

**RUSH**

**REQUEST FOR LEGAL SERVICES**

RECEIVED  
CORPORATION COUNSEL

**Date:** October 28, 2019  
**From:** Keani N.W. Rawlins-Fernandez, Chair  
Economic Development and Budget Committee

2019 OCT 28 PM 3:38


TRANSMITTAL  
**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: David Galazin, Esq.

**Subject:** COUNTY PROPERTY TAX REFORM (EDB-37)

**Background Data:** Please review the attached proposed bills, and if appropriate, approve them as to form and legality. Please send signed hard copies with your response.

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

RECEIVED  
2019 NOV -8 AM 9:01  
OFFICE OF THE  
COUNTY COUNCIL

Requestor's Signature 	Contact Person <u>James Krueger</u> (Telephone Extension: <u>7761</u> )
Keani N.W. Rawlins-Fernandez	

- ROUTINE (WITHIN 15 WORKING DAYS)
- PRIORITY (WITHIN 10 WORKING DAYS)
- RUSH (WITHIN 5 WORKING DAYS)
- URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): October 30, 2019  
REASON: For posting on November 1, 2019 for the November 8, 2019 Council meeting agenda.

**FOR CORPORATION COUNSEL'S RESPONSE**

ASSIGNED TO: <u>DAG</u>	ASSIGNMENT NO. <u>2019-0098</u>	BY: <u>MDA</u>
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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 11.7.19

By 

(Rev. 7/03)

edb:ltr:037acc01:jgk

Attachments

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

BILL NO. \_\_\_\_\_ (2019)

A BILL FOR AN ORDINANCE RELATING TO  
TIERS OF REAL PROPERTY TAX RATES

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

SECTION 1. Article X, Chapter 3.48, Maui County Code, is amended to  
read as follows:

**“Article X**

**Determination of Rates and Tiers**

**3.48.560 Definitions.** Unless a different meaning is clearly indicated by the context, as used in this article:

A. [“Net taxable lands” means all other real property exclusive of buildings.

B.] “Net taxable real property[.]” [“net taxable buildings” or “net taxable lands”] means[, as indicated by the context,] the percentage of the fair market value of property determined under section 3.48.180, which the director of finance certifies as the tax base as provided by ordinance, less exemptions as provided by ordinance, and[, in all cases which appeals from the director's assessment are then unsettled,] less [fifty per cent] 50 percent of the value in dispute[.] for all cases in which appeals from the director's assessments are unsettled.

B. “Tax rate” means the dollar amount of tax levied under this chapter per \$1,000.00 of net taxable real property, computed to the nearest cent.

**3.48.561 Tax rate tiers.** A. Classifications are established in section 3.48.305.

B. To establish progressive property taxes and notwithstanding any provisions to the contrary, three equivalent or ascending tiers of tax rates for properties classified as owner-occupied, non-owner-occupied, short-term rental, commercial, and industrial must be established. The tiered rates apply to three corresponding ascending or equal ranges of property

values. The rates, tiers, and value ranges are set forth in the annual budget. Any reference to "tiers" in this chapter incorporates value ranges.

**3.48.565 Increase or decrease.** The council may increase or decrease the tax rate, and tiers, if applicable, for [buildings and for all other real property, exclusive of buildings for net taxable land and net taxable buildings of] each class of net taxable real property established in accordance with section 3.48.305. A resolution setting the tax rates and tiers [shall] should be adopted on or before June 20 preceding the tax year for which property tax revenues are to be raised according to the following procedures:

A. The council [shall] must advertise its intention to increase or decrease tax rates and tiers and the date, time, and place of a public hearing in a newspaper of general circulation. The date of the public hearing [shall] should be not less than ten days after the advertisement is first published and [shall] must set forth the tax rates and tiers to be considered by the council.

B. After the public hearing provided for in subsection A [of this section], the council [shall] should readvertise and reconvene within three weeks to adopt a resolution fixing the tax rates and tiers for the tax year for which property tax revenues are to be raised. The advertisement [shall] must state the new rates and tiers to be fixed and the date, time, and place of the meeting scheduled for fixing [such] the rates[,] and tiers. The date, time, and place of the meeting [shall] must also be announced at the public hearing required by subsection A [of this section]. If the resolution fixing the tax rates and tiers is not adopted within three weeks from the public hearing required by subsection A [of this section], the council [shall] must again advertise and meet as required by subsection A.

