

Chapter 32

SPECIAL IMPROVEMENT FINANCING BY COMMUNITY FACILITIES DISTRICTS

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Chapter 32**SPECIAL IMPROVEMENT FINANCING BY COMMUNITY FACILITIES DISTRICTS****Article 1. General Provisions.****Section 32-1. Citation.**

This chapter shall be known as the community facilities districts code.
(1994, Ord. No. 94-77, sec. 3.)

Section 32-2. Provision of alternate method of financing special improvements.

This chapter is adopted pursuant to section 46-80.1, Hawai'i Revised Statutes, as amended, and provides a complete, additional and alternative method of performing the acts authorized by this chapter, and 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 districts, the levying, assessment and collection of special taxes, the financing of facilities, the issuance of bonds and other matters covered by this chapter.
(1994, Ord. No. 94-77, sec. 3.)

Section 32-3. Conflicting provisions of other laws.

Any provision in this chapter which conflicts with any other provision of law adopted by ordinance of the council shall prevail over the other provision of law.
(1994, Ord. No. 94-77, sec. 3.)

Section 32-4. Actions and determinations of council.

The council may take actions or make any determinations which it determines are necessary or convenient to carry out the purpose of this chapter and which are not otherwise prohibited by law.
(1994, Ord. No. 94-77, sec. 3.)

Section 32-5. Powers reserved to council.

Any provision of law to the contrary notwithstanding, the council reserves the following powers over any proposed community facilities district.

- (a) If, for any reason whatsoever, the community facilities district bonds authorized under article 6 are not sold or cannot be sold to any acceptable purchaser within a reasonable time, then the council shall have the power and authority to terminate the entire community facilities district, or any part thereof by ordinance.
- (b) In addition to the foregoing, at any time during the proceedings of any community facilities district proposal up to and including the adoption of the special tax ordinance under section 32-53, the council shall have the power and authority to terminate the entire community facilities district, or any part thereof by ordinance, if it determines that the community facilities district is not in the public interest.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-6. Limitation on challenges; exhaustion of remedies.

Pursuant to section 46-80.1, Hawai'i Revised Statutes, as amended, no action or proceeding to question the validity of or enjoining 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 pursuant thereto or under this chapter, shall be

maintained unless begun within thirty days of the 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. Furthermore, no person may bring an action challenging the validity of or enjoining any district established, special tax levied or bonds issued under this chapter unless that person has appeared at the hearing on the establishment of the district or made an individual protest in writing at the time of or before the hearing to establish such district, special tax or bonds (or to changes or annexation, as applicable) as provided herein.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-7. Types of special improvements.

A district may be established to finance the purchase, construction, installation, expansion, improvement or rehabilitation of any real or other tangible property with a useful life estimated by the council to be five years or longer. Special improvements may be privately owned if the council determines that they serve a public purpose. Special improvements need not be physically located within the district.

Examples of special improvements which may be financed by a district include, but are not limited to, the following:

- (a) Streets, roads, highways, pedestrian malls, sidewalks or alleyways, including but not limited to, grading, paving or otherwise improving the foregoing.
- (b) Public parking facilities.
- (c) Lighting systems, including, but not limited to traffic signals, for any public right-of-way.
- (d) Local park, recreation, child care, parkway, and open-space facilities.
- (e) Elementary, secondary, vocational and higher education school sites and facilities.
- (f) Libraries, museums or other cultural facilities.
- (g) 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 particular service and for the conveyance of those facilities to the public utility. If the facilities are conveyed to the public utility, the agreement may provide for a refund by the public utility to the district or improvement area thereof for the cost of the facilities. Any reimbursement made to the district shall be utilized to reduce the special tax levied within the district or improvement area, or to construct or acquire additional facilities within the district or improvement area, as specified in the ordinance of formation.
- (h) Water systems.
- (i) Police, criminal justice (including but not limited to jails and courthouses), fire suppression (including but not limited to fire stations) and paramedic facilities.
- (j) Wastewater, storm drainage, sewage removal or treatment, or solid waste disposal, recycling or resource recovery systems or facilities.
- (k) Transit or transportation systems.
- (l) Telecommunications systems.
- (m) Any other facilities which the County is authorized by law to contribute revenue to, or construct, own, maintain or operate.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-8. Payment of existing assessments or debt service.

The district may also pay in full all amounts necessary to eliminate or reduce any fixed assessment liens or to repay or defease, in whole or in part, any indebtedness secured by any tax, fee, charge, or assessment levied within the area of a district or may pay debt service on that indebtedness.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-9. Transfer of moneys.

The council may from time to time transfer moneys to a district or to an improvement area within a district, for the benefit of the district or an improvement area therein, from any funds available to the County. (1994, Ord. No. 94-77, sec. 3.)

Section 32-10. Special levy.

In any fiscal year in which a special tax or charge is levied for any facility in a district or an improvement area within a district, the council may include in the levy a sum sufficient to repay, over such period of time as the council may specify, the amounts transferred to that district or improvement area pursuant to section 32-9. (1994, Ord. No. 94-77, sec. 3.)

Section 32-11. Revolving fund.

The council may appropriate any available moneys to a revolving fund to be used for the acquisition of real or personal property, engineering, planning and related design services, or the construction of structures or improvements needed in whole or in part to provide one or more of the facilities of a district. The revolving fund shall be reimbursed from special tax revenues or other money available from the district, and no sums shall be disbursed from the fund until the council has, by resolution, established the method by, and term within which, the district is to reimburse the fund. The district shall reimburse the fund for any amount disbursed to the district within the period specified by the council, together with interest at the current rate per annum received on similar types of investments by the council as determined by the director of finance. (1994, Ord. No. 94-77, sec. 3.)

Section 32-12. Contribution by County.

Any time either before or after the formation of the district, the council may provide, by ordinance, that for a period specified in the ordinance, the County may contribute, from any source of revenue not otherwise prohibited by law, any specified amount, portion, or percentage of such revenues for the purposes set forth in such ordinance. (1994, Ord. No. 94-77, sec. 3.)

Section 32-13. Advances of funds or work in-kind.

