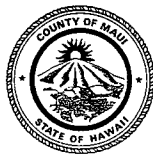


KATHY L. KAOHU  
County Clerk



JAMES G.M. KRUEGER  
Deputy County Clerk

**OFFICE OF THE COUNTY CLERK**

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/county/clerk](http://www.mauicounty.gov/county/clerk)

April 25, 2022

OFFICE OF THE  
COUNTY CLERK

2022 APR 25 PM 1:07

RECEIVED

Honorable Yuki Lei Sugimura, Chair  
Infrastructure and Transportation Committee  
Council of the County of Maui  
Wailuku, Hawaii 96793

Dear Chair Sugimura:

Respectfully transmitted are copies of the following documents that were referred to your Committee by the Council of the County of Maui at its meeting of April 22, 2022:

COUNTY COMMUNICATIONS:

No. 22-101 - Shayne R. Agawa, Deputy Director of Water Supply

BILL:

No. 75 (2022) - "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.75, MAUI COUNTY CODE, RELATING TO COMMUNITY FACILITIES DISTRICTS"

Respectfully,

A handwritten signature in black ink that reads "Kathy L. Kaohu".

KATHY L. KAOHU  
County Clerk

/jym

Enclosures

cc: Director of Council Services

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

BILL NO. 75 (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.75, MAUI COUNTY  
CODE, RELATING TO COMMUNITY FACILITIES DISTRICTS

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

SECTION 1. Chapter 3.75, Maui County Code, is amended 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.
- 3.75.031 Actions and determinations of council.
- 3.75.032 Powers reserved to council.
- 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.
- 3.75.090 Validity of proceedings.
- 3.75.095 Rulemaking authority.

**Article II. Proceedings**

- 3.75.100 Institution of proceedings.
- 3.75.110 Petition requesting institution of proceedings.
- 3.75.120 Adoption of resolution of intention.
- 3.75.130 Report on special improvements.
- 3.75.140 Notice of public hearing on proposed district.

- 3.75.150 Mailed notice of hearing.
- 3.75.160 Waiver of hearing.
- 3.75.170 Protests against establishment of district.
- 3.75.180 Protest by more than 55 percent.
- 3.75.190 Duration of hearing; determination.
- 3.75.200 Approval of ordinance of formation.
- 3.75.210 District boundaries.
- 3.75.220 District term.
- 3.75.230 Financing of special improvements and payment of incidental expenses identified in ordinance of formation.
- 3.75.240 Designation of improvement area.
- [3.75.250 Property owners' election to perform work.]

### **Article III. Special Tax**

- 3.75.260 Special tax apportionment.
- 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.
- 3.75.320 Special tax collection.
- 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 the County[.] or other public entity.

### **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.
- 3.75.590 Contents of proposed ordinance of annexation.
- 3.75.600 Notice of hearing on proposed ordinance of annexation.
- 3.75.610 Protests against proposed ordinance of annexation.
- 3.75.620 Protest by more than 55 percent.
- 3.75.630 Duration of hearing; determination.
- 3.75.640 Filing of notice.

**Article VII. Bonds**

- 3.75.650 Bond ordinance.
- 3.75.660 Costs includable in bond principal.
- 3.75.670 Minimum value-to-lien ratio.
- 3.75.680 Covenant to pursue foreclosure sale to collect delinquent special taxes.
- 3.75.690 Signing of bonds.
- 3.75.700 Manner of sale.
- 3.75.710 Bond fund.
- 3.75.720 Refunding bonds.
- 3.75.730 Prohibition on issuance of general obligation bonds secured by general credit.
- 3.75.740 Debt limit calculation.

## **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] that authorizes the issuance of community facilities district bonds.

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

“Community facilities district” or “district” means a district of land established by the County under 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, easements, or right-of-way for a special improvement.

3. Payment of water, sewer, or other utility connection [fee] fees or other permit and development fees necessary for the acquisition, planning, design, construction, installation, improvement, rehabilitation, or operation of a special improvement.

