

ORDINANCE NO. _____

BILL NO. 88 (2022)

A BILL FOR AN ORDINANCE AMENDING
CHAPTER 3.48, MAUI COUNTY CODE, RELATING
TO LAND CLASSIFIED AND USED FOR AGRICULTURE

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

SECTION 1. The purpose of this Ordinance is to clarify agricultural use as it relates to real property taxation.

SECTION 2. Section 3.48.290, Maui County Code, is amended to read as follows:

“3.48.290 Considerations by director. A. The director 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, except as follows:

[A.] 1. For real property tax purposes, the value of land classified and used for agriculture, whether such lands are dedicated in accordance with section 3.48.350 or not, is the value of the land for agricultural use without regard to any value the land might have for other purposes or uses, or to neighboring land uses, and determined as provided in section 3.48.320. Agricultural use means that portion of real property in use for commercial or non-commercial agriculture, silviculture, or aquaculture, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. For the purpose of this chapter, agricultural use includes farmlands that are fallow

in accordance with a crop rotation cycle, and does not include homesites and associated yard areas, and areas unusable or unsuitable for agricultural use.

[B] 2. For real property tax purposes, the value of land leased under section 207 of the Hawaiian Homes Commission Act, 1920, is \$0.”

SECTION 3. Section 3.48.320, Maui County Code, is amended to read as follows:

“3.48.320 Land classified as agriculture or commercialized residential and used for agriculture. In determining the value of lands that are classified and used for agriculture, or classified as commercialized residential and used for agriculture, whether the lands are dedicated in accordance with section 3.48.350 or not, consideration must be given to rent, productivity, nature of [actual] agricultural use[,] in accordance with subsection 3.48.290(A)(1), 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 persons with special knowledge of land values.”

SECTION 4. Section 3.48.350, Maui County Code, is amended to read as follows:

“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 land for a specific [ranching or other] agricultural use and to have 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.] agricultural use in accordance with subsection 3.48.290(A)(1).

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] in agricultural use for the five-

year period immediately preceding the dedication request; except that land situated within an agricultural district may be dedicated for a period of twenty years and must be taxed at [fifty] 50 percent of its assessed value in the use.

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

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

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

D. Upon receipt of a petition as provided in subsections B and C, the director must make a finding of fact as to whether the land in the petition area is reasonably well suited for the intended agricultural use. The finding 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 must also make a finding of fact as to whether the intended use is in conflict with the overall development plan of the [state.] State. If both findings are favorable to the owner, the director must approve the petition and declare that the owner's land is dedicated land; except that for lands in urban districts, the director must make further findings respecting the economic feasibility of the intended use of the land. If all three findings are favorable, the director must approve the petition and declare the land to be dedicated. To place prospective buyers on notice of the roll back liability, the petitioner 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 constitutes a forfeiture on the part of the owner of any right to change the use of 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 31, to be effective as of July 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 by the owner within sixty days of the change [by the owner]. Upon any conveyance or any change in ownership during the period of dedication, the land 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 does not alter the original dedication period.

F. Failure of the owner to observe the restrictions on the use of the land cancels the dedication and special tax assessment privilege retroactive to the date of the dedication, but in any event must not exceed the term of the original dedication; and all differences between the amount of taxes that were paid and those that would have been due from assessment in the higher use are payable with a [ten] 10 percent 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, 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, except that a change in land use classification upon petition by the owner of 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 the dedicated lands, does not constitute a failure of the owner to observe the restrictions on the use.

2. If an owner is permitted to change uses as provided in subsections C and D, the owner will be allowed thirty-six months from the date of the approval of the petition to convert to the new [ranching or] agricultural use. If the owner fails to make the conversion within the specified time limit, 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 will be considered as a part of the dedication period. The petitioner must submit progress reports of efforts in converting from one agricultural use to another agricultural use to the director by the anniversary date of the petition approval, and yearly, thereafter, as long as 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 the portion that is withdrawn from the dedicated use and applied to a use other than [ranching or other] agricultural use may be taxed as provided by this subsection.

G. The petition must be filed with the director by September 1 of any calendar year, in a form prescribed by the director, and will be approved or disapproved by December 15. If approved, the assessment based upon the use requested in the dedication takes effect on January 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, includes aquaculture.

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

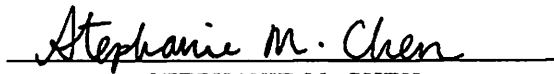
3. The land dedicated must have been substantially and continuously [used in the livestock uses enumerated] in agricultural use in accordance with subdivision 2 of this subsection.

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

SECTION 5. 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 6. This Ordinance takes effect upon approval.

APPROVED AS TO FORM AND LEGALITY:



STEPHANIE M. CHEN

Department of the Corporation Counsel

County of Maui

LF 2021-1751

2022-04-27 Ord Amd Ch 3.48

INTRODUCED BY:

Jamona A. M. Balvin