At any time either before or after the formation of the district, the council may accept advances of funds or work or property in-kind from any source, including, but not limited to, paying any cost incurred by the County in creating a district. The County may enter into an agreement, as authorized by resolution, with the person or entity advancing the funds or work or property in-kind, to repay all or a portion of the funds advanced, or to reimburse the person or entity for the value, or cost, whichever is less, of the work or property in-kind, as provided in the agreement, with or without interest, provided that the proposal to repay the funds or the value or cost of the work or property in-kind, whichever is less, is included in the resolution of intention to establish a district adopted pursuant to section 32-20 and in the ordinance of formation to establish the district adopted pursuant to section 32-29 and, if applicable, in the ordinance of consideration to alter the types of facilities provided within an established district adopted pursuant to section 32-39, or the ordinance of annexation to annex additional territory to an established district adopted pursuant to section 32-48. Any such agreement shall not constitute a debt or liability of the County or be payable from sources other than the proceeds of the special taxes levied or proceeds of bonds issued pursuant to this chapter. (1994, Ord. No. 94-77, sec. 3.)

Section 32-14. Construction of chapter.

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

(1994, Ord. No. 94-77, sec. 3.)

Section 32-15. Validity of proceedings.

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

(1994, Ord. No. 94-77, sec. 3.)

Section 32-16. Definitions.

Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

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

“Clerk” means the clerk of the council of the County.

“Community facilities district” means a district of land established by the County pursuant to this chapter for the sole purpose of financing facilities, including costs and incidental expenses. Land may be included in more than one community facilities district.

“Cost” means the expense of acquiring, constructing, installing, improving or rehabilitating facilities, including, but not limited to, the costs of construction, improvement or acquisition of buildings, acquisition of land, rights-of-way, water, sewer, or other capacity or connection fees, lease payments for facilities that are relocated, satisfaction of contractual obligations relating to expenses or the advancement of funds for expenses existing at the time bonds are issued pursuant to this chapter; architectural, engineering, inspection, legal, financial and other consultant fees; bond and other reserve funds; discount fees; interest on any bonds due and payable prior to the date of estimated completion of the facilities and for a period after that date determined by the council; costs of proceedings undertaken pursuant to this chapter, including, but not limited to, a reasonable fee to the County for undertaking such proceedings; and all costs of issuance of bonds, including, but not limited to, fees for bond counsel, other legal fees, trustee fees, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit, other credit enhancement costs, printing costs, and incidental expenses related thereto.

“Council” means the council of the County.

“County” means the County of Hawai‘i.

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

“Director” means the director of finance of the County.

“District” means a community facilities district established pursuant to this chapter, and “financed by the district” means financed by the County using special taxes and any other moneys (including proceeds of bonds) derived from the district.

“Facilities,” “improvements” or “special improvements” means the special improvements referred to in section 32-7, including costs and incidental expenses related thereto.

“Improvement area” means an area within a district so designated in accordance with section 32-59.

“Incidental expense” includes all of the following:

- (1) The cost of planning and designing facilities to be financed pursuant to this chapter, including the cost of environmental evaluations of those facilities.

- (2) The costs associated with the creation of the district, issuance, carrying or repaying of bonds, determination of the amount of taxes, collection of taxes, payment of 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 and arbitrage rebate required by Federal tax law.
- (3) Any other expenses incidental to the acquisition, construction, installation of facilities or inspection of the authorized work.
- (4) Administrative expenses of the County associated with the facilities, the bonds or proceedings undertaken pursuant to this chapter.

“Landowner” or “owner” of land means any person shown as the owner of land by record of the director or any other means reasonably available or otherwise known by the County to be the owner of the land. The County has no obligation to obtain other information as to the ownership of the land, and its determination of ownership shall be final and conclusive for the purpose of this chapter. A public body is not a landowner or owner of land for purposes of this chapter, unless the land owned by a public body would be subject to a special tax pursuant to section 32-54.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-17. Property acquired by County or other public entity.

If property subject to a special tax levied pursuant to this chapter is acquired by the County (or, to the extent permitted by law, any other public entity) through a negotiated transaction or eminent domain proceedings, the obligation to pay the special tax shall be payable out of the purchase price, rental payments or eminent domain award, as the case may be, in an amount sufficient to pay or provide for the payment of the principal and interest on any bonds issued under this chapter that would have been payable from the special tax. If property subject to a special tax levied pursuant to this chapter is acquired by the County by foreclosure or similar proceeding or by gift or devise, unless otherwise paid or provided for, the property shall be sold as soon as practicable, and either (a) the obligations to pay the special tax shall be payable from the sales price in an amount sufficient to pay or provide for the payment of the principal and interest on any bonds issued under this chapter that would have been payable from the special tax, or (b) the purchaser of the property shall take title subject to the lien of the special tax and shall be required to pay the special taxes becoming due from and after the sale date.

(1994, Ord. No. 94-77, sec. 3.)

Article 2. District Establishment Procedures.

Section 32-18. Institution of procedures.

- (a) The procedure for the establishment of a district may be instituted by the council on its own initiative and shall be instituted by the council at its next regular meeting for which notice has not yet been given, after receipt by the clerk of a petition requesting the institution of the procedure signed by the landowners owning the requisite portion of the area of the proposed district, as specified in paragraph (d) of section 32-19, accompanied by the payment of a fee (if any) which the County determines is necessary to compensate the County for costs expected to be incurred by the County in conducting the procedure to create a district pursuant to this chapter.
- (b) No district shall be established unless the council finds that the establishment of such district is in the public interest. The council’s findings shall be final and conclusive

(1994, Ord. No. 94-77, sec. 3; Am. 2007, Ord. No. 07-146, sec. 2.)

Section 32-19. Petition requesting institution of the procedure.

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

- (a) A request that the council institute the procedure to establish a district pursuant to this chapter;
- (b) A description of the boundaries of the territory which is proposed for inclusion in the district;
- (c) A description of the type or types of facilities to be financed by the district;
- (d) The signatures of the owners of not less than twenty-five percent of the area of land proposed to be included within the district. If the council finds the petition is signed by the requisite number of owners of land proposed to be included within the district, that finding shall be final and conclusive.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-20. Adoption of resolution of intention.

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

- (a) State that a district is proposed to be established under the terms of this chapter and describe the term of the proposed district and the boundaries of the territory proposed for inclusion in the district, which may be accomplished by reference to a map on file in the office of the director, showing the proposed district. The term of the district shall be a specified period of years but shall not expire until all bonds and other debt incurred pursuant to this chapter, and incidental expenses related thereto, payable from special taxes levied on property in the district shall have been paid or duly provided for.
- (b) State the name proposed for the district in substantially the following form: "Hawaii County Community Facilities District No. ____." One or more additional descriptive words may be used in the name of the proposed district to indicate the geographic area of the district.
- (c) State the type or types of facilities proposed to be financed by the district pursuant to this chapter. If the purchase of completed facilities or the incurring of incidental expenses is proposed, the resolution shall identify those facilities or the type of such expenses, as the case may be.
- (d) State that, except where funds are otherwise available, a special tax sufficient to pay for all facilities, including incidental expenses, will be annually levied within the district. The resolution shall describe the estimated rate and proposed method of apportionment of the special tax in sufficient detail to allow each landowner within the proposed district to estimate the maximum annual amount that the landowner will have to pay. The council may prohibit prepayment of the special tax or may specify conditions under which the special tax may be prepaid and permanently satisfied, which conditions may include periods during which prepayment will not be permitted and the requirement that a premium be paid upon prepayment.
- (e) State whether the County intends to issue bonds under this chapter in whole or in part payable from and secured by the special tax.
- (f) Fix a time and place for a public hearing on the establishment of the district which shall be not less than sixty or more than ninety days after the adoption of the resolution of intention.
- (g) Describe the protest procedure.