C. [If adopting] During adoption of an increase or decrease in the tax rates and tiers as provided by subsections A and B [of this section], if the council determines that it requires a further increase or decrease in tax rates and tiers, or fails to act in any specified period, the council [shall] must readvertise and follow the requirements of subsections A and B.

D. The council's failure to act by the dates suggested in this section is not a basis to invalidate any tax rate, any tax tier, or the provisions of any ordinance or resolution.

**3.48.575 Use of increased or decreased rates[,] and tiers.** If the tax rates and tiers for the tax year are increased or decreased, the council [shall] must notify the director of finance of

the increased or decreased rates[,] and tiers, and the director [shall] must employ [such] those rates and tiers in the levying of property taxes as provided by this chapter.

**3.48.580 Calculations submitted by director.** A. [The director of finance shall, on] On or before April 19 preceding the tax year, the director of finance should furnish the council with a calculation certified [by him] as being as nearly accurate as [may be,] possible, of the estimated revenues derived using the rates and tiers set forth in the proposed budget, separately stated for each [category] classification established in accordance with section 3.48.305, for net taxable [lands and for net taxable buildings.] real property.

B. [The director of finance shall, on] On or before May 1 preceding the tax year, the director of finance should furnish the council with a calculation certified [by him] as being as nearly accurate as [may be,] possible, of the net taxable real property within the County, separately stated for each [category] classification established in accordance with section 3.48.305 [for net taxable lands and for net taxable buildings] plus such additional data relating to the property tax base as may be necessary.

C. The director's failure to provide notice by the dates suggested in this section is not a basis to invalidate any tax rate, any tax tier, or the provisions of any ordinance or resolution.

**[3.48.585 Validity.** Insofar as the validity of any tax rate is concerned, the provisions of sections 3.48.565 and 3.48.580, as to dates, shall be deemed directory; provided, that all other provisions of sections 3.48.565 and 3.48.580, and all provisions of section 3.48.570 and 3.48.575 shall be deemed mandatory.]

**3.48.590 Minimum real property tax.** Notwithstanding any provision to the contrary, [there shall be levied upon] each individual parcel of real property taxable under this chapter is subject to a minimum real property tax as set forth in the annual budget, except[:] for the following:

[1)] A. Those tracts leased under section 207 of the Hawaiian Homes Commission Act, 1920, as amended[;].

[2)] B. Any parcel used for farming taro where the assessed value times the current agricultural class tax rate is less than the minimum real property tax[;].

[3)] C. Portions of real property designated as kuleana land and granted an exemption as provided for in section 3.48.554[;].

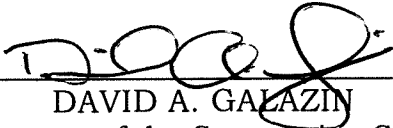
[4)] D. Homes[, ] or portions [thereof,] of homes granted an exemption under section 3.48.475 to be levied a real property tax of \$150 per year[; and].

[5)] E. Remnant parcels granted an exemption under section 3.48.552 to be levied a real property tax of \$150 per year.”

SECTION 2. 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 3. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND  
LEGALITY:



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DAVID A. GALAZIN  
Department of the Corporation Counsel  
County of Maui  
2019-0098  
EDB-37 2019-11-7 Ordinance Chap. 3.48 Article X

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

BILL NO. \_\_\_\_\_ (2019)

A BILL FOR AN ORDINANCE RELATING TO  
REAL PROPERTY TAX VALUATIONS

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

SECTION 1. Article VII, Chapter 3.48, Maui County Code, is amended to  
read as follows:

**“Article VII**

**Valuations**

**3.48.290 Considerations by director.** The director [of finance shall] must cause the fair market value of all taxable real property to be determined and annually assessed by the market data and cost approaches to value using appropriate systematic methods suitable for mass valuation of properties for taxation purposes, so selected and applied to obtain, as far as possible, uniform and equalized assessments throughout the [county; provided, that the ] County, except as follows:

A. For real property tax purposes, the value of land classified and used for agriculture, whether such lands are dedicated [pursuant to] in accordance with section 3.48.350 or not, [shall, for real property tax purposes, be] is the value of [such] the land for agricultural use without regard to any value [that such] the land might have for other purposes or uses, or to neighboring land uses, and determined as provided in section 3.48.320[; and provided further that, for].

B. For real property tax purposes, the value of land leased under [Section] section 207 of the Hawaiian Homes Commission Act, 1920, [shall be no value.] is \$0.00.

[In making such determination and assessment, the director shall separately value and assess, within each class established in accordance with section 3.48.305, buildings and all other real property, exclusive of buildings.]

