of the district or special improvements to be financed.
4. Specify any proposed new special tax which will be levied to finance new or existing special improvements.
5. Specify the proposed change to the rate or method of apportionment of an existing special tax.

**3.75.420 Notice of hearing on proposed ordinance of consideration.** The council shall fix the time and place for a hearing on the proposed ordinance of consideration. The date of the hearing shall not be less than thirty or more than sixty days from the date of introduction of the proposed ordinance. The county clerk shall publish notice of the hearing in the same manner as required under section 3.75.140 for notice of a hearing on a resolution of intention. In addition, the county clerk shall mail the notice to each owner of land in the district at least fifteen days before the hearing. The notice shall contain:

1. A summary of the proposed ordinance and the name, address, and telephone number of a County department or officer from whom a copy of the proposed ordinance can be obtained (alternatively, the notice may contain the full text of the proposed ordinance).
2. The time and place of the hearing.
3. A statement that, at the hearing, the testimony of all interested persons and landowners for or against the proposed changes will be heard. The notice shall also summarize the protest procedure, including the respective rights of an owner and the effect of protests made against the proposed changes.

**3.75.430 Protests against the proposed ordinance of consideration.** Protests against the provisions of the proposed ordinance of consideration may be made in writing by landowners. All written protests shall be filed with the county clerk before or at the hearing. The council may waive any irregularities in the form or content of any written protest. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

**3.75.440 Protest by more than 55 percent.** If the owners of more than 55 percent of the land or if more than 55 percent of the owners of the land in the district file written protests with the council before or at the hearing against a provision in the proposed

ordinance of consideration and if protests are not withdrawn so as to reduce the amount of the protests to 55 percent or less, the provision specified in the written protests shall not be in the approved ordinance of consideration. No proceedings to include the provision in another ordinance of consideration shall again be undertaken for a period of one year from the close of the hearing.

**3.75.450 Duration of hearing; determination.** The hearing may be continued from time to time, but shall be completed within thirty days; except that, if the council finds that the complexity of the proposed changes or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed six months. At the conclusion of the hearing, the council may abandon the proceedings or, after considering all protests and such other relevant factors (such as the general plan or development plan) as it deems appropriate, may approve the ordinance of consideration (in the form in which it was introduced or with such changes as determined by council). The approved ordinance shall not contain provisions successfully protested in accordance with section 3.75.440.

**3.75.460 Filing of notice.** After the effective date of an ordinance of consideration, the director shall provide notice of any special tax change or levy in the manner specified under section 3.75.340.

**Article V. Early Termination of District**

**3.75.470 Authorization to terminate district before expiration of term specified in ordinance of formation.** The council may terminate a district before the expiration of the term specified in the ordinance of formation. An early termination shall be accomplished in accordance with this article.

**3.75.480 Ordinance of early termination.** A. Except as provided in subsection B, if the council determines that the public convenience and necessity will be promoted by terminating a district before the expiration of the term specified in the applicable ordinance of formation, the council may approve an ordinance of early termination. The council shall have the full discretion to commence proceedings for the early termination of a district when deemed appropriate. The receipt of a petition under section 3.75.490 shall not require or obligate the council to commence the proceedings.

B. The council shall not approve an ordinance of early termination for a district unless provisions are included to assure

the payment of the following from the special taxes or accumulated reserves of the district:

1. All outstanding debt service on bonds issued for the district.

2. All outstanding incidental expenses accrued for the district.

C. An ordinance of early termination of a district shall amend the term of the district as specified in the ordinance of formation.

**3.75.490 Petition for early termination.** The council may commence proceedings to approve an ordinance of early termination if receiving the following:

1. A petition signed by the owners of at least 25 percent of the land within a district requesting the early termination of the district.

2. A fee which the council determines is necessary to compensate the County for the costs of proceedings to review the proposed early termination of the district.

The fee shall be nonrefundable, even if the council does not approve the early termination.

**3.75.500 Director's recommendation on early termination.** The director may recommend to the council that a district be terminated before the expiration of the term specified in the ordinance of formation. The recommendation shall be made if the director determines that the public convenience and necessity will be promoted by the early termination. A recommendation shall be accompanied by a proposed ordinance of early termination.