If an improvement area is proposed to be established, the resolution of intention shall also state and describe the boundaries of the proposed improvement area, the name proposed for the improvement area, the types of facilities proposed to be financed by the improvement area and whether and to what extent it is proposed that special taxes shall be applied in the improvement area for purposes of financing such facilities.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-21. Reports of facilities.

At the time of the adoption of the resolution of intention to establish a district, the council shall direct the director of public works, department of public works, or other appropriate department, officer or officers who is or will be responsible for providing or maintaining one or more of the proposed types of facilities to be financed by the district, if it is established, to study the proposed district and, at or before the time of the hearing (or within sixty days after adoption of the resolution of intention, or such earlier date established by the council, if the hearing is waived pursuant to section 32-24), file a report with the council containing a brief description of the proposed facilities by type which will in their opinion be required to adequately meet the needs of the district, and their estimate of the cost of providing those facilities. In preparing the report, the department or officer may consult with other officers of the County or the State and with any financial feasibility or other consultant retained by the County or any property owner to assist in the procedure or otherwise available. If the purchase of completed facilities or the payment of incidental expenses is proposed, the council shall direct the appropriate officer to estimate the fair and reasonable cost of those facilities or incidental expenses. All of those reports shall be made a part of the record of the hearing on the resolution of intention to establish the district.

(1994, Ord. No. 94-77, sec. 3; Am. 2001, Ord. No. 01-108, sec.1; Am. 2007, Ord. No. 07-146, sec. 3.)

Section 32-22. Published notice of hearing.

- (a) The clerk shall publish a notice of the hearing twice, at least one week apart, in a newspaper of general circulation in the County. Publication shall be completed at least seven days prior to the date of the hearing.
- (b) The notice shall contain all of the following information:
 - (1) A summary of the resolution of intention to establish the district and the name, address and telephone number of a department or official of the County from which a copy of the resolution of intention can be obtained (alternatively the notice may contain the full text of the resolution).
 - (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 or taxpayers for or against the establishment of the district, the extent of the district, the financing of specified types of facilities or the special tax will be heard. The notice shall also describe, in summary, the protest procedure, including the respective rights of owners and lessees and the effect of protests against the establishment of the district, the extent of the district, the financing of a specified type of facilities, or a specified special tax, as provided in section 32-27, and the effect of failure to file a written protest as provided in section 32-6.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-23. Mailed notice of hearing.

In addition to publishing notice as provided in section 32-22, the clerk shall give notice of the hearing by first-class mail to each owner of land within the proposed district, and to each lessee of property within the proposed district, which the director has on record. This notice shall be mailed at least fifteen days before the hearing and shall contain the same information required to be contained in the published notice pursuant to section 32-22. Failure to give notice to any landowner or lessee or failure of any landowner or lessee to receive such notice shall not affect the validity or effectiveness of the hearing or any other proceedings taken under this chapter or any special tax levied under this chapter if the council determines that a reasonable effort was made to give such notice, which determination shall be final and conclusive.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-24. Waiver of notice and hearing by petition.

If a petition is filed by the owners of one hundred percent of the land in the proposed district and by all lessees having a possessory interest in any property to be included within the proposed district who, by the express terms of the lease, must pay the special tax contemplated by this chapter (unless the owner or lessor shall, with the petition, file a written waiver of the stipulation in the lease which requires the lessee to pay the special tax to be levied in the proposed district and a written undertaking to pay the special tax), then it shall be unnecessary for the council to provide any notice of the hearing, or to conduct a public hearing under this chapter. The council may immediately proceed to adopt an ordinance of formation pursuant to section 32-29 and to levy and assess a special tax in the manner provided in this chapter, provided that the council finds that such approval is in the public interest. The council's findings shall be final and conclusive.

(1994, Ord. No. 94-77, sec. 3; Am. 2009, Ord. No. 09-33, sec. 2.)

Section 32-25. Addition of territory at the hearing.

At the hearing, the council may add additional territory to the district, but only if the owners (and lessees described in section 32-27) of one hundred percent of the land to be added have submitted to the clerk a written request to be added to the district prior to or at the beginning of the hearing.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-26. Protests.

At the hearing, protests against the establishment of the district, the extent of the district, the financing of specified types of public facilities or the special tax may be made orally or in writing by any interested persons or taxpayers. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities and defects to which objection is made. All written protests shall be filed with the clerk at or before the time fixed for the hearing. The council may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-27. Protest by more than fifty-five percent.

- (a) If the owners of more than fifty-five percent of the area of the land, or if more than fifty-five percent of the owners of the land, in the territory proposed to be included in the district:
 - (1) File written protests with the council, prior to or at the beginning of the hearing, against the establishment of the district, and
 - (2) If protests are not withdrawn so as to reduce the amount of the protests to fifty-five percent or less (of the area of land or of the owners), no further proceedings to create the specified district or to levy the specified special tax shall be taken for a period of one year from the date of the hearing.
- (b) If property proposed to be included in the district is subject to a lease, the lessee shall be deemed to have and may exercise all of the rights of the owner for notice and hearing and to protest under this section, unless, prior to the closing of the public hearing, the lessor or owner of the property has filed with the council either:
 - (1) A written statement that the lease does not require the lessee to pay the proposed special tax and a written undertaking by the lessor or owner to pay the proposed special tax and to refrain from imposing the obligation to pay the special tax upon any successor lessee, or
 - (2) A written waiver of any requirement in the lease that the lessee pay the proposed special tax and a written undertaking by the lessor or owner to pay the proposed special tax and to refrain from imposing the obligation to pay the special tax upon any successor lessee.

- (c) If the more than fifty-five percent protests are only against the furnishing of a specified type or types of facilities, or against levying a specified special tax, then proceedings to create the district may continue, but those types of facilities or the specified special tax shall be eliminated from the ordinance of formation (if adopted).

(1994, Ord. No. 94-77, sec. 3.)