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

5. Reimbursement of an advance of funds for acquiring, planning, designing, 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, payment of bond counsel or other legal [fee] fees, trustee [fee] fees, bond insurance premium, or letter of credit or other credit enhancement cost[.] and other costs and charges in the ordinary course of a municipal bond transaction including County administrative charges.

“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 that 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] 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 either of the following:

1. The costs of or associated with the 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 that 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] expenses of the County associated with the special improvements, bonds, special taxes, or proceedings undertaken pursuant to this chapter[, collection of special taxes, or payment of debt service on bonds].

2. The cost of planning and designing the special improvements, including the cost of environmental evaluations, assessments, and impact statements.

3. The costs associated with the creation of the district, issuance, carrying or repaying of bonds, determination of the amount of special taxes, collection of special taxes, payment of special taxes, or costs otherwise incurred in order to carry out the authorized purposes of the district, including financing, consulting, trustee and legal fees, replenishment of any reserves established in connection with bonds, arbitrage rebate required by federal law, and foreclosure costs.

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

“Landowner” or “owner of land” or “owner” 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]~~ is 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 real property assessment 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[:]. If the fee simple owner files either of the following with the council, the fee simple owner is considered the “landowner”:

a. A written statement, signed, and notarized by the fee simple owner, 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, signed and notarized by the fee simple owner, 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]~~ does not include an entity of the federal, state, or county government. Such an entity ~~[shall have]~~ has no right to petition under sections 3.75.100, 3.75.110, 3.75.160, 3.75.190, 3.75.390, or 3.75.490 or to protest under sections 3.75.170, 3.75.180, 3.75.430, 3.75.440, 3.75.530, 3.75.540, 3.75.610, or 3.75.620. The

entity and its land [shall be] are disregarded when computing the total number of landowners and amount of land eligible for petition or protest purposes.

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

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

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

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

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

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

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

"Special tax" means a tax levied in accordance with this chapter.

**3.75.020 Provision of alternate method of financing special improvements.** This chapter is established under 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 or special taxes, 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] prevails.

**3.75.031 Actions and determinations of council.** The council may take actions or make any determinations that it determines are necessary or convenient to carry out the purpose of this chapter and that are not otherwise prohibited by law.

**3.75.032 Powers reserved to council.** A. Any provision of law to the contrary notwithstanding, the council reserves the following powers over any proposed community facilities district:



1. If, for any reason whatsoever, the community facilities district bonds authorized under article VII of this chapter are not sold or cannot be sold to any acceptable purchaser within a reasonable time, then the council has the power and authority to terminate a part or the entire community facilities district by ordinance.

2. In addition to the foregoing, at any time during the proceedings of any community facilities district proposal up to and including the construction of the special improvements, the council has the power and authority to terminate a part or the entire community facilities district by ordinance, if it determines that the community facilities district, or any part of it, is not in the public interest.

B. If the council terminates the community facilities district at any time under this section, any fee submitted as required under this chapter is nonrefundable. Further, to the extent the fee does not cover the costs to the County for the proceedings or for the County's work done in furtherance of the special improvements, the special taxes continue to be collected until the County is fully reimbursed for its costs. As an example, if after the ordinance of formation is approved by the council and the County is required to conduct an environmental assessment or environmental impact statement for the special improvements project and the environmental assessment or environmental impact statement identifies negative effects on the environment, the council may terminate the community facilities district in the public interest, and the costs of the environmental assessment or environmental impact statement, including consultant and legal fees to defend the environmental assessment or environmental impact statement, must be reimbursed to the County from the collection of the special taxes.

**3.75.040 Limitation on challenges.** Under 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] must be maintained, unless begun within thirty days of the [effective date] adoption of the ordinance, determination, levy, assessment, or other act, as the case may be[.], and in the case of bonds, within thirty days after adoption of the ordinance authorizing the issuance of those bonds.