**3.75.510 Contents of proposed ordinance of early termination.** A proposed ordinance of early termination shall:

1. State the name of the district.

2. Describe the boundaries of the district.

3. Identify the proposed early termination date of the district.

4. Give a narrative justification for the proposed early termination.

5. With respect to the debt service on bonds issued for the district:

a. Specify the method by which the debt service will be fully paid before the early termination of the district; or

b. Establish a trust or other fund in the County treasury with a balance sufficient to pay the debt service outstanding after the early termination of the district.

6. With respect to incidental expenses accrued for the district:

- a. Guarantee the payment of the incidental expenses before the early termination of the district; or
- b. Establish a method by which incidental expenses, if any, will be paid after the early termination of the district.

**3.75.520 Notice of hearing on proposed ordinance of early termination.** The council shall fix the time and place for a hearing on the proposed ordinance of early termination. The date of the hearing shall not be less than thirty or more than sixty days from the date of introduction of the proposed ordinance. The county clerk shall publish notice of the hearing in the same manner as required under section 3.75.140 for notice of a hearing on a resolution of intention. In addition, the county clerk shall mail the notice to each owner of land in the district at least fifteen days before the hearing. The notice shall contain:

1. A summary of the proposed ordinance and the name, address, and telephone number of a County department or officer from whom a copy of the proposed ordinance can be obtained (alternatively, the notice may contain the full text of the proposed ordinance).
2. The time and place of the hearing.
3. A statement that, at the hearing, the testimony of all interested persons and landowners for or against the proposed early termination will be heard. The notice shall also summarize the protest procedure, including the respective rights of an owner and the effect of protests made against the proposed early termination.

**3.75.530 Protests against the proposed ordinance of early termination.** Protests against the provisions of the proposed ordinance of early termination may be made in writing by landowners. All written protests shall be filed with the county clerk before or at the hearing. The council may waive any irregularities in the form or content of any written protest. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

**3.75.540 Protest by more than 55 percent.** If the owners of more than 55 percent of the land or if more than 55 percent of the owners of the land in the district file written protests with the council before or at the hearing against a provision in the proposed ordinance of early termination and if protests are not withdrawn so as to reduce the amount of the protests to 55 percent or less, the



provision specified in the written protests shall not be in the approved ordinance of early termination. No proceedings to again include the provision in another ordinance of early termination shall be undertaken for a period of one year from the close of the hearing.

**3.75.550 Duration of hearing; determination.** The hearing may be continued from time to time, but shall be completed within thirty days; except that, if the council finds that the complexity of the proposed early termination or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed six months. At the conclusion of the hearing, the council may abandon the proceedings or, after considering all protests and such other relevant factors as it deems appropriate, may approve the ordinance of early termination. The approved ordinance shall not contain any provision which is contrary to this article.

**3.75.560 Construction of article.** This article shall not be construed as requiring an ordinance to effectuate the termination of each district. A district shall automatically terminate upon reaching the expiration of the term specified in the ordinance of formation. This article applies only if the council desires to terminate a district earlier than the expiration date specified in the ordinance of formation.

**Article VI. Annexation of Territory**

**3.75.570 Authorization to annex; contiguity not required.** The council may annex an area of land to an existing district in accordance with this article. The annexed land need not be contiguous to the existing district.

**3.75.580 Ordinance of annexation.** If the council determines that the public convenience and necessity require the addition of land to an existing district, the council may approve an ordinance of annexation adding the land. The ordinance of annexation adding land to an existing district shall be deemed an amendment of the ordinance of formation for that district. The council shall have the full discretion to commence proceedings for the annexation of land when deemed appropriate.

**3.75.590 Contents of proposed ordinance of annexation.** A proposed ordinance of annexation shall:

1. State the name and term of the existing district.
2. Describe the boundaries of the existing district and the area proposed to be annexed.

3. Identify the special improvements financed by the existing district, the special improvements to be financed by the area proposed to be annexed, and the special improvements to be financed in common by both.

4. Specify the proposed new special tax which will be levied within the area proposed to be annexed.

5. Specify any proposed change to the special tax within the existing district as a result of the proposed annexation. The special tax rate in the existing district shall not be increased as a result of annexation proceedings pursuant to this article.