Section 32-28. Duration of hearing; determination.

The hearing may be continued from time to time, but shall be completed within thirty days, except that if the council finds that the complexity of the proposed district or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed six months. The council may modify the resolution of intention by eliminating proposed facilities, or by changing the rate or method of apportionment of the proposed special tax so as to reduce the maximum special tax for all or a portion of the property within the proposed district, or by removing territory from the proposed district. At the conclusion of the hearing, the council may abandon the proposed establishment of the community facilities district or may, after considering all protests and such other relevant factors (such as the County general plan) as it shall deem appropriate, subject to section 32-27, determine to proceed with establishing the district.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-29. Adoption of ordinance of formation.

- (a) If the council determines to establish the district, it shall adopt an ordinance of formation establishing the district. The ordinance of formation shall contain all of the information required to be included in the resolution of intention to establish the district specified in section 32-20 (and, if not otherwise contained in the resolution of intention, any designation made by the council pursuant to section 32-59). If a special tax is to be levied in the district to pay for any facilities and the special tax has not been eliminated by protest pursuant to section 32-27, the ordinance shall state that fact and shall identify any facilities proposed to be funded with the special tax, including estimated costs and incidental expenses.
- (b) If the ordinance of formation is adopted pursuant to subsection (a), the council shall determine whether all proceedings were valid and in conformity with the requirements of this chapter. If the council determines that all proceedings were valid and in conformity with the requirements of this chapter, it shall make a finding to that effect and that finding shall be final and conclusive.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-30. Special tax; apportionment.

There is no requirement that the special tax imposed pursuant to this chapter be fixed in amount or apportioned on the basis of special benefit to any property or that the facility to be financed convey a special benefit on any property in the district. It shall be sufficient that the council determines that the property to be subject to the special tax is improved or benefitted in a general manner or in any other manner. Notwithstanding anything to the contrary contained in this chapter, the facilities to be financed may be located outside of the district and may also benefit property outside the district. However, a special tax levied pursuant to this chapter may be based on benefit received by parcels of real property, or the cost of making facilities available to each parcel, or the stage or type of development or use of each parcel, or wholly or partially contingent as to all or certain parcels on the happening of one or more specified events related to the development or improvement of such parcels, or any other reasonable basis or formula as determined by the council, and any determination of the reasonableness of any special tax or the basis or method of the apportionment thereof by the council shall be final and conclusive.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-31. Establishment of district boundaries.

- (a) A community facilities district may include areas of territory that are not contiguous.
- (b) In establishing the boundaries of the district, the council may alter the exterior boundaries of the district to include less territory than that described in the notice of the hearing or the petition but it may not include any territory not described in the notice of the hearing or the petition except as provided in section 32-25.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-32. Levy of special tax.

- (a) At any time after the adoption of the ordinance of formation, the council may levy and assess any special tax within the territory of the district as specified in the ordinance of formation adopted pursuant to subsection (a) of section 32-29 or in a separate special tax ordinance if such levy is not provided for in the ordinance of formation.
- (b) Upon levy of the special tax, the director shall forthwith notify the several landowners and lessees of which the director is aware by certified mail of the amount of the special tax to be assessed on the respective parcel, of any formula by which the special tax may be changed, and of the date when the special tax becomes payable. Failure to give or receive such notice to or by any landowner or lessee shall in no way affect the validity of the levy of special tax under this chapter nor entitle the landowner or lessee to an extension of time within which to pay the special tax.
- (c) All special taxes levied pursuant to this chapter shall be a lien against each lot or parcel of land subject to the special tax from the date of adoption of the ordinance levying the special tax until fully paid, or until the expiration of the special tax, in each case as provided in the ordinance, and shall have priority over all other liens except the lien of general real property taxes and the lien of assessments levied under section 46-80, Hawai'i Revised Statutes, as amended. The lien of the special tax levied and assessed pursuant to this chapter shall be on a parity with the lien of general property taxes and the lien of assessments levied under section 46-80, Hawai'i Revised Statutes, as amended, except to the extent the law or assessment ordinance provides that the lien of assessments levied under section 46-80 shall be subordinate to the lien of general real property taxes. All liens of special taxes made pursuant to this chapter shall be on a parity without regard to when made or for what purpose. No delay, mistake, error, defect or irregularity in any act or proceeding authorized by this chapter shall prejudice or invalidate any special tax or related lien; but the same may be remedied by subsequent or amended acts or proceedings and, when so remedied, the same shall take effect as of the original act or proceeding. If in any court of competent jurisdiction any special tax levied under this chapter is set aside for irregularity in the proceedings, the council may, upon notice and hearing or by petition as required in establishing an original district pursuant to this chapter, make a new levy and assessment of a special tax in accordance with the provisions of this chapter.
- (d) Within fifteen days after the levy and assessment by ordinance of any special tax pursuant to this chapter, the director shall file a notice of special tax authorization with the bureau of conveyances or land court. The notice of special tax authorization shall be in substantially the following form:

NOTICE OF SPECIAL TAX AUTHORIZATION

Pursuant to the requirements of section 32-32, Hawai'i County Code, the undersigned Clerk of the Council of the County of Hawai'i, State of Hawai'i, hereby gives notice that the Council of the County of Hawai'i, State of Hawai'i is authorized to annually levy and assess a special tax for the purpose of: (as applicable)

- (1) Paying principal and interest on bonds, the proceeds of which are being used to finance (briefly describe facilities financed), and incidental expenses;

- (2) Providing (briefly describe facilities financed without bonds).

The special tax is authorized to be imposed within Hawai'i County Community Facilities District No.____ which has been officially formed.

The rate and method of apportionment of the authorized special tax is as follows: (here insert verbatim description of the rate and method of apportionment from the ordinance of formation of the district). The special tax is a lien on the property upon which it is levied.

Reference is made to the (amended) boundary map of the community facilities district on file with the Clerk of the Council of the County of Hawai'i, which map is the final boundary map of the community facilities district.

For further information contact (here provide name, address, and telephone number of the appropriate office, officer, department, or bureau of the County).

- (e) From the date of filing pursuant to subsection (d), all persons are deemed to have notice of the contents of the notice of special tax authorization.

(1994, Ord. No. 94-77, sec. 3.)

Article 3. Changes in Term of District, Authorized Facilities and Special Taxes.

Section 32-33. Facilities specified in ordinance.

Except as otherwise provided in this chapter, upon the establishment of a district, only the types of facilities specified in the ordinance of formation may be financed by the district under the authority of this chapter.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-34. Levy of special tax as specified in ordinance.