**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 that 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] must 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] subsection 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 that 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 or special tax liens, repay or

defeasement 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] County may enter into an agreement, as authorized by council 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, whatever is less, of the work or property in-kind, as determined by the council, with or without interest, [; provided that,] so long as 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[.], and if applicable, in the ordinance of consideration or ordinance of annexation. Any such agreement [shall] must 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 under this chapter.

**3.75.080 Construction of chapter.** This chapter [shall] must 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 that does not directly affect the jurisdiction of the County to order the provision of a special improvement [shall void] voids or [invalidate] invalidates 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] does 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.

**3.75.095 Rulemaking authority.** The director of finance is authorized to adopt administrative rules to carry out duties under this chapter.

**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. Under this subsection, a councilmember must submit a request to the council chair to institute proceedings and must include the information required under section 3.75.110 and

a draft resolution of intention containing the information required under section 3.75.120.

B. Proceedings for the establishment of a district [shall] must be instituted by the council after receipt and examination by the county clerk of the following:

1. [a] A petition requesting the institution of the proceedings signed by the owners of at least 25 percent of the land to be taxed in the proposed district. Each signature must be followed by the printed or typewritten name of the person signing the petition and the tax map key number of the parcel owned by that person or the person's entity in the proposed district. If the parcel is owned by an entity, the person signing the petition on behalf of the entity must also provide proof of ownership of the entity.

2. [The County may also require a] A fee [that the County determines is necessary] to compensate the County, including legal and consultant fees, for the costs of proceedings to form the proposed district as set forth in the annual budget [and may enter into a deposit agreement with the owners for such purpose]. The county clerk must first determine the sufficiency of the petition, and if the petition is sufficient, the county clerk must then forward the petition and a certificate showing the result of the county clerk's examination to the council.

C. Fees are nonrefundable, even if the council does not establish the proposed district. The County may also require additional fees as appropriate [later] at any time in the proceedings.

D. When required to institute proceedings after the receipt of a petition and [any] required fee [and deposit agreement], the council [shall] must do so [at the first regular meeting for that notice of a resolution of intention may be posted under chapter 92, Hawaii Revised Statutes.] within ninety days after receipt of a petition, fee, and certificate from the county clerk. [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] must include the following:

1. A request that the council institute proceedings to establish a district under 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.

5. Estimation of the term of the district.
6. Cost estimate of the special improvements, including costs for permitting and other approvals, assessments, acquisition, planning, design, construction, installation, and materials.
7. Cost estimate and identification of expected incidental expenses.
8. Identification of the County agency that would be responsible for managing the special improvement acquisition, planning, procurement, design, permitting, construction, and installation, and all other matters related to the development of the special improvements.
9. Identification of the County agency that would be responsible for the operation and maintenance of the special improvements upon completion.
10. Cost estimate of the administrative and operational costs to each County agency.
11. Identification of the maintenance expected to be necessary for the special improvements and cost estimate of the ongoing maintenance costs to the County.
12. Identification and explanation of the County's liability risks beyond levels normally acceptable for public improvements.
13. A list of the entitlements and permits already obtained or required to be obtained for the special improvements and a narrative of the efforts by the petitioner and the status of obtaining said entitlements and permits.
14. A draft resolution of intention containing all of the information required in section 3.75.120.

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

**3.75.120 Adoption of resolution of intention. A.** Proceedings for the establishment of a district [shall] must be instituted by the adoption of a resolution of intention to establish the district. The resolution [shall] must 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] must be a specified calendar period and [shall] must 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] must 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] must be annually levied within the proposed district. The resolution [shall] must 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, that [shall] must not be less than [thirty] ninety or more than [sixty] one hundred eighty 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.]

B. If an improvement area is proposed to be established, the resolution of intention must also 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 be levied in the improvement area for purposes of financing such improvements.