**3.48.300 Methods—Recordkeeping.** [So far as practicable, records shall] Records should be compiled and kept [which shall] that show the methods established by or under the authority of the director[, ] for the determination of values.

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

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

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

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

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

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

[2.] 4. [A parcel] Real property that serves as the owner's [primary] principal residence and has been granted a bed and breakfast home permit, a [transient vacation rental] short-term rental home permit, or a conditional permit allowing a transient vacation rental use [pursuant to title 19 of this code, shall] in accordance with the comprehensive zoning ordinance, must be classified "commercialized residential" without regard to its highest and best use[.], and cannot qualify for a home exemption.

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

[4.] 6. Unless classified as "time share," "hotel and resort," or "commercialized residential," lodging or dwelling units, as defined in [title 19 of this code,] the comprehensive zoning ordinance, occupied by transient tenants for periods of less than six consecutive months [shall be classified as "short-term rental"], including [a parcel] real property that does not serve as the owner's [primary] principal 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] in accordance with the comprehensive zoning ordinance, must be classified as "short-term rental" without regard to its highest and best use[.], and cannot qualify for a home exemption.

[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.



6.] 7. Unless classified as “time share” or “commercialized residential,” properties occupied by transient tenants for periods of less than six consecutive months, have eight or more lodging or dwelling units as defined in [title 19 of this code,] the comprehensive zoning ordinance, and employ more than twenty full-time persons, [shall] must be classified as “hotel and resort.”

[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 shall be classified as “commercial.”

iv. Hotel and resort. Unless classified as “time share” or “commercialized residential,” properties that are occupied by transient tenants for periods of less than six consecutive months, have eight or more lodging or dwelling units as defined in title 19 of this code, and employ more than twenty full-time persons, shall be classified as “hotel and resort.”

v. Time share. Units occupied by transient tenants for periods of less than six consecutive months that are subject to a time share plan as defined in section 514E-1, Hawaii Revised Statutes, as amended, 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."

vii. Short-term rental. Unless classified as "time share," "hotel and resort," or "commercialized residential," lodging or dwelling units, as defined in title 19 of this code, occupied by transient tenants for periods of less than six consecutive months shall be classified as "short-term rental," including properties granted a short-term rental home permit, transient vacation rental permit, or conditional permit allowing transient vacation rental use.

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

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

4. A condominium owner, the condominium association or any entity filing a condominium property regime, or both, 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] real property that does not serve as the owner's [primary] principal 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,] in accordance with the comprehensive zoning ordinance, and was classified as "commercialized residential" prior to May 23, 2012, [shall retain such] will retain the "commercialized residential" classification.

**3.48.310 Assessment of lots and parcels.** Whenever land has been divided into lots or parcels as provided by law, each [such] lot or parcel [shall] must be separately assessed. Each condominium unit and its appertaining common interest is a parcel and must be separately assessed.

**3.48.320 Land classified as agriculture or commercialized residential and used for agriculture.** In determining the value of lands [which] that are classified and used for agriculture, or classified as commercialized residential and used for agriculture, whether [such] the lands are dedicated pursuant to section 3.48.350 or not, consideration [shall] must be given to rent, productivity, nature of actual agricultural use, the advantage or disadvantage of factors such as location, accessibility, transportation facilities, size, shape, topography, quality of soil, water privileges, availability of water and its cost, easements and appurtenances, and to the opinions of [person who may be considered to have] persons with special knowledge of land values.

**3.48.325 Deferred or roll back tax—Change in classification.** A deferred or roll back tax [shall] must be imposed on the owner of agricultural lands assessed according to their agricultural use as provided in section 3.48.290 in the event of a change in land use classification by the authorized state agency to urban or rural districts or upon the subdivision of the land into parcels of five acres or less; [provided, that] except the tax [shall] does not apply if the owner dedicates [his] the land as provided in section 3.48.350 within three years from the date of the change in land use classification and fulfills all of the requirements of the dedication. The deferred tax [shall be] is due and payable at the end of the third year following the change in land use classification, [provided that] so long as the land [shall continue] continues to be used for agriculture during this period.

A. The total amount of deferred taxes [shall] will be computed commencing at the end of the third year following the change in classification where the land has continuously been used for agriculture; [provided, however, that where] except that when the land has been put to a higher urban or rural use prior to the expiration of the three-year period, the amount of deferred taxes [shall] must be computed commencing at the end of the year in which the land has been put to [such] a higher urban or rural use, and [shall] will be retroactive to the date the assessment was made [pursuant to] in accordance with section 3.48.290, [provided the retroactive period shall not exceed] but for not more than ten years. Where the owner has subdivided [his] the land into parcels of five acres or less, the deferred tax [shall commence] commences from the date the conversion was made retroactive to the date the assessment was made [pursuant to] in accordance with section 3.48.290, but for not more than ten years.