Upon approval of a special tax under this chapter, the special tax may be levied only at the rate and may be apportioned only pursuant to the method specified in the ordinance of formation, except as provided in this chapter, and except that the council may levy the special tax at a rate lower than that specified in the ordinance. In addition, the special tax may be levied only so long as it is needed to pay the principal and interest on debt incurred in order to provide facilities under authority of this chapter, or so long as it is needed to pay the costs and incidental expenses of such facilities or debt.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-35. Elimination of facilities in ordinance.

Except as otherwise provided in this chapter, the council may, at any time, after conducting a public hearing, eliminate one or more of the types of facilities specified in the ordinance of formation to establish the district but may not finance any types of facilities that were not specified in the ordinance of formation.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-36. Authorization to change term, facilities or special taxes.

- (a) If the council determines that the public convenience and necessity require any change in the term of an established district or in the types of authorized public facilities which should be financed, that the rate or method of apportionment of a special tax should be changed, or that a new special tax should be proposed, the council may adopt an ordinance of consideration to alter the term of the district or the types of facilities to be financed, to levy and assess a new special tax or special taxes, or, except as provided in subsection (b), to alter the rate or method of apportionment of the special tax. Those proceedings may be commenced at any time.
 - (b) The council shall not adopt an ordinance of consideration to reduce the term of any district or the rate of any special tax or terminate the levy of any special tax if the district or proceeds of that tax are being utilized to retire any debt incurred pursuant to this chapter unless the council determines that the reduction in the term of that district or the reduction or termination of that tax (as the case may be) would not interfere with the timely retirement or otherwise impair the security of that debt.
 - (c) The ordinance of consideration adopted pursuant to subsection (a) shall contain all of the information required by paragraphs (a) to (e), inclusive, of section 32-39.
- (1994, Ord. No. 94-77, sec. 3.)

Section 32-37. Petition for changes in term, facilities or taxes.

- (a) If a petition signed by the landowners (or lessees described in section 32-27) of twenty-five percent or more of the territory within the district is filed with the council requesting that proceedings be commenced to change the term of the district or the types of facilities financed by the district or that the rate or method of apportionment of an existing special tax be changed, or that a new special tax be levied, the council shall thereafter adopt an ordinance of consideration in the form specified in section 32-39 to make those changes within the district except that the term of a district shall not be reduced and an existing special tax being used to retire any debt incurred in order to finance facilities under this chapter shall not be reduced or terminated if doing so would interfere with the timely retirement or otherwise impair the security of that debt.
 - (b) Any petition pursuant to this section shall be accompanied by the payment of a fee (if any) which the council determines is necessary to compensate the County for costs incurred in conducting proceedings to change the district pursuant to this article.
- (1994, Ord. No. 94-77, sec. 3.)

Section 32-38. Form of petition.

The petition shall request the council to commence proceedings to make specified changes to a named district. The petition may consist of any number of separate instruments each of which shall comply with all the requirements of a petition except as to the number of signatures.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-39. Form of ordinance for changes in term, facilities or taxes.

The ordinance of consideration to alter the term of an established district, the types of facilities financed, or to levy and assess a new special tax or special taxes, or to alter the rate or method of apportionment of an existing special tax, shall do all of the following:

- (a) State the name of the district.
- (b) Generally describe the territory included in the district.
- (c) Specify the changes in term or facilities or special taxes proposed.
- (d) Specify any new special taxes which would be levied to pay for new or existing facilities and any proposed alteration to the rate or method of apportionment of an existing special tax.

- (e) Fix a time and place for a hearing upon the ordinance which shall not be less than sixty or more than ninety days after the adoption of the ordinance of consideration.
(1994, Ord. No. 94-77, sec. 3.)

Section 32-40. Notice of hearing on ordinance.

The clerk shall give notice of the hearing in the same manner and within the same time as provided for the giving of notice of a hearing on a resolution of intention to establish a district.

The notice shall do all of the following:

- (a) Contain the text of the ordinance.
- (b) State the time and place for hearing.
- (c) State that at the hearing the testimony of all interested persons or taxpayers for or against the proposed changes will be heard. The notice shall also describe, in summary, the protest procedure, including the respective rights of owners and lessees and the effect of protests made (and of failure to make written protests) against the proposed changes.

The notice and hearing may be waived in the same manner as provided in section 32-24.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-41. Protests.

At the hearing, protests against the proposals described in the ordinance may be made orally or in writing by any interested persons. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall be filed with the clerk at or before the time fixed for the hearing. The council may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-42. Protest by more than fifty-five percent.

- (a) If the owners of more than fifty-five percent of the area of the land, or if more than fifty-five percent of the owners of the land, in the territory included in the district, file with the council, prior to or at the beginning of the hearing, written protests against changing the term of the district or the facilities to be financed, or changing the apportionment or increasing the amount of any special tax levied in the district, and if protests are not withdrawn so as to reduce the amount of the protests to fifty-five percent or less, those changes specified in the written protests shall be eliminated from the ordinance and shall not be included in another ordinance for a period of one year from the date of the decision of the council on the hearing.
- (b) If property included in the district is subject to a lease, the lessee shall be deemed to have and may exercise all of the rights of the owner for notice and hearing and to protest under this section, unless, prior to the closing of the public hearing, the lessor or owner of the property files with the council either:
 - (1) A written statement that the lease does not require the lessee to pay the special tax and a written undertaking by the lessor or owner to pay the special tax and to refrain from imposing the obligation to pay the special tax upon any successor lessee; or
 - (2) A written waiver of any requirement in the lease that the lessee pay the special tax and a written undertaking by the lessor or owner to pay the special tax and to refrain from imposing the obligation to pay the special tax upon any successor lessee.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-43. Duration of hearing; abandonment of proceedings.

The hearing may be continued from time to time, but shall be completed within thirty days, except that if the council finds that the complexity of the proposed district or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed six months. Subject to section 32-42, at the conclusion of the hearing the council may abandon the proceedings or may, after passing upon all protests and after considering such other relevant factors (such as the County general plan) as it shall deem appropriate, determine to proceed to change the term of the district or facilities to be financed by the district, or levy and assess an additional special tax or special taxes within the district, or change an existing special tax within the district, as proposed in the ordinance of consideration.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-44. Filing of notice.

Upon adoption of the ordinance of consideration, the clerk shall provide notice as provided in section 32-32.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-45. Application to improvement area.

An improvement area may be established by the ordinance of consideration in connection with changes in term, facilities or special taxes pursuant to this article. In case the changes contemplated by this article are to apply only to an improvement area, the proceedings provided in this article shall also apply only to such improvement area.

(1994, Ord. No. 94-77, sec. 3.)