C. If the council finds that the complexity of the proposed district requires additional time for the council's evaluation or requires additional information from the petitioner or representative of the landowners, the council may defer action on the resolution any may request more information to be provided to the council. The council may also defer action and require the petitioner or

representative of the landowners to obtain entitlements and permits required for the special improvements or take other actions prior to the council's consideration of the resolution of intention.

**3.75.130 Report on special improvements.** A. At the time of the adoption of the resolution of intention to establish a district, the council [shall] must do the following:

1. [direct] Request the appropriate administrative head [or heads] who will be responsible for the development, operation, and maintenance of the special improvements to study the proposed district[,] and file with the council a report on the study. If required by the administrative head, the study may be conducted by a third-party consultant under the direction of the administrative heads.

2. [The council shall also request] Request the [appropriate administrative head] director to hire a special tax consultant recognized in the area of special tax district formation to study the proposed district 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 reports shall] Collectively, the reports must 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, identification of the County agency that will be responsible for the acquisition, planning, design, construction, installation, improvements, or rehabilitation of the special improvements and the operation and maintenance of the special improvements upon completion, and a discussion of each of the matters to be considered by the council under to section 3.75.200.A. In preparing the [report] reports, that may be general and preliminary and need not be based on detailed plans and specifications, the administrative heads and 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. The reports must be submitted to the council at least ten days before the public hearing on the proposed district.

B. At the time of the adoption of the resolution of intention to establish a district, the council must request that all County departments comment on the proposed special improvements and formation of the community facilities district, and the comments must include the following:

1. The requirements and other improvements that will be required by the agency for the development of the special improvements.

2. The entitlements and permits required for the development and use of the special improvements.

3. A discussion of each of the matters to be considered by the council under to section 3.75.200.A.

4. The feasibility of the agency to undertake the following, or any parts within the agency's jurisdiction, and any concerns and potential impediments the agency may have on:

a. The development of the special improvements.

b. The operation and maintenance of the special improvements upon completion.

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

A. The county clerk [shall] must 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] must be completed at least ten days prior to the date of the hearing.

B. The notice [shall] must 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] must 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] must give notice of the hearing by first-class mail to each owner of land within the proposed district that the county clerk has identified. The notice [shall] must be mailed at least fifteen days before the hearing and [shall] must contain the same information as required in the published notice under section 3.75.140. Failure to give notice to any owner or failure of any owner to receive such notice



[shall] does 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] is 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] must be submitted in writing to and examined by 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] must not hold the hearing. If a hearing is not held because of the petitions, the owners [shall be deemed to have waived] waive the right to protest under section 3.75.170. Waiver petitions must include the printed or typewritten name of the person signing the waiver petition and the tax map key number of the parcel owned by that person or the person's entity in the proposed district. If the parcel is owned by an entity, the person protesting on behalf of the entity must also provide proof of ownership of the entity.

**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 or other interested persons. All written protests [shall] must 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. Protests by owners of land within the proposed district must include the printed or typewritten name of the person signing the protest and the tax map key number of the parcel owned by that person or the person's entity in the proposed district. If the parcel is owned by an entity, the person protesting on behalf of the entity must also provide proof of ownership of the entity.

**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 of the area of land or of the owners, the proceedings to create the specified district [shall] must cease. No proceedings to create the district

[shall] can 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] must 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] must be completed within [thirty days] one year; 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 one year and 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, community plan, or development plan) as it deems appropriate, may proceed with establishing the district.

**3.75.200 Approval of ordinance of formation.** A. In deciding whether to approve or disapprove the establishment of a proposed community facilities district, the council must consider the following:

1. Whether the special improvements to be financed will have a primarily local or regional benefit. Preference will be given to special improvements having a regional impact and benefitting the larger community.

2. Whether the special improvements are of high priority to the community when standing alone and when compared to other infrastructure or improvements needed in the area. Preference will be given to special improvements of high priority when standing alone and when compared to other infrastructure or improvements needs in the area.

3. Whether the property proposed for a community facilities district is already burdened by other community facilities district financing.

