

**COUNCIL OF THE COUNTY OF MAUI**

# **BUDGET AND FINANCE COMMITTEE**

November 3, 2017

**Committee  
Report No. \_\_\_\_\_**

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Budget and Finance Committee, having met on August 15, 2017, September 19, 2017, and October 24, 2017, makes reference to County Communication 17-147, from Councilmember Riki Hokama, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 3.48.305, MAUI COUNTY CODE, RELATING TO THE CLASSIFICATION OF LAND AND BUILDING."

The purpose of the proposed bill is to amend Section 3.48.305, Maui County Code ("MCC"), relating to the classification of land and building as it pertains to planned developments where transient vacation rentals are permitted and to condominium property regimes.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed bill, approved as to form and legality, incorporating nonsubstantive revisions.

Your Committee notes that "highest and best use" for tax valuation purposes means the highest legal permissible use of a real property that will generate the highest revenue. "Actual use" for tax valuation purposes means the way an owner uses his or her real property.

A representative from the Department of Finance said an amendment codified as Section 3.48.305(C), MCC, was passed in 1982 to allow condominiums to be classified by actual use. The goal was to achieve equity between condominiums in Apartment Districts and Hotel Districts. However, this amendment is not functioning as intended. It has created inequity between condominium and non-condominium unit owners because the latter cannot claim actual use.

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Your Committee notes that to implement the above amendment, the Real Property Tax Assessment Division uses a "condominium use declaration form." The form requires owners of about 20,000 condominium units to attest to the actual use of their units as "Apartment," "Commercial," "Hotel and Resort," "Time Share," or "Homeowner." The Department's representative stated by removing the requirement to determine actual use, clerical staff would not have to review numerous declaration forms every year, thereby streamlining the real property tax process for condominium units.

The representative said the revised proposed bill would not affect those units classified as "Homeowner" or "Time Share." The representative estimated about 9.7 percent of the remaining units would change classifications, resulting in a net positive revenue impact of about 8.3 million dollars.

He also said 500 of the 2,700 condominium units currently classified lower than their highest and best use would generate 6 million of the anticipated 8.3 million dollars in increased revenue.

Your Committee noted a concern for how the revised proposed bill would affect long-term rentals. The representative said the revised proposed bill does not provide a mechanism to allow long-term rentals to be taxed differently from highest and best use. However, he said the Committee can add further revisions to the revised proposed bill to address the matter.

Your Committee notes "Minatoya properties" are units permitted for transient vacation rental use pursuant to Section 19.12.020(G), MCC.

Your Committee questioned how the revised proposed bill would affect "Minatoya properties." The representative said each unit would be classified individually by highest and best use regardless if it is a "Minatoya property." He further said the Department has an appeal process if the property owner feels the Department classified a unit incorrectly.

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Your Committee questioned if the revised proposed bill would only affect condominiums in hotel and resort districts. The representative said all condominiums would be affected regardless of their location.

Your Committee questioned the Department's process for identifying the uses of units in mixed-use condominiums. The representative said most of the owners' uses are currently on record, but should the Department require information, a letter will be sent to the owner or an inspection will be conducted.

Your Committee requested the number of units currently used for long-term and short-term rentals. The Department was unable to provide the specific information.

Another representative from the Department said the Real Property Tax Division currently has a contract with the Bureau of Conveyances to obtain maps for each condominium. He hopes to eventually have these maps in a digital three-dimensional format.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a further revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, RELATING TO REAL PROPERTY TAX."

The purpose of the further revised proposed bill is to (1) amend Section 3.48.305, MCC, relating to the classification of land and building pertaining to planned developments where transient vacation rentals are permitted and to condominium property regimes; and (2) add a new section relating to condominium units or planned developments dedicated for long-term residential use.

The representative said the further revised proposed bill would allow owners to dedicate their condominiums for long-term residential use. This could provide owners with a lower tax rate.