Article 4. Annexation of Territory.**Section 32-46. Authorization to annex; contiguity not required.**

The council may annex territory to an existing district as provided in this article. The annexed territory need not be contiguous to territory included in the existing district.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-47. Ordinance of annexation.

If the council determines that public convenience and necessity require that territory be added to an existing district, or if one hundred percent of the landowners (or lessees described in section 32-27) in the territory to be annexed petition the council to include territory within the district, the council may adopt an ordinance of annexation to annex the territory.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-48. Contents of ordinance of annexation.

The ordinance of annexation to annex the territory shall do all of the following:

- (a) State the name and term of the existing community facilities district.
- (b) Generally describe the territory included in the existing district and the territory proposed to be annexed.
- (c) Specify the types of facilities provided pursuant to this chapter by the existing district and the types of facilities to be provided by the territory proposed to be annexed; and include a plan for providing facilities that will be financed in common by the existing district and the territory proposed to be annexed.

- (d) Specify any special taxes which would be levied within the territory proposed to be annexed to pay for facilities provided pursuant to this chapter. A special tax proposed to pay for facilities financed with bonds secured by the existing district shall 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 facility as determined by the council.
- (e) Specify any alteration in the special tax rate levied within the existing district as a result of the proposed annexation. The maximum tax rate in the existing district may not be increased as a result of annexation proceedings pursuant to this article.
- (f) Fix a time and place for a hearing upon the ordinance which shall not be less than sixty nor more than ninety days after the adoption by the council of the ordinance of annexation to annex territory pursuant to section 32-47.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-49. Notice of hearing.

The clerk of the council shall give notice of the hearing in the same manner and within the same time as provided for the giving of notice of a hearing on a resolution of intention to establish a district, as required by section 32-22 or section 32-23, within the territory proposed to be annexed.

The notice shall do all of the following:

- (a) Contain a summary of the ordinance and the name, address and telephone number of a department or official of the County from which a copy of the ordinance can be obtained (alternatively, the notice may contain the full text of the ordinance).
- (b) State the time and place for the hearing.
- (c) State that at the hearing the testimony of all interested persons for or against the annexation of territory to the district or the levying of special taxes within the territory proposed to be annexed will be heard. The notice shall also describe, in summary, the protest procedure, including the respective rights of owners and lessees and the effect of protests made (and of failure to make written protests) against the proposed changes.

The notice and hearing may be waived in the same manner as provided in section 32-24.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-50. Protests.

At the hearing, protests against the proposals described in the ordinance of annexation may be made orally or in writing by any interested person. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities or defects to which objection is made. All written protests shall be filed with the clerk prior to the time fixed for the hearing. The council may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-51. Protest by more than fifty-five percent.

- (a) If the owners of more than fifty-five percent of the area of land, or if more than fifty-five percent of the owners of the land, in the territory included in the existing district or the annexed territory, file with the council, prior to or at the beginning of the hearing, written protests against the proposed addition of territory to the existing district, and if protests are not withdrawn so as to reduce the amount of the protests to fifty-five percent or less, no further proceedings shall be undertaken for a period of one year from the date of decision of the council on the issues discussed at the hearing.

- (b) If property included or proposed to be included in the district is subject to a lease, the lessee shall be deemed to have and may exercise all of the rights of the owner for notice and hearing and to protest under this section, unless prior to the closing of the public hearing, the lessor or owner of the property files with the council either:
- (1) A written statement that the lease does not require the lessee to pay the special tax and a written undertaking by the lessor or owner to pay the special tax and to refrain from imposing the obligation to pay the special tax upon any successor lessee; or
 - (2) A written waiver of any requirement in the lease that the lessee pay the special tax and a written undertaking by the lessor or owner to pay the special tax and to refrain from imposing the obligation to pay the special tax upon any successor lessee.
- (1994, Ord. No. 94-77, sec. 3.)

Section 32-52. Duration of hearing; abandonment; election.

The hearing may be continued from time to time, but shall be completed within thirty days, except that if the council finds that the complexity of the proposed annexation or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed six months. Subject to section 32-51, at the conclusion of the hearing, the council may abandon the proceedings or may, after passing upon all protests, determine that the area proposed to be annexed is added to and part of the existing district with full legal effect, pursuant to the ordinance of annexation. Thereafter, the council may, by ordinance, levy and assess any special tax within the annexed territory.

(1994, Ord. No. 94-77, sec. 3.)

Article 5. Procedures for Levying Special Tax.

Section 32-53. Levy of special tax.

After a district has been created and authorized to levy specified special taxes pursuant to this chapter, the council may, by ordinance, levy and assess the special taxes at the rate and apportion them pursuant to the method specified in the ordinance of formation or the ordinance of consideration or the ordinance of annexation, as appropriate, except that the council may levy and assess the special tax at a lower rate, subject to the provisions of section 32-62. Properties or entities of the State, Federal, or County governments shall, except as otherwise provided in section 32-54, be exempt from the special tax. No other properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the ordinance of formation to establish a district adopted pursuant to section 32-29 or in an ordinance of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment of an existing special tax as provided in section 32-39 or in an ordinance of annexation adopted pursuant to section 32-48. The proceeds of any special tax may only be used to pay, in whole or part, the cost of facilities (including the debt service of any bonds issued to pay such costs), and incidental expenses pursuant to this chapter. The special tax may be collected in the same manner as general real property taxes are collected, be subject to the same penalties and the same procedure, sale, and lien priority (subject to the provisions of section 32-32(c)) in case of delinquency as is provided by general law for default on the payment of real property taxes, unless another procedure is adopted by the council in the ordinance of formation or special tax ordinance. The director may collect the special tax at intervals as specified in the ordinance of formation or special tax ordinance, including intervals different from the intervals at which the general real property taxes are collected. The director may deduct reasonable administrative costs incurred in collecting the special tax to the extent included in the special tax.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-54. Levy of special tax on leasehold or possessory interest in property.