B. Any other provisions to the contrary notwithstanding, the deferred or roll back tax [shall apply] applies only if a change in

land use classification has been made as a result of a petition by any property owner or lessee and [shall apply] only upon lands owned by the owner or lessee who has petitioned for the change in classification. The deferred or roll back tax [shall] does not apply to lands owned by any [other] owner or lessee who has not petitioned for the change in classification, [provided] so long as the owner or lessee [shall continue] continues to use the land in its agricultural use for a period of three years after the change in land use classification is made, or where the change in classification is initiated by any governmental agency or instrumentality.

C. The deferred or roll back tax [shall] will be based on the difference in assessed value between the highest and best use and the agricultural use of the land, at the tax rate applicable for the respective years.

1. Where the owner subdivides [his] the land into parcels of five acres or less, the deferred tax [shall be] is due and payable within sixty days of [such] the conversion, subject to a [ten] 10 percent [per year] annual penalty.

2. Where the owner changes the land use classification, the deferred tax [shall be] is due and payable within three years of [such] the conversion, except that where the land has been put to its higher urban or rural use, the tax [shall be] is due and payable at the end of the year in which the land has been put to [such] higher use, subject to a [ten] 10 percent [per year] annual penalty.

D. Any other provisions to the contrary notwithstanding, the land [shall] will continue to be assessed in its agricultural use as provided in section 3.48.290 until the land is put to its higher urban or rural use, or for a period of three years following the change in classification, whichever is shorter; [provided, that] however, for purposes of determining the amount of deferred taxes to be assessed to the owner or lessee, the retroactive period [shall include] includes the period during which the land [is continued] continues to be assessed in its agricultural use following the change in classification. Any tax due and owing [shall attach] attaches to the land as a paramount lien in favor of the [county] County as provided for by this chapter.

**3.48.330 Unusable or unsuitable land for agricultural use.** Where lands located within agricultural districts are put to agricultural uses, [that] the tax upon any portion of [such] the lands that is not usable or suitable for any agricultural use, whether dedicated pursuant to section 3.48.350 or not, [the tax upon such unusable or unsuitable land shall] may be deferred and [shall be] payable upon conversion as provided under sections 3.48.290 through 3.48.340.

**3.48.340 Valuation of buildings—Additions, modifications, or new work.** A. In determining the value of buildings, [consideration shall be given to] the director must consider any additions, alterations, remodeling, modifications, or other new construction, improvement, or repair work undertaken upon or made to existing buildings [as the same] because they may result in a higher assessable valuation of the buildings; [provided, however,] except that any increase in value resulting from [any] additions, alterations, modifications, or other new construction, improvement, or repair work to buildings undertaken or made by the owner-occupant [thereof pursuant to] in accordance with the requirements of any urban redevelopment, rehabilitation, or conservation project under the provisions [or Part] of part II of [Chapter] chapter 53 of the Hawaii Revised Statutes [shall] will not increase the assessable valuation of any building for a period of seven years from the date of certification as provided in this section.

B. [It is further provided that the] The owner-occupant [shall] must file with the director, [of finance,] in the manner and place [which] that the director may designate, a statement of the details of the improvements certified in the following manner:

1. [In the case of] For additions, alterations, modifications, or other new construction, improvement, or repair work to a building [that are] undertaken [pursuant to] in accordance with any urban redevelopment, rehabilitation, or conservation project as mentioned in this section, the statement [shall] must be certified by the mayor or any governmental official designated by [him] the mayor and approved by the council, that the [additions, alterations, modifications or other new construction, improvement or repair work to the buildings were made] work was completed and satisfactorily [comply] complies with the particular urban redevelopment, rehabilitation, or conservation act provision[,]; or

2. [In the case of] For maintenance or repairs to a residential building undertaken [pursuant to] in accordance with any health, safety, sanitation, or other governmental code provision, the statement [shall] must be certified by [the mayor, or any governmental official designated by him and approved by the council,] a county inspector, that the building was inspected [by them] and found to be substandard when the owner-occupant made [his] the claim, and the maintenance [of] or repairs to the buildings were made and satisfactorily comply with the particular code provision.

