

## **Chapter 33**

### **TAX INCREMENT DISTRICTS**

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**Chapter 33****TAX INCREMENT DISTRICTS****Article 1. General Provisions.****Section 33-1. Purpose.**

The purpose of this chapter is to enable the County to utilize tax increment financing to finance public improvements within a specific contiguous or noncontiguous geographic area, which is also an improvement district or a community facilities district, designated a tax increment district, by dedicating a portion of property tax revenue increases within the district to the funding of specific projects. This chapter also allows the creation of provisional tax increment districts, which can provide resources to enable the County to comprehensively address conditions in a targeted area through improvement districts, community facilities districts, or a combination of the two methods in conjunction with tax increment financing.  
(1994, Ord. No. 94-76, sec. 3.)

**Section 33-2. Definitions.**

As used in this chapter, the following words and terms shall have the following meanings unless the context indicates a different meaning or intent:

“Adjusted assessment base” means the value of the assessment base for a tax increment or provisional tax increment district after adjusting the original assessment base annually by the adjustment rate, the effect of which shall be cumulative.

“Adjustment rate” means a percentage rate or rates of adjustment of the assessment base recommended by the director of finance and approved by the council at the time the tax increment or provisional tax increment district is established, based on the historical and projected increases to the assessed values of taxable real property within the boundary of the district and the projected cost increases to the County for servicing the new developments within the district.

“Assessment base” means the total assessed values of all taxable real property in a tax increment or provisional tax increment district as most recently certified by the director of finance on the date of creation of the district.

“Assessment increment” means the amount by which the current assessed values of taxable real property located within the boundaries of a tax increment or provisional tax increment district exceeds its assessment base.

“Blight” means a condition resulting in a reduction in or lack of proper utilization of the area to such an extent that it constitutes a serious physical, social or economic burden on the County. Specifically, this improper utilization must be caused by either:

- (a) The existence of residential, commercial, industrial or other types of buildings which are unfit or unsafe to occupy and are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime because of any one or a combination of the following factors:
  - (1) Defective design and character of physical construction;
  - (2) Faulty interior arrangement and exterior spacing;
  - (3) High density of population and overcrowding;
  - (4) Inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities; or
  - (5) Age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses; or
- (b) The existence of properties which suffer from economic dislocation, deterioration, or whose use is unreasonably impaired because of one or more of the following factors:
  - (1) Faulty planning;

- (2) The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development;
- (3) The laying out of lots in disregard of the contours and other topography or physical characteristics of the ground and surrounding conditions;
- (4) The existence of inadequate public improvements, public facilities, open spaces, and utilities which cannot be remedied by private or governmental action without tax increment financing;
- (5) A prevalence of depreciated values, impaired investments, and social and economic maladjustment; or
- (6) The existence of lots or other areas which are subject to being submerged by water.

“Council” means the council of the County of Hawai‘i.

“County” means the County of Hawai‘i.

“Director” means the director of finance of the County of Hawai‘i.

“Project costs” means expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the district that are listed in a tax increment financing plan as costs of public works or public improvements in a tax increment district, plus other costs incidental to the expenditures or obligations. Project costs include:

- (a) Capital costs, including the actual costs of the construction of public works or public improvements, new buildings, structures, and fixtures; the actual costs of the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; and the actual costs of the acquisition, clearing, and grading of property;
- (b) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of tax increment bonds and all interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs, any capitalized interest, and any premium paid over the principal amount of the obligations because of the redemption of the obligations prior to maturity;
- (c) Professional service costs, including architectural, planning, engineering, marketing, appraisal, financial consultant, and special services and legal advice;
- (d) Imputed administrative costs, including reasonable charges for the time spent by employees of the County in connection with the implementation of a tax increment financing plan;
- (e) Relocation costs to the extent required by Federal or State law;
- (f) Organizational costs, including the costs of conducting environmental impact studies or other studies, the costs of publicizing the creation of a tax increment district, and the cost of implementing the tax increment financing plan for the tax increment district;
- (g) Payments determined by the council to be necessary or convenient to the creation of a tax increment district or improvement district, or to the implementation of the tax increment financing plan for the tax increment district.

“Property” means:

- (a) Land, including land under water and waterfront property;
- (b) Buildings, structures, fixtures, and improvements on the land;
- (c) Any property appurtenant to or used in connection with the land;
- (d) Every estate, interest, privilege, easement, franchise, and right in land, including rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.

“Provisional tax increment district” means a contiguous or noncontiguous geographic area designated pursuant to this chapter by the council for the purpose of financing preliminary costs for establishing a tax increment district in conjunction with an improvement district or community facilities district.

“Public works” or “public improvements” means any one or any combination of the following which shall be constructed to standards acceptable to the County at the time of the commencement of the project:

- (a) The establishment, opening, extension, widening, or altering of any street, alley, or other highway or sidewalk;
- (b) The grading, paving, curbing, or otherwise improving of the whole or any part of any existing public street, alley, or other highway or sidewalk;
- (c) The construction, installation, extension, maintenance, reconstruction, additions or improvements of a storm drainage facility or sanitary sewerage system;
- (d) The construction, installation, extension, maintenance, reconstruction, additions or improvements of a street lighting system;
- (e) The construction, installation, extension, maintenance, reconstruction, additions or improvements of a water system;
- (f) The construction, installation, extension, maintenance, reconstruction, additions or improvements of underground or overhead utility facilities including gas, electrical, telephone, or television facilities, and the removal, relocation, replacement or reconstruction thereof;
- (g) The establishment, extension, or construction of public off-street parking facilities, pedestrian mall, parks, playgrounds, beach areas, or other public recreational areas and facilities;
- (h) To make improvements related to the foregoing and to otherwise improve any of the foregoing to an extent exceeding maintenance or repair thereof;
- (i) Any other public improvement deemed necessary for the tax increment district by the council.