4. Whether the related development, if any, and the subject infrastructure or improvements conform to the policies of the general plan, the comprehensive zoning ordinance, and the community plan of the area.

5. Whether the credit quality for the bond issues will be sustained.

6. Whether there are sufficient safeguards to ensure comprehensive, clear, and timely disclosure to potential buyers of property in the community facilities district.

7. Whether the allocation of the special tax is fair, equitable, and consistent with policies of the general plan, comprehensive zoning ordinance, and community plan of the area.

8. Whether the establishment of the district is in the public interest.

9. Whether it is feasible for the County and the departments to develop and operate the special improvements.

10. The amount and substance of any protests.

11. The reports and comments submitted by the County administration under to section 3.75.130.

B. If the council determines to establish the district, it [shall] must approve an ordinance of formation. The ordinance of formation [shall] must contain the following, but no provision that was successfully protested under section 3.75.180 [shall] may 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] is 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. Special tax notice to owners, buyers, and lessees of the parcels within the district.

9. Any other information required by this chapter.

C. When the ordinance of formation is passed on second reading, the council [shall] must determine whether all proceedings were valid and in conformity with the requirements of this chapter. If the council so determines, it [shall] must make a finding to that effect. The finding [shall be] are 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] must be a specified calendar period. Under an ordinance of formation, the expiration of the term [shall] must not be earlier than the date on that 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.

C. The ordinance of formation may be amended by the council at any time when additional expenses are identified.

**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] must be made in the ordinance of formation for the district. An improvement area [shall] must 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] must not apply to any contract for the acquisition of special improvements, and [shall] must 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]~~ is not ~~[be]~~ required to present sealed proposals or bids when the director calls for bids preparatory to letting a contract to do work financed under 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]~~ must 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 under this chapter be fixed in amount or apportioned on the basis of special benefit to be conveyed on a parcel of land in the district by the special improvement or that the special improvement ~~[financed]~~ convey a special benefit ~~[to]~~ on the parcel. The only requirement is that the parcel to be subject to the special tax is improved or benefitted by the special improvement ~~[benefit the parcel]~~ in a general manner or in any other manner.

B. A special tax levied under 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]~~ is final and conclusive. [Special taxes shall be levied and apportioned under 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] must be levied and apportioned under the rate and method specified in the ordinance of formation. The director [shall] must 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.

3. Determine the penalties for delinquent payments.

Special taxes [shall] must 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] must 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] must 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 that special taxes may be prepaid and permanently satisfied. The conditions may include periods during that prepayment [shall] is not [be] permitted or a requirement that a premium be paid upon prepayment. If the council has specified conditions under that 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] must prepare a notice of cancellation of the special taxes for the parcel.

The director [shall] must transmit a copy of the notice to the owner, who may file it with the bureau of conveyances or land court, as applicable. 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] are exempt from the special tax, except as otherwise provided by subsection B and section 3.75.360. No other properties or entities within a district [shall be] are exempt from the special tax, unless expressly exempted in the ordinance of formation, ordinance of consideration, or ordinance of annexation, as applicable.

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] must, notwithstanding subsection A, be levied on the leasehold or possessory interest and [shall] must 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] must include in the contract a statement that the property interest [shall] must be subject to special taxation under this chapter. Failure to comply with the requirement [shall] does 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] must be levied in a manner that complies with the following:

1. A maximum annual special tax amount for the residential parcel [shall] must 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] chapter, including a change in use, development, improvement, subdivision, or consolidation of the parcel.

**3.75.320 Special tax collection.** Special taxes [shall] must 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] must apply to special tax delinquencies. The director [shall] must 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] is a lien [against] upon the land and improvements of the parcel. The lien [shall] must attach from the effective date of the ordinance levying the special tax and [shall] must be extinguished when the special tax is fully paid or terminated.