**3.48.345 Water tanks.** Any provision to the contrary notwithstanding, any tank or other storage receptacle required by any government agency to be constructed or installed on any taxable real property before water for home and farm use is supplied; and any other water tank, owned and used by a real property taxpayer for storing water solely for [his] the taxpayer's own domestic use, [shall] will be exempted in determining and assessing the value of [such] the taxable real property.

**3.48.350 Dedicated lands.** A. A special land reserve is established to enable the owner of any parcel of land within an agricultural district, a rural district, a conservation district, or any urban district to dedicate [his] land for a specific ranching or other agricultural use and to have [his] the land assessed at its value in such use; provided, that if the land is located within an urban district:

1. A lessee of the land with a term of ten or more years remaining from the date of the petition shall also be deemed an owner of the land within these provisions[;].

2. The land dedicated must be used for the cultivation of crops such as sugar cane, pineapple, truck crops, orchard crops, ornamental crops, or the like[;].

3. The land dedicated must have been substantially and continuously used for the cultivation of crops such as sugar cane, pineapple, truck crops, orchard crops, ornamental crops, or the like for the five-year period immediately preceding the dedication request; [provided further,] except that land situated within an agricultural district may be dedicated for a period of twenty years and [shall] must be taxed at [fifty] 50 percent of its assessed value in [such] the use.

B. If any [other] owner desires to use [his] land for a specific ranching or other agricultural use and to have [his] the land taxed at its assessed value in this use or [fifty] 50 percent of its assessed value as the case may be, [he shall also] the owner must petition the director [of finance] and declare in [his] the petition that [his] the land can best be used for the purpose for which [he] the owner requests permission to dedicate [his] the land and that if [his] the petition is approved [he will use his] the land will be used for this purpose.

C. If the owner desires to change from one specific ranching or other agricultural use to another ranching or other agricultural use [he shall so] the owner must petition the director [of finance] and declare in [his] the petition that:

1. [His] The land can best be used for a ranching or other agricultural purpose other than that for which [he] the owner originally requested permission[; and] .

2. [He] The owner will use [his] the land for that new purpose if [his] the petition is approved.

D. Upon receipt of a petition as provided [above] in subsections B and C, the director [shall] must make a finding of fact as to whether the land in the petition area is reasonably well suited for the intended use. The finding [shall] must include and be based upon the productivity ratings of the land in those uses for which it is best suited, a study of the ownership, size of operating unit, the present use of surrounding similar lands, and other criteria as may be appropriate. The director [shall] must also make a finding of fact as to whether the intended use is in conflict with the overall development plan of the state. If both findings are favorable to the owner, the director [shall] must approve the petition and declare that the owner's land is dedicated land; [provided,] except that for lands in urban districts, the director [shall] must make further findings respecting the economic feasibility of the intended use of the land. If all three findings are favorable, the director [shall] must approve the petition and declare the land to be dedicated. [In order to] To place prospective buyers on notice of the roll back liability, the petitioner [shall] must within thirty days of notice of approval record the dedication in accordance with the procedures of the bureau of conveyances.

E. The approval by the director of the petition to dedicate [shall constitute] constitutes a forfeiture on the part of the owner of any right to change the use of [his] the land to a use other than agriculture for a minimum period of ten years or twenty years, as the case may be, automatically renewable indefinitely, subject to cancellation as follows:

1. In the case of a ten-year dedication, the owner may after the ninth year and years thereafter, give notice of cancellation by filing with the director[, ] a written notice of cancellation[, ] on or before December [31st,] 31, to be effective as of July [1<sup>st</sup>] 1 of the following tax year[;].

2. In the case of a twenty-year dedication, the owner may during the nineteenth year and years thereafter give notice of cancellation as provided by this subsection[;].

3. In the case of a change in a major land use classification not as a result of a petition by any property owner or lessee such that the owner's land is placed within an urban district, the dedication may be canceled within sixty days of the change by the owner. Upon any conveyance or any change in ownership during the period of dedication,

the land [shall] will continue to be subject to the terms and conditions of the dedication unless a release has been issued by the director.

Any other provision to the contrary notwithstanding, an approved change in use as provided in subsections C and D [shall] does not alter the original dedication period.

F. Failure of the owner to observe the restrictions on the use of [his] the land [shall cancel] cancels the dedication and special tax assessment privilege retroactive to the date of the dedication, but in any event [shall] must not exceed the term of the original dedication; and all differences [in] between the amount of taxes that were paid and those that would have been due from assessment in the higher use [shall be] are payable with a [ten] 10 percent [a year] annual penalty from the respective dates that these payments would have been due. The additional taxes and penalties, due and owing as a result of a breach of the dedication, [shall be] constitute a paramount lien upon the property as provided for by this chapter.