Your Committee questioned what penalties an owner may incur should he or she violate the dedication terms. A Deputy Corporation

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Counsel said the owner would have to pay the difference between their highest and best use rate and the long-term residential use rate.

The Deputy Corporation Counsel also said owners would prove their compliance with the dedication for long-term residential use with a properly-recorded lease with the Bureau of Conveyances. If owners use one-year leases, they would need to record the new lease every year.

A representative from the Department said homeowner classification takes precedence over all others. Furthermore, long-term rental dedication allows participating owners to receive the "Apartment" classification tax rate.

Your Committee noted the current system for taxing condominium units is reliant on truthful responses from the owners on their unit's actual use. A representative from the Department said by removing actual use, the Department can ensure owners are taxed at the appropriate rates.

Your Committee voted 7-0 to recommend passage of the further revised proposed bill on first reading and filing of the communication. Committee Chair Hokama, Vice-Chair White, and members Atay, Carroll, Crivello, Guzman, and Sugimura voted "aye." Committee members Cochran and King were excused.

Your Budget and Finance Committee RECOMMENDS the following:

1. That Bill \_\_\_\_\_ (2017), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, RELATING TO REAL PROPERTY TAX," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 17-147 be FILED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.

  
\_\_\_\_\_  
RIKI HOKAMA, Chair

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

BILL NO. \_\_\_\_\_ (2017)

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

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

SECTION 1. Section 3.48.305, Maui County Code, is amended to read as follows:

**“3.48.305 Classification of land and building.** A. Except as otherwise provided in subsection 3.48.305(B), land and building shall be classified, upon consideration of the real property’s highest and best use, into the following general classes:

1. Residential.
2. Apartment.
3. Hotel and resort.
4. Time share.
5. Commercial.
6. Industrial.
7. Agricultural.
8. Conservation.
9. Homeowner.
10. Commercialized residential.

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

1. A parcel that is used exclusively as the owner’s principal residence and has been granted a home exemption in accordance with sections 3.48.410 and 3.48.475, shall be classified as “homeowner” without regard to its highest and best use[;].
2. A parcel that serves as the owner’s primary residence and has been granted a bed and breakfast permit, a transient vacation rental permit, or a conditional permit allowing a transient vacation rental use pursuant to title 19 of

this code, shall be classified "commercialized residential" without regard to its highest and best use[;].

3. A parcel that is subject to a time share plan as defined in section 514E-1, Hawaii Revised Statutes, as amended, shall be classified as "time share[;]."

4. A parcel that does not serve as the owner's primary residence and has been granted a short-term rental home permit, a transient vacation rental permit, or a conditional permit allowing transient vacation rental use pursuant to title 19 of this code shall be classified as "commercial" without regard to its highest and best use[; and].

5. [A unit and its appertaining common interest that are part of a planned development where transient vacation rentals are permitted, in accordance with chapter 19.32 of this code, shall be classified in accordance with subsection 3.48.305(C)(2)(a). The planned development shall form an entity that shall annually report to the director on a form prescribed by the director, the actual use of each unit in the planned development along with any information deemed relevant by the director to determine the actual use of each unit. If the required annual report is not filed on or before December 1, the director may classify all units in the planned development in accordance with subsection 3.48.305(A) for the following assessment year. The entity shall report any change in actual use of a unit in the planned development within thirty days of that change. The director may investigate any unit and, if it is determined by the director that the actual use differs from the use reported, reclassify and reassess the unit.] Unless classified as "time share," "commercial," or "commercialized residential," units occupied by transient tenants for periods of less than six consecutive months, excluding properties granted a short-term rental home permit, transient vacation rental permit, conditional permit allowing transient vacation rental use, or bed and breakfast permit, shall be classified as "hotel and resort" and the real property tax shall be adjusted to taxes at the "hotel and resort" tax rate for the applicable tax year.