B. The lien of the special tax [shall] must 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] must 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 under this chapter [shall] must 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] must be by way of advertisement and sale without suit, and [shall] must 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 under default in payment of property taxes. In any event, the director [shall] must 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] must notify all owners of parcels of land subject to the special tax. Notices [shall] must be sent by certified or registered mail with request for return receipt or delivery confirmation. Each of the notices [shall] must 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] does not affect the validity of the special tax nor entitle the landowner to an extension of time within which to pay the special tax. The ordinance of formation, ordinance of consideration, ordinance of early termination, and ordinance of annexation approved by the council under this chapter must be recorded with the Bureau of Conveyances or the Land Court, whichever the case may be, by the director promptly after the adoption of the applicable ordinance. From the date of recording with the Bureau of



Conveyances or the Land Court, all persons are considered to have notice of 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] must 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 the County or other public entity.** A. If a parcel subject to a special tax is acquired by the County (or, to the extent permitted by law, any other public entity) through a negotiated transaction or eminent domain proceeding, the conveyer [shall] must 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, unless otherwise paid or provided for, the parcel [shall] must be sold as soon as practicable, and either:

1. The special tax [shall] must 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] must take title subject to the lien of the special tax and [shall] must be required to pay the special taxes becoming due from and after the sale date.

C. Notwithstanding subsections A and B, if property subject to a special tax levied under this chapter is acquired by a federal, state or county government, the special tax must continue to be levied on the property acquired and must be enforceable against the public entity that acquired the property unless such special tax is prepaid and permanently satisfied, whether prior to or subsequent to the acquisition of the property, in accordance with the applicable ordinance of formation. However, even if the ordinance of formation that authorized creation of the district did not specify conditions under which the obligation to pay a special tax may be prepaid and permanently satisfied, the council may specify conditions under which the federal, state, or county government that acquires the property may prepay and satisfy the obligation to pay the special tax, if the council finds and determines that the prepayment arrangement will fully protect the interests of the owners of the district's debt.

**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] must 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 or the public interest 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] has 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] does not require or obligate the council to commence the proceedings.

B. The council [shall] must 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] must be an amendment of the ordinance of formation for the district. The ordinance of consideration [shall] must contain the pertinent information required by section 3.75.410.

**3.75.390 Petition for changes in term, special improvement, or special tax.** A. The council may commence proceedings to approve an ordinance of consideration [if receiving] after receipt and examination by the county clerk of 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. Each signature must be followed by the printed or typewritten name of the person signing the petition and the tax map key number of the parcel owned by that person or the person's entity in the district. If a parcel is owned by an entity, the person signing the petition on behalf of the entity must also provide proof of ownership of the entity.

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 as set forth in the annual budget.

The county clerk must first determine the sufficiency of the petition and if the petition is sufficient, the county clerk must then forward the petition and a certificate showing the result of the county clerk's examination to the council. The fee [shall be] is nonrefundable, even if the council does not make the change or levy. The County may require additional fees as appropriate at any time.

B. A petition requesting a change in term, special improvements, or special tax must include the following:

1. A request that the council institute proceedings to change the term, special improvements, or special tax under to this chapter.

2. A description of the boundaries of the district.

3. A description of the proposed change to the term of the district, special improvements, and incidental expenses to be financed, as applicable.

4. The signatures of the owners of land comprising at least the minimum percentage required under section 3.75.390.

5. Cost estimate of the special improvements, including costs for permitting and other approvals, assessments, acquisition, planning, design, construction, installation, and materials.

6. Cost estimate and identification of expected incidental expenses.

7. A proposed new special tax that will be levied to finance new or existing special improvements and incidental expenses.

8. Identification of the County agency that would be responsible for managing the special improvement acquisition, planning, procurement, design, permitting, construction, and installation, and all other matters related to the development of the special improvements.

9. Identification of the County agency that would be responsible for the operation and maintenance of the special improvements upon completion.

10. Cost estimate of the administrative and operational costs to each County agency.

11. Identification of the maintenance expected to be necessary for the special improvements and cost estimate of the ongoing maintenance costs to the County.