1. Failure to observe the restrictions on the use means failure for a period of twelve consecutive months to use the land in that manner requested in the petition or the overt act of changing the use for any period, [provided] except that a change in land use classification upon petition by the owner of [such] the dedicated lands, or the petition by the owner for a change in use as provided in subsection C, and the owner's subsequent change in use of [such] the dedicated lands, [shall] does not [be deemed to] constitute a failure of the owner to observe the restrictions on the use.

2. If an owner is permitted to change [his use] uses as provided in subsections C and D, [he shall] the owner will be allowed thirty-six months from the date of the approval of [his] the petition to convert to the new ranching or agricultural use. If the owner fails to make the conversion within the specified time limit, [he] the owner will be subject to the taxes and penalties provided above. For purposes of assessment of taxes and penalties, the conversion period shall be considered in addition to the specified dedication period, except, however, in the case of the leased lands whose term expires prior to or in conjunction with the end of the dedication period, the conversion period [shall] will be considered as a part of the dedication period. The petitioner [shall] must submit progress reports of [his] efforts in converting from one agricultural use to another agricultural use to the director [of finance] by the anniversary date of the



petition approval, and yearly, thereafter, as long as [such] the conversion period remains.

Any other provisions to the contrary notwithstanding, when a portion of the dedicated land is subsequently applied to a use other than the use set forth in the original petition, only [such] the portion [as] that is withdrawn from the dedicated use and applied to a use other than ranching or other agricultural use [shall] may be taxed as provided by this subsection.

G. [The director shall prescribe the form of the petition.] The petition [shall] must be filed with the director [of finance] by September [1<sup>st</sup>] 1 of any calendar year, in a form prescribed by the director, and [shall] will be approved or disapproved by December [15th.] 15. If approved, the assessment based upon the use requested in the dedication [shall be effective] takes effect on January [1<sup>st</sup>] 1 of the next calendar year.

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

I. "Owner," as used in this section, includes lessees of real property whose lease term extends at least ten years from the date of the petition, in the case of a ten-year dedication, or lessees of real property whose lease term extends at least twenty years from the date of the petition, in the case of a twenty-year dedication.

J. "Agricultural use," as used in this section, [shall include] includes aquaculture.

K. A special land reserve is established to enable the owner of any parcel of land within an urban district to dedicate [his] land for a specific livestock use, such as feed lots, calf-raising, and [like] similar operations in dairy, beef, swine, poultry, and aquaculture, but excluding grazing or pasturing, and to have [his] the land assessed at its value in [such] the use; [provided, that:] subject to the following conditions:

1. A lessee of the land with a term of ten or more years remaining from the date of the petition [shall] may also be deemed an owner of the land within these provisions[;].

2. The land dedicated must be used for livestock uses, such as feed lots, calf-raising, and [like] similar operations in dairy, beef, swine, poultry, and aquaculture, but excluding grazing or pasturing[;].

3. The land dedicated must have been substantially and continuously used in the livestock uses enumerated in subdivision 2 of this subsection[; and].

4. [Such] The livestock use must be compatible with the surrounding uses.

**3.48.355 Golf course assessment—Basis.** A. Property operated and used as a golf course [shall] will be assessed for property tax purposes on the [following basis: The value to be assessed by the director shall be on the] basis of its actual use as a golf course rather than on the valuation based on the highest and best use of the land.

B. In determining the value [or] of actual use, factors to be considered [shall] must include[, among others,] rental income, cost of development, sales price, and the effect of the value of the golf course on the value of the surrounding lands.

**3.48.360 Golf course assessment—Conditions.** [In order to] To qualify in having land assessed in valuation as a golf course, the owner of any parcel of land desiring or presently using [his] the land for a golf course [shall as a condition precedent qualify as follows:] must comply with the following:

A. Dedication of [Land.] land.

1. The owner [of any parcel of land for a golf course shall] must petition the director [of finance] and declare in [his] the petition that [he will dedicate his] the parcel of land will be dedicated for a golf course.

2. The approval by the director [of finance] of the petition to dedicate the land [shall constitute] constitutes a forfeiture on the part of the owner of any right to change the use of the land for a minimum period of ten years, automatically renewable indefinitely, subject to cancellation by either the owner or the director [of finance] upon five years' notice at any time.