[C. When property is subdivided into condominium units, each condominium association or any entity filing a condominium property regime, shall file an annual report with the director of all units in the association, by tax map key number, before December 1 of each calendar year.

1. The director shall prescribe the form of the list and any supporting evidence as necessary. The list shall include whether the unit is vacant, owner occupied, or rented long term or short term, by month.

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

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

i. Homeowner. Only those units owned and occupied as a principal home and for which a home exemption claim was filed and granted shall be classified as "homeowner."

ii. Apartment. Only those units occupied by the owner for personal use or by a lessee for a term of six consecutive months or more shall be classified as "apartment."

iii. Commercial. Only those units occupied by the owner or a lessee for business or mercantile activities; or those units that do not serve as the owner's primary residence, and have been granted a short-term rental home permit, a transient vacation rental permit, or a conditional permit allowing transient vacation rental use pursuant to title 19 of this code shall be classified as "commercial."

iv. Hotel and resort. Unless classified as "time share," "commercial," or "commercialized residential," units occupied by transient tenants for periods of less than six consecutive months, excluding properties granted a short-term rental home permit, transient vacation rental permit, conditional permit allowing transient vacation rental use, or bed and breakfast permit, shall be classified as "hotel and resort." In addition, unless classified as "time share," "commercial," or "commercialized residential," units advertised for occupancy by transient tenants for periods of less than six consecutive months for any period during the course of any assessment year, shall be reclassified to "hotel and resort" and the real property tax shall be adjusted to taxes at the "hotel and resort" tax rate for the applicable tax year.

v. Time share. Units occupied by transient tenants for periods of less than six consecutive months that are subject to a time share plan as defined in section 514E1, Hawaii Revised Statutes, as amended, shall be classified as "time share."

vi. Commercialized residential. Units that serve as the owner's primary residence and that have been granted a bed and breakfast permit, a transient vacation rental permit, or a conditional permit allowing transient vacation



rental use pursuant to title 19 of this code, shall be classified as “commercialized residential.”

b. Deemed a parcel and assessed separately from other units.

3. The director may, after investigation, reclassify and reassess any unit in a condominium association found to be in violation of the owner’s certification of actual use.

4. A condominium owner and/or the condominium association or any entity filing a condominium property regime shall notify the director of any change in a unit’s classification within thirty days of that change.

5. If the required annual report is not filed on or before December 1, the director may classify all units in the project in accordance with subsection B for the following assessment year.]

[D.]C. Notwithstanding the foregoing, a parcel that does not serve as the owner’s primary residence and was, prior to May 23, 2012, granted a conditional permit for bed and breakfast or transient vacation rental use pursuant to title 19 of this code, and was classified as “commercialized residential” prior to May 23, 2012, shall retain such “commercialized residential” classification [until after the Council has otherwise provided, after its review of this section as provided in subsection E.

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

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

**“3.48.370 Condominium units or planned developments dedicated for long-term residential use. A. “Owner” as used in this section, means a person who is the fee simple owner of the real property, or who is the lessee of real property whose lease term extends ten years or more from the date of the petition.**

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

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

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

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

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

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

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

F. Failure of the owner to observe the restrictions on the long-term residential use of the unit shall cancel the special tax assessment privilege retroactive to the date of the dedication, or the most recent ten-year renewal period; and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a ten percent penalty from the respective dates that these payments would have been due. Failure to observe the long-term residential use restrictions on the unit shall include, but not be limited to, advertising the unit for occupancy by transient tenants for less than one hundred eighty consecutive days during the long-term residential dedication period. Nothing in this subsection shall preclude the County from pursuing any other remedy to enforce the covenant on the use of the land.

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


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

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

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

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

APPROVED AS TO FORM AND  
LEGALITY:

  
\_\_\_\_\_  
JEFFREY UEOKA  
Department of the Corporation  
Counsel  
County of Maui  
2017-0093  
BF-45 2017-09-11 Ordinance