12. Identification and explanation of the County's liability risks beyond levels normally acceptable for public improvements.

13. A list of the entitlements and permits already obtained or required to be obtained for the special improvements and a narrative of the efforts by the petitioner and the status of obtaining said entitlements and permits.

14. A draft ordinance of consideration containing all of the information required in section 3.75.410.

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

### **3.75.400 Reserved.**

**3.75.410 Contents of proposed ordinance of consideration.** A proposed ordinance of consideration [shall] must:

1. State the name of the district.

2. State the term of the district.

3. Describe the boundaries of the district.

[3.] 4. Specify the proposed change to the term of the district or special improvements and incidental expenses to be financed.

[4.] 5. Specify any proposed new special tax that will be levied to finance new or existing special improvements and incidental expenses.

[5.] 6. Specify the proposed change to the rate or method of apportionment of an existing special tax.

7. Special tax notice to owners, buyers, and lessees of the parcels within the district.

8. Any other information required by this chapter.

**3.75.420 Notice of hearing on proposed ordinance of consideration.** The council [shall] must fix the time and place for a hearing on the proposed ordinance of consideration. The date of the hearing [shall] must not be less than [thirty] ninety or more than [sixty] 180 days from the date of introduction of the proposed ordinance. The county clerk [shall] must 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] must mail the notice to each owner of land in the district at least fifteen days before the hearing. The notice [shall] must 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] must 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[.] or other interested persons. All written protests [shall] must 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. Protests by owners of land within the district must include the printed or typewritten name of the person signing the protest and the tax map key number of the parcel owned by that person or the person's entity in the district. If the parcel is owned by an entity, the person protesting on behalf of the entity must also provide proof of ownership of the entity.

**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] must not be in the approved ordinance of consideration. No proceedings to include the provision in another ordinance of consideration [shall] can again be undertaken for a period of one year from the close of the hearing.

**3.75.450 Duration of hearing; determination.** A. The hearing may be continued from time to time, but [shall] must be completed within [thirty] ninety 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.

B. In deciding whether to approve or disapprove a change under to this article IV, the council must consider the factors in section 3.75.200.

C. 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, community plan, or development plan) as it deems appropriate, may approve the ordinance of consideration (in the form that it was introduced or with such changes as determined by council). The approved ordinance [shall] must not contain provisions successfully protested in accordance with section 3.75.440.

**3.75.460 Filing of notice.** [After the effective date] Upon approval of an ordinance of consideration, the director [shall] must 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] must 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 or the public interest 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] has 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] must not require or obligate the council to commence the proceedings.

B. The council [shall] must 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] must 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] after receipt and examination by the county clerk of 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. Each signature must be followed by the printed or typewritten name of the person signing the petition and the tax map key number of the parcel owned by that person or the person's entity in the district. If a parcel is owned by an entity, the person signing the petition on behalf of the entity must also provide proof of ownership of the entity.
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 as set forth in the annual budget.

The county clerk must first determine the sufficiency of the petition and if the petition is sufficient, the county clerk must then forward the petition and a certificate showing the result of the county clerk's examination to the council. The fee [shall be] is nonrefundable, even if the council does not approve the early termination. The County may require additional fees as appropriate at any time.

**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] must be made if the director determines that the public convenience and necessity will be promoted by the early termination. A recommendation [shall] must 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] must:

1. State the name and term 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 that 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] must fix the time and place for a hearing on the proposed ordinance of early termination. The date of the hearing [shall] must not be less than [thirty] ninety or more than [sixty] one hundred eighty days from the date of introduction of the proposed ordinance. The county clerk [shall] must 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] must mail the notice to each owner of land in the district at least fifteen days before the hearing. The notice [shall] must 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] must 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[.] or other interested persons. All written protests [shall] must 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. Protests by owners of land within the district must include the printed or typewritten name of the person signing the protest and the tax map key number of the parcel owned by that person or the person's entity in the district. If the parcel is owned by an entity, the person protesting



on behalf of the entity must also provide proof of ownership of the entity.