3. The failure of the owner to observe the restrictions on the use of [his] the land to that of a golf course [shall cancel] cancels the special tax assessment privilege retroactive to the date of the dedication, but not more than ten years prior to the tax year in which the [exemption] dedication is disallowed. All differences [in] between the amount of taxes that were paid and those that would have been due from assessment in the higher use [shall be] are payable with a [six-percent-a-year] 6 percent annual penalty from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over twelve consecutive months to use the land in that manner requested in the petition as a golf course [by] or the overt act of changing the use for any period. Nothing in this [subdivision shall preclude] subsection precludes the [county] County from pursuing any other remedy to enforce the covenant on the use of the land as a golf course.

4. [The director of finance shall prescribe the form of the petition.] The petition [shall] must be filed by September [1<sup>st</sup>] 1 of any calendar year, in a form prescribed by the director, and [shall] will be approved or disapproved by December [15th of such year.] 15. If approved, the assessment based upon the use requested in the dedication [shall be effective] takes effect on January [1<sup>st</sup>] 1 of the next calendar year.

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

6. "Owner," as used in this section, includes lessees of real property whose lease term extends at least ten years [effective] from the date of the petition.

7. The [amount of] additional taxes and penalties, due and owing where the owner has failed to observe the restriction on the use, [shall attach] attaches to the property as a paramount lien in favor of the [county] County as provided for by [ordinance] this chapter.

B. Covenant [Not to Engage in Discrimination.] not to engage in discrimination. The owner [shall] must covenant in [his] the petition with the director [of finance] that [he] the owner will not discriminate against any individual in the use of the golf course facilities because of the individual's race, sex, religion, color, or ancestry.

**3.48.365 Lands dedicated for 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 at least ten years from the date of the petition.

B. A special land reserve is established to enable the owner of any parcel of land within a hotel, apartment, resort, commercial, or industrial district to dedicate [his] the land for residential use and to have [his] the land assessed at its value in residential use; provided, that:

1. The land dedicated [shall] must be limited to a parcel used only for single-family dwelling residential use[;].

2. The owner of the land dedicated [shall] must use it as [his] the owner's home[; and].

3. Not more than one parcel of land [shall] may be dedicated for residential use by any owner.

C. If any owner desires to use [his] land for residential use and to have [his] the land assessed at its value in this use, [he shall so] the owner must petition the director [of finance] and declare in [his] the petition that if [his] the petition is approved, [he] the owner will use [his] the land for single-family dwelling

residential use only and that [his] the land so dedicated will be used as [his] the owner's home.

D. Upon receipt of [any such] a petition, the director [of finance shall] must make a finding of fact as to whether the land described in the petition is being used by the owner for single-family dwelling residential use only and as [his] the owner's home. If the finding is favorable to the owner, the director [of finance shall] must approve the petition and declare the land to be dedicated.

E. The approval of the petition by the director [of finance] to dedicate [shall constitute] constitutes a forfeiture on the part of the owner of any right to change the use of [his] the land for a minimum 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 use of land or the sale of the property [shall cancel] cancels the special tax assessment privilege retroactive to the date of the dedication, or the latest renewal ten-year 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] are payable with a [ten] 10 percent penalty from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over twelve consecutive months to use the land in the manner requested in the petition or the overt act of changing the use for any period, or the sale of the real property. Nothing in this subsection [shall preclude] precludes 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 use or any other breach [as a result of failure to use or any other breach] of the dedication, [shall be] constitute a paramount lien upon the property as provided for by ordinance.

H. The director [of finance shall] will prescribe the form of the petition. The petition [shall] must be filed with the director [of finance] by September [1<sup>st</sup>] 1 of any calendar year and [shall] will be approved or disapproved by December [15<sup>th</sup>.] 15. If approved, the assessment based upon the use requested in the dedication [shall be effective] takes effect on January [1<sup>st</sup>] 1 of the next calendar year.

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

J. After December 15, 2019, no parcel of land may be dedicated for residential use pursuant to this section, and no existing dedication authorized by this section may be renewed. This section will be repealed on December 31, 2020.

**3.48.366 Land dedicated for fast track housing.** A. A special land reserve is established to enable an owner of land on which a residential workforce housing project has been approved for fast track housing by the council [~~pursuant to~~] in accordance with chapter 2.97 of this code to dedicate the project site for fast track housing and be exempt from real property taxes until the project is complete.

B. If the owner desires to dedicate the project site for fast track housing, the owner [~~shall~~] must petition the director and affirm the owner [~~shall~~] will complete the fast track housing [~~pursuant to~~] in accordance with the application approved by the council in accordance with chapter 2.97 of this code.