“Targeted area” means a specific geographic area proposed to be included in a tax increment or provisional tax increment district in which the council finds that blight significantly impacts and injuriously affects the entire area.

“Tax increment” means the amount of real property taxes levied for each fiscal year on the assessment increment.

“Tax increment bonds” means bonds, notes, interim certificates, debentures, or other obligations issued pursuant to this chapter.

“Tax increment district” or “district” means a contiguous or noncontiguous geographic area designated pursuant to this chapter by the council for the purpose of tax increment financing.

“Tax increment financing plan” or “financing plan” means the plan for tax increment financing for a district submitted to and approved by the County council. The tax increment financing plan shall contain estimates of:

- (a) Project costs;
- (b) Amount of tax increment bonds to be issued;
- (c) Sources of revenue to finance or otherwise pay project costs;
- (d) The most recent assessed value of taxable real property in the district;
- (e) The duration of the district’s existence;
- (f) The financial and budgetary impacts on the County resulting from the proposed tax increment financing plan;
- (g) The proposed adjustment rate as recommended by the director of finance.

“Tax increment fund” or “fund” means a fund held by the director or other fiduciary designated by the council and into which all tax increments, other moneys pledged by the County for payment of tax increment bonds and any moneys available for project costs are paid, and all proceeds from the sale of tax increment bonds are deposited, and from which moneys are disbursed to pay project costs for the tax increment district or to satisfy claims of holders of tax increment bonds issued for the district, or as otherwise authorized herein.

“Total assessed value” means the gross assessed value less any applicable exemptions, and is also referred to as the “net assessed value.”

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-3. Authority; general provisions.**

- (a) Whenever in the opinion of the council it is desirable to create a tax increment or provisional tax increment district, the district shall be created and the project financed under the provisions of this chapter.
  - (b) All project costs of a tax increment or provisional tax increment district shall be paid from the tax increment fund of that district.
  - (c) The County may issue and sell tax increment bonds to provide funds to pay project costs upon finding that the tax increment of the district and any other available revenues will be sufficient to cover the full debt service on any such bonds. Both principal and interest on tax increment bonds shall be payable solely from the tax increment fund, all according to the provisions of this chapter.
- (1994, Ord. No. 94-76, sec. 3.)

**Section 33-4. Powers reserved to council.**

Any provision of law to the contrary notwithstanding, the council reserves the following powers over any tax increment district proposal:

- (a) If, for any reason whatsoever, the tax increment bonds authorized under article 4 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 project to be financed by the tax increment district, or any part thereof. In the event that the project is terminated, all project costs incurred to the date of termination shall be paid from the tax increment fund.
  - (b) In addition to the foregoing, at any time during the proceedings of any tax increment or provisional tax increment district proposal up to and including the adoption of the ordinance creating a tax increment district under section 33-11, the council shall have the power and authority to terminate the entire tax increment district project, or any part thereof, if it determines that the tax increment district project is not in the public interest.
  - (c) In addition to the foregoing, at any time during the proceedings of any tax increment district proposal up to and including the adoption of the ordinance creating a tax increment district under section 33-11 hereof, the council shall have the power and authority to require the inclusion of costs of off-site improvements such as roads, water, sewers, drainage, which may be outside the tax increment district boundaries but which service the tax increment district. In the event that such costs are to be so included, the appropriate resolutions and ordinances shall be amended accordingly.
- (1994, Ord. No. 94-76, sec. 3.)

**Section 33-5. Private contributions.**

The owner or owners of real property located in a tax increment district or provisional tax increment district may advance funds for project costs. Any funds advanced under this section shall be deposited in the tax increment fund for the district. To the extent that such funds are used to pay project costs of the district, the council shall authorize partial or full reimbursement from the tax increment fund to the property owners who advanced such funds upon the termination of the district if money is available in the fund to make such reimbursement. If the funds advanced are not used to pay project costs within three years of the date they are advanced, the money shall be returned at that time to the property owners who advanced the funds along with the interest earned, if any, on the investment of the funds advanced while they were on deposit with the district.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-6. Administration; annual report.**

- (a) The director of finance shall be responsible for the administration of this chapter, including any tax increment districts enacted hereunder, and shall adopt rules pursuant to chapter 91, Hawai'i Revised Statutes, as necessary for the purposes of implementing this chapter.
  - (b) The director of finance shall prepare an annual report to be submitted to the council by August 15 of every year on the status of every tax increment and provisional tax increment district. The report shall:
    - (1) Update the estimates and projections provided in the original plan(s);
    - (2) Certify the amount of the assessment increment to the council, together with the proportion that the assessment increment bears to the total assessed value of the real property within the district for that year; and
    - (3) Provide such additional information as the director deems necessary or the council requests.
- (1994, Ord. No. 94-76, sec. 3.)

**Section 33-7. Requirements.**

No tax increment district can be created unless the council finds that the proposed district meets all of the following requirements:

- (a) The project area proposed to be included in the district is a targeted area.
- (b) The improvements necessary to remedy the conditions in the targeted area cannot reasonably be expected to be