- (a) If a public body owning property, including property held in trust for any beneficiary, which is exempt from a special tax pursuant to section 32-53, directly or indirectly grants a leasehold or other possessory interest in the property to a nonexempt person or entity, the special tax shall, notwithstanding section 32-32 or 32-53 or any other provision of this chapter, be levied and constitute a lien on the leasehold or possessory interest and shall be payable by the owner of the leasehold or possessory interest. In addition, in the case of property owned by a person or entity other than a public body, if such person or entity directly or indirectly grants a leasehold or other possessory interest in the property to a nonexempt person or entity, the applicable ordinance of formation, ordinance of consideration or ordinance of annexation may provide, notwithstanding section 32-32 or 32-53 or any other provision of this chapter, that the special tax shall be levied and constitute a lien on either the fee title interest or the leasehold or other possessory interest in such property and shall be payable by either the owner of the fee title interest or the owner of the leasehold or possessory interest, as is specified in the applicable ordinance.
- (b) When entering into a lease or other written contract creating a possessory interest that may be subject to taxation pursuant to subsection (a), the public body or other lessor or grantor shall include, or cause to be included, in the contract a statement that the possessory interest may be subject to special taxation pursuant to this chapter, and that the party in whom the possessory interest is vested may be subject to the payment of special taxes levied on the possessory interest. Failure to comply with the requirements of this section shall not, however, invalidate the contract or affect the validity or enforceability of the special tax or the obligation of the party in whom the possessory interest is vested to pay the special tax.

(1994, Ord. No. 94-77, sec. 3; Am. 2007, Ord. No. 07-146, sec. 4.)

Section 32-55. Challenges to special taxes.

In accordance with section 46-80, Hawai'i Revised Statutes, as amended, any action or proceeding to attack, review, set aside, void, or annul the levy of a special tax or an increase in a special tax pursuant to this chapter shall be commenced within thirty days after the special tax is approved by the council in the ordinance of formation or in the ordinance of consideration or in the ordinance of annexation, as the case may be.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-56. Notice of cancellation of special tax authorization upon prepayment of special tax.

In the event that the council has specified conditions pursuant to section 32-20 under which the obligation to pay the special tax identified therein may be prepaid and permanently satisfied, and if the special tax is so prepaid and permanently satisfied as to a particular parcel of land, the council shall prepare and file with the bureau of conveyances or land court a notice of cancellation of special tax authorization as to that parcel. The notice of cancellation of special tax authorization shall identify with particularity the special tax being canceled and the particular parcel of land subject to the tax. The director shall mail a copy of the notice of cancellation of special tax authorization to the owner and any lessee of the property of which the director is aware after filing the document. The council may specify a charge for the preparation and filing of this notice.

(1994, Ord. No. 94-77, sec. 3.)

Article 6. Bonds.**Section 32-57. Bond ordinance.**

- (a) Whenever the council deems it necessary or appropriate that community facilities district bonds be issued to finance the costs of any facility or facilities or to reimburse costs thereof previously paid, at or after adoption of an ordinance of formation or special tax ordinance levying special taxes with respect to such facilities, the council may authorize the issuance of bonds by ordinance. The ordinance may provide for:
- (1) The issuance of the bonds in one or more series;
 - (2) The date the bonds shall bear;
 - (3) The maturity date or dates of the bonds which shall not be more than forty years after the issuance date of the bonds;
 - (4) The rate or maximum rate of interest on the indebtedness, which shall not exceed the maximum rate permitted by law, and which may be fixed or variable and may be simple or compound;
 - (5) The time or times at which interest shall be payable;
 - (6) The denomination of the bonds;
 - (7) The form of the bonds;
 - (8) The conversion or registration privileges carried by the bonds;
 - (9) The rank or priority of the bonds;
 - (10) The manner of execution of the bonds;
 - (11) The medium of payment of the bonds;
 - (12) The place or places of payment;
 - (13) The terms of redemption and the redemption price or prices to which the bonds are subject;
 - (14) The pledge or assignment of all or part of the special taxes levied on property in the district or improvement area thereof, the liens securing such special taxes, proceeds of the bonds and any other funds which are intended by the council to secure payment of the bonds, which pledge shall be a first and exclusive lien, superior to all other claims (except to the extent otherwise provided in the ordinance);
 - (15) The establishment and handling of a separate special fund or funds to pay or secure the bonds or to pay for the facilities or incidental expenses;
 - (16) The investment of proceeds of the bonds and any other funds (including special taxes) pledged to secure payment of the bonds in any obligations permitted by the ordinance; and
 - (17) Any other provisions for the issuance, payment, security, credit enhancement, interest rate swaps, handling of funds, default, remedies, and other matters related to the bonds which the council deems appropriate.
- (b) The 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, within parameters provided in the ordinance, a certificate signed by the director at or prior to the delivery of the bonds and the receipt of payment therefor or in an indenture, trust agreement or fiscal agent agreement between the County and a corporate trustee or fiscal agent located within or without the State.
- (c) The principal amount of bonds issued and outstanding for a district pursuant to this article shall not exceed one-third of the value of the real property upon which a special tax is levied for payment of the debt service on the bonds. The "value of the real property" shall be the fair market value of the land and special improvements to be constructed within or financed by the district, as evidenced by an appraisal of the subject property made by a certified general real property appraiser who is a Member of the Appraisal Institute (MAI) or a reasonably comparable professional organization of real property appraisers. Notwithstanding the foregoing, such requirement shall not apply if the council finds and determines by a vote of not less than two-thirds of its members that the proposed bond issue will assist materially in promoting significant public policies, programs or initiatives of the County.
- (1994, Ord. No. 94-77, sec. 3; Am. 2007, Ord. No. 07-146, sec. 5.)

Section 32-58. Expenses includable in proposed bonded indebtedness.

The amount of the proposed bonded indebtedness may include all costs and estimated costs incidental to, or connected with, issuing, carrying or repaying the proposed debt or the accomplishment of the purpose for which the proposed debt is to be incurred.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-59. Designation of improvement area.

For purposes of financing of, or contributing to the financing of, specified facilities, the council may by ordinance designate a portion or portions of the district as one or more improvement areas. An area shall be known as "Improvement Area No.____" of "Hawai'i County Community Facilities District No.____." After the designation of an improvement area, all proceedings for purposes of levying special taxes for purposes of financing such specified facilities shall apply only to the improvement area for those specified facilities, except to the extent otherwise provided in the ordinance.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-60. Foreclosure action to collect unpaid special taxes.

- (a) In addition to any other remedy provided by law, if any amount levied as a special tax for the payment of bond interest or principal is not paid when due, the County shall, after one hundred twenty days of delinquency of any installment of principal, order that the same, together with any penalties, interest and costs, be collected by an action brought to foreclose the lien of special tax.
- (b) The council may covenant, for the benefit of bond owners, to commence and diligently pursue to completion any foreclosure action regarding delinquent installments of any amount levied as a special tax for the payment of interest on or principal of any bonds that are issued. The covenant may specify a deadline for commencement of the foreclosure action and any other terms and conditions the council determines reasonable regarding the foreclosure action.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-61. Signing of bonds.