**3.75.600 Notice of hearing on proposed ordinance of annexation.** The council shall fix the time and place for a hearing on the proposed ordinance of annexation. The date of the hearing shall not be less than thirty or more than sixty days from the date of introduction of the proposed ordinance. The county clerk shall publish notice of the hearing in the same manner as required under section 3.75.140 for notice of a hearing on a resolution of intention. In addition, the county clerk shall mail the notice to each owner of land in the existing district and area proposed to be annexed. The notice shall be mailed at least fifteen days before the hearing. The notice shall contain all of the following information:

1. A summary of the proposed ordinance and the name, address, and telephone number of a County department or officer from whom a copy of the proposed ordinance can be obtained (alternatively, the notice may contain the full text of the proposed ordinance).

2. The time and place of the hearing.

3. A statement that, at the hearing, the testimony of all interested persons and landowners for or against the proposed annexation will be heard. The notice shall also summarize the protest procedure, including the respective rights of an owner and the effect of protests made against the proposed annexation.

**3.75.610 Protests against proposed ordinance of annexation.** Protests against the proposed ordinance of annexation may be made in writing by landowners. All written protests shall be filed with the county clerk before or at the hearing. The council may waive any irregularities in the form or content of any written protest. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

**3.75.620 Protest by more than 55 percent.** If the owners of more than 55 percent of the applicable land or if more than 55

percent of the owners of the applicable land file written protests with the council before or at the hearing against the proposed annexation and if protests are not withdrawn so as to reduce the amount of the protests to 55 percent or less, the annexation proceedings shall cease. No proceedings to again annex the land shall be undertaken for a period of one year from the close of the hearing.

**3.75.630 Duration of hearing; determination.** The hearing may be continued from time to time, but shall be completed within thirty days; except that, if the council finds that the complexity of the proposed annexation or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed six months. At the conclusion of the hearing, the council may abandon the proceedings or, after considering all protests and such other relevant factors (such as the general plan or development plan) as it deems appropriate, may approve the ordinance of annexation (in the form in which it was introduced or with such changes as determined by the council and permitted by this part). Thereafter, the County may levy the special tax on the annexed land.

**3.75.640 Filing of notice.** After the effective date of an ordinance of annexation, the director shall provide notice of any special tax change or levy in the manner specified under section 3.75.340.

## **Article VII. Bonds**

**3.75.650 Bond ordinance.** A. Whenever the council deems it necessary or appropriate that community facilities district bonds be issued to finance the cost of special improvements or to reimburse the cost thereof previously paid, the council may authorize the issuance of bonds. The issuance shall be authorized by a bond ordinance approved with or after the approval of the ordinance of formation levying the special tax to finance the special improvements. The bond ordinance shall provide for the following:

1. The issuance of the bonds in one or more series.
2. The date the bonds shall bear.
3. The maturity date or dates of the bonds, which shall not be more than thirty years after the issuance date of the bonds.
4. The rate or maximum rate of interest on the bonds, which shall not exceed the maximum rate permitted by law and which may be fixed or variable and simple or compound.
5. The time or times at which interest shall be payable.

6. The denomination of the bonds.
7. The form of the bonds.
8. The conversion or registration privileges carried by the bonds.
9. The rank or priority of the bonds.
10. The manner of execution of the bonds.
11. The medium of payment of the bonds.
12. The place or places of payment.
13. The terms of redemption and the redemption price or prices to which the bonds are subject.
14. The pledge or assignment of all or part of the special taxes collected from the district or improvement area thereof, the liens securing such special taxes, or any other funds which are intended by the council to secure payment of the bonds. The pledge shall be superior to all other claims on the special taxes (except to the extent otherwise provided in the bond ordinance).
15. The establishment and handling of a separate special fund or funds to pay or secure the bonds or to pay for the special improvements or incidental expenses.
16. The obligations in which may be invested the proceeds of the bonds and any other funds (including special taxes) pledged to secure payment of the bonds.
17. Covenants regarding the levels of special tax collection and foreclosure as necessary or desirable.
18. Any other provisions for the issuance, payment, security, credit enhancement, handling of funds, default, remedy, or other matter related to the bonds which the council deems appropriate.