**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] must not be in the approved ordinance of early termination. No proceedings to again include the provision in another ordinance of early termination [shall] must 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] must be completed within [thirty] ninety 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] must not contain any provision that is contrary to this article.

**3.75.560 Construction of article.** This article [shall] must not be construed as requiring an ordinance to effectuate the termination of each district. A district [shall] automatically [terminate] terminates 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 or public interest 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] is be deemed an amendment of the ordinance of formation for that district. The council [shall have] has 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] must:

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 that will be levied within the area proposed to be annexed to pay for special improvements under to this chapter. A special tax proposed to pay for special improvements financed with bonds secured by the existing district must be the same as the tax levied in the existing district for that purpose, except that a higher special tax may be levied for that purpose within the territory proposed to be annexed to compensate for the interest and principal and incidental expenses previously paid by the existing district, less any depreciation allowable to the special improvements as determined by the council.
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] must not be increased as a result of annexation proceedings under this article.
6. Special tax notice to owners, buyers, and lessees of the parcels within the district.
7. Any other information required by this chapter.

**3.75.600 Notice of hearing on proposed ordinance of annexation.** The council [shall] must fix the time and place for a hearing on the proposed ordinance of annexation. The date of the hearing [shall] must not be less than [thirty] ninety or more than [sixty] one hundred eighty days from the date of introduction of the proposed ordinance. The county clerk [shall] must 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] must mail the notice to each owner of land in the existing district and area proposed to be annexed. The notice

[shall] must be mailed at least fifteen days before the hearing. The notice [shall] must 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] must 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[.] or other interested persons. All written protests [shall] must 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. Protests by owners of land within the area proposed to be annexed must include the printed or typewritten name of the person signing the protest and the tax map key number of the parcel owned by that person or the person's entity in the proposed area to be annexed. If the parcel is owned by an entity, the person protesting on behalf of the entity must also provide proof of ownership of the entity.

**3.75.620 Protest by more than 55 percent.** If the owners of more than 55 percent of the [applicable] land to be annexed or if more than 55 percent of the owners of the [applicable] land to be annexed 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] must cease. No proceedings to again annex the land [shall] can 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] must be completed within [thirty] ninety 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, community plan, or development plan) as it deems appropriate, may approve the ordinance of annexation (in the form that 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] Upon approval of an ordinance of annexation, the director [shall] must 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] must 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] must provide for the following:

1. The issuance of the bonds in one or more series.
2. The date the bonds [shall] must bear.
3. The maturity date or dates of the bonds, that [shall] must not be more than thirty years after the issuance date of the bonds.
4. The rate or maximum rate of interest on the bonds, that [shall] must not exceed the maximum rate permitted by law and may be fixed or variable and simple or compound.
5. The time or times that interest [shall] must 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 that 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 that are intended by the council to secure payment of the bonds. The pledge [shall] must 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 that 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 that 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 under which such bonds are issued for a district [shall] must 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] is 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] must be signed by the mayor and countersigned by the director or the director's deputy. Signatures on the bonds may be manual, electronic or facsimile. If any officer whose signature appears on the bonds vacates the office before the delivery of the bonds, the signature [shall be] is 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). The director may establish the final terms of the sale of the bonds, if the terms are within the parameters established by council.

**3.75.710 Bond fund.** Collections for payment of principal of and interest on bonds and incidental expenses [shall] must be paid into a district bond or reserve fund and [shall] must 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 under this article. The refunding bonds [shall] must be authorized by a bond ordinance.

B. Except as otherwise approved by the council, refunding bonds [shall] must 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] must not count against any

maximum amount of bonds authorized in the original bond ordinance.

C. The designated costs of issuing refunding bonds [shall] must 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] must 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] must 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] must reduce the special taxes levied in or term of the district. The reduction [shall] must 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] can 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] must 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 takes effect on approval.

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INTRODUCED BY:

Yuki Sei K. Sugimura