Unless otherwise specified in the ordinance providing for issuance of the bonds, the bonds shall be signed by the mayor of the County and countersigned by the director of finance or the director's deputy. All signatures on the bonds may be manual or facsimile. If any officer whose signature appears on the bonds ceases to be that officer before the delivery of the bonds, this person's signature is as effective as if this person had remained in office.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-62. Levy of amount of special taxes.

When the council fixes and levies special taxes for the district it shall also fix and levy that amount of special taxes within the district which is required for the payment of the principal of and interest on any bonds, including any necessary accumulation for or replenishment or expenditures of bond reserve funds or accumulation of funds for future bond payments or to pay for or reimburse payments pursuant to credit enhancement or prior contributions to debt service or other costs or incidental expenses related to the bonds. The special taxes shall be levied and collected by the same officers and at the same time and in the same manner that all other special taxes are levied and collected for the district or in any other manner specified by the council. The special taxes shall not exceed the authority granted by this chapter. All of the collections for payment of principal and interest on bonds and related expenses shall be paid into the district bond fund or reserve, rebate or other fund for the district and shall be used solely for the payment of the principal of and interest on the outstanding bonds of the district and related costs and incidental expenses, all as provided in the ordinance providing for issuance of the bonds.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-63. Manner of sale.

The district may sell the bonds so issued at public or private sale at the times, for the price or prices and in the manner the council determines to be appropriate and in the public interest (such determination being final and conclusive).

(1994, Ord. No. 94-77, sec. 3.)

Section 32-64. Action to determine validity.

In accordance with section 46-80, Hawai'i Revised Statutes, as amended, any action to determine or to challenge the validity or issuance of bonds issued or to be issued pursuant to this chapter shall be commenced within thirty days after the council by ordinance authorizes the issuance of the bonds.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-65. Refunding bonds.

The council may, by ordinance, authorize issuance of bonds to refund any or all of the district bonds outstanding that have been issued pursuant to this article or to refund general obligation bonds issued in accordance with section 32-71.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-66. Limitations on issuance of refunding bonds.

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

(1994, Ord. No. 94-77, sec. 3.)

Section 32-67. Necessity of procedures for original bond issue.

Except as otherwise provided in this article, the council may issue refunding bonds without repeating any of the procedures required for the approval of the original bond issue, if the council determines that it would be prudent in the management of its fiscal affairs, or of benefit to property owners or lessees in the district, to issue the refunding bonds. The provisions of sections 32-57 through 32-64 shall apply to the refunding bonds to the extent such provisions may be made appropriately applicable.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-68. Payment of designated costs of issuing refunding bonds.

The designated costs of issuing the refunding bonds, as defined by section 32-69, may be paid from proceeds of the refunding bonds or may be paid from any other legally available source including any available revenues of the council, as determined by the council. However, any amounts paid by the County other than from the proceeds of sale of the refunding bonds or from interest or other gains derived from the investment of the proceeds of sale shall be added to the total net interest costs to maturity on the refunding bonds in determining whether the issuance of the refunding bonds complies with section 32-66.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-69. Designated costs of issuing the refunding bonds.

For purposes of this article, the term “designated costs of issuing the refunding bonds” means any of the following costs and expenses designated by the council in the ordinance providing for the issuance of the refunding bonds:

- (a) 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 in connection with the redemption or retirement of the bonds to be refunded;
- (b) 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 out of the proceeds of the sale of the refunding bonds or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds;
- (c) Any premium necessary in the calling or retiring of the bonds to be refunded;
- (d) Any insurance premium or fee payable to the issuer of a bond insurance policy or letter of credit insuring all or part of the principal and/or interest due on the refunding bonds; and
- (e) 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.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-70. Reduction of refunding bond taxes.

All savings achieved through the issuance of refunding bonds may be used by the council to reduce the special taxes which were levied to retire the bonds being refunded. At the time the council makes a determination to issue the refunding bonds, it shall determine and cause to be made any reductions in the annual tax levy in the district, which reductions shall be made on a pro rata basis.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-71. General obligation bonds.

The council, in lieu of the issuance of community facilities district bonds as provided in this article, may in its sole discretion issue general obligation bonds of the County, or authorize payment of the required amount from the capital projects fund of the County, or both, in order to pay or reimburse the costs of facilities to be financed and any incidental expenses related thereto. All such general obligation bonds shall be authorized, issued and sold in accordance with chapter 47, Hawai‘i Revised Statutes, as amended, and any facility authorized to be financed under this chapter shall be an “undertaking” within the meaning of chapter 47. Without limiting the generality of the provisions of the foregoing sentence, the form, name, date, denomination, numbers, maximum interest rate, method of execution and all other terms and details of such general obligation bonds shall be fixed and determined in accordance with and as provided by chapter 47. No right of prior redemption need be reserved in the issuance of such bonds, nor shall either the amounts or dates of the maturities of or of the interest on any such bonds be required to conform in any way to the amounts and due dates of any special taxes levied or to be levied under this chapter. The validity of such general obligation bonds shall not be affected in any way by any proceedings taken, contracts made or acts performed in connection with any facility or any special tax for such facility.

If general obligation bonds are issued as provided in this section, except as otherwise provided herein, the council may subsequently direct all moneys collected on account of special taxes for the costs of any facility to finance which such bonds have been issued or for incidental expenses, after the issuance of such bonds, to be applied to the reimbursement of the general fund of the County for interest on and principal of such general obligation bonds. Any amounts collected on account of such special taxes as aforesaid which are not so directed by the council to be applied to such reimbursement shall be appropriated to and become a part of the capital projects fund or general fund of the County as the council may from time to time direct. In connection with any facilities financed with the proceeds of general obligation bonds, proceedings for establishment of a community facilities district or districts or improvement area or areas therein and levy of special taxes with respect thereto may be undertaken at any time prior to or while such general obligation bonds are outstanding

to reimburse the County for the cost of such facilities or debt service on such bonds (and such related financing and administrative costs and incidental expenses as the council may determine).

Community facilities district bonds may be issued, in accordance with sections 32-57 through 32-70, to refund all or part of such general obligation bonds. The refunding of any such general obligation bonds (whether with community facilities district bonds or other general obligation bonds) shall not affect the amount or time of payment of any special taxes, except as the council may determine in accordance with section 32-70.

(1994, Ord. No. 94-77, sec. 3.)

Section 32-72. Debt limit calculation.

Bonds issued under this chapter, when the only security for such bonds is the special taxes or liens on the property in the district subject thereto, shall be excluded from any determination of the power of the County to issue general obligation bonds or funded debt for purposes of section 13 of Article VII of the Constitution of the State of Hawai'i.

(1994, Ord. No. 94-77, sec. 3.)