B. The bond ordinance may provide that any or all of the terms listed in this section or elsewhere in this article may be fixed by or set out in a certificate signed by the director at or prior to the delivery of the bonds or in an indenture, trust agreement, or fiscal agent agreement between the County and a corporate trustee or fiscal agent located within or outside the state.

**3.75.660 Costs includable in bond principal.** The principal amount of bonds authorized to be issued may include all costs and estimated costs of special improvements and incidental expenses associated with issuing the bonds.

**3.75.670 Minimum value-to-lien ratio.** The principal amount of bonds issued under an indenture or certificate pursuant to which such bonds are issued for a district shall not exceed one-third of the value of the real property upon which a special tax is levied for payment of the debt service on the bonds. The "value of

the real property” shall be the fair market value of the land and special improvements, within the meaning of section 3.75.050, to be constructed within the district, as shown upon an appraisal of the subject property made by an M.A.I. real estate appraiser or other qualified appraiser. Upon a finding of the council that the value of the property “as-is” is sufficient, the council may base the value to lien determination in this section on assessed value so long as the value-to-lien is at least five to one.

**3.75.680 Covenant to pursue foreclosure sale to collect delinquent special taxes.** The director may covenant, for the benefit of bond owners, to commence and diligently pursue to completion any foreclosure by advertisement and sale regarding delinquent special taxes. The covenant may specify a deadline for commencement of the foreclosure sale and any other terms and conditions the director determines reasonable regarding the foreclosure sale.

**3.75.690 Signing of bonds.** Unless otherwise specified in the bond ordinance, the bonds shall be signed by the mayor and countersigned by the director or the director's deputy. Signatures on the bonds may be manual or facsimile. If any officer whose signature appears on the bonds vacates the office before the delivery of the bonds, the signature shall be as effective as if the officer had remained in office.

**3.75.700 Manner of sale.** The director may sell bonds at public or private sale at the times, for the price or prices, and in the manner the council determines in the bond ordinance to be appropriate and in the public interest (such determination being final and conclusive).

**3.75.710 Bond fund.** Collections for payment of principal of and interest on bonds and incidental expenses shall be paid into a district bond or reserve fund and shall be used solely for the payment of the principal of and interest on the outstanding bonds of the district and incidental expenses, all as provided in the bond ordinance.

**3.75.720 Refunding bonds.** A. The council may authorize the issuance of bonds to refund any or all of the district bonds outstanding that have been issued pursuant to this article. The refunding bonds shall be authorized by a bond ordinance.

B. Except as otherwise approved by the council, refunding bonds shall not be issued if the total net interest cost to maturity on the refunding bonds plus the principal amount of the refunding

bonds exceeds the total net interest cost to maturity on the bonds to be refunded plus the principal amount of the bonds to be refunded. Subject to such limitations, the principal amount of the refunding bonds may be more than, less than, or the same as the principal amount of the bonds to be refunded. The principal amount of such refunding bonds shall not count against any maximum amount of bonds authorized in the original bond ordinance.

C. The designated costs of issuing refunding bonds shall be paid from proceeds of the refunding bonds, interest earned on those proceeds, or special taxes from the district. However, any interest or special taxes paid for the designated costs shall be added to the total net interest costs to maturity on the refunding bonds in determining whether the issuance of the refunding bonds complies with subsection B.

D. The saving achieved through the issuance of refunding bonds shall be used by the council to reduce:

1. The special taxes levied in the district; or
2. The term of the district within which the special taxes are levied.

At the time the council authorizes the issuance of refunding bonds, the council also shall reduce the special taxes levied in or term of the district. The reduction shall be made through an ordinance of consideration.

**3.75.730 Prohibition on issuance of general obligation bonds secured by general credit.** No general obligation bonds secured by the County's general credit shall be issued to finance special improvements identified in an ordinance of formation or pay for the incidental expenses of a district.

**3.75.740 Debt limit calculation.** Bonds issued under this article, when the only security is the special tax levy or lien in a district, shall be excluded from any determination of the power of the County to issue general obligation bonds or funded debt for purposes of Section 13 of Article VII of the State Constitution.”

SECTION 2. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



JEFFREY UEOKA  
Department of the Corporation Counsel  
County of Maui  
2018-1452  
2018-10-19 Ordinance