C. Upon confirmation of the council's application approval for fast track housing, the director [~~shall~~] will approve the petition and declare the property to be dedicated to fast track housing.

D. The approval of the petition by the director [~~of finance~~] to dedicate a property for fast track housing [~~shall constitute~~] constitutes a forfeiture on the part of the owner of any right to change the use of the project site as set forth by chapter 2.97 of this code.

E. Failure of the owner to commence construction within the time period set forth by chapter 2.97 of this code [~~shall forfeit~~] forfeits the special tax assessment privilege retroactive to the date of the dedication, and all real property taxes that would have been due from assessment [~~shall be~~] are payable with a 10 percent penalty from the respective dates that these payments would have been due. Nothing in this subsection [~~shall preclude~~] precludes the County from pursuing any other remedy to enforce the covenant on the use of the land.

F. The taxes and penalties, due and owing as a result of failure of the owner to commence construction within the time period set forth by chapter 2.97 of this code, [~~shall be~~] constitute a paramount lien upon the property as provided for by [~~ordinance.~~] this chapter.

G. [~~The director of finance shall prescribe the form of the petition.~~] The petition [~~shall~~] must be filed with the director by September [~~first~~] 1 of any calendar year, in a form prescribed by the director, and [~~shall~~] will be approved or disapproved by December [~~15th.~~] 15. If approved, the assessment based upon the use requested in the dedication [~~shall~~] will be effective on January [~~1<sup>st</sup>~~] 1 of the next calendar year.

**3.48.367 Land dedicated for use as residential workforce housing rental unit project.** A. As used in this section, unless the context otherwise requires:

“Owner” means:

- (1) the fee simple owner of property;
- (2) a lessee of property whose lease term extends at least thirty years from the date of an application for an exemption; or
- (3) a lessee of property, with the fee simple owner's written authorization.

“Residential workforce housing unit” has the same meaning as in section 2.96.020.

“Residential workforce housing rental unit project” means any project comprised of ten or more rental units where all of the units are residential workforce housing rental units subject to the restrictions in section 2.96.070.

B. An owner may apply to the director for a property tax exemption under this section, in a form prescribed by the director. The application must include a declaration that, if the exemption is granted, the property will be dedicated for use as a residential workforce housing rental unit project for thirty years.

C. The director of finance will forward an application submitted in accordance with subsection B to the director of housing and human concerns. If the director of housing and human concerns determines the property described in the application will be utilized for a residential workforce housing rental unit project, the director of finance will grant the exemption by approving the application.

D. If the exemption is granted, the owner must record the approved application with the bureau of conveyances of the State of Hawaii or the land court of the State of Hawaii, as appropriate.

E. An exemption granted under this section, is valid for one year, but it will be automatically renewed for successive one-year terms until the dedication period has expired or the exemption is canceled under subsection F.

F. Failure to comply with this section or the declaration included in the application will result in cancellation of the exemption retroactive to the beginning of the most recent renewal period. Any additional taxes and penalties, due and owing as a result of failure to comply with this section or the declaration included in the application, constitute a paramount lien upon the property as provided for by ordinance. Nothing in this subsection precludes the County from pursuing any remedy to enforce the dedication included with the application.

G. The owner may request to be relieved from compliance with the requirements of this section or the declaration included in the application for one designated period not to exceed thirty-six months. The director will approve the request if the owner shows the relief will more likely than not increase the property's viability as a residential workforce housing rental unit project. The dedication period will be extended by the length of the designated period and the owner must record the approved request and extension of the dedication period with the bureau of conveyances of the State of Hawaii or the land court of the State of Hawaii, as appropriate.

H. An application for an exemption under this section must be filed with the director by September first of any calendar year, and the exemption will be granted or denied by December fifteenth. If granted, the exemption will be effective on January first of the next calendar year.

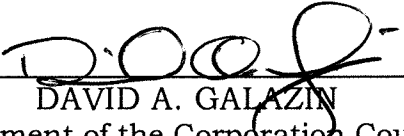
I. If an application for an exemption under this section or a request for relief under subsection G is denied, the owner may appeal by the same procedure that is used to appeal from an assessment under section 3.48.595.

J. The director must report to the council on the status of all dedications approved in accordance with this section at least annually.”

SECTION 2. 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 3. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND  
LEGALITY:

  
\_\_\_\_\_  
DAVID A. GALAZIN  
Department of the Corporation Counsel  
County of Maui  
2019-0098  
EDB-37 Ordinance Chap. 3.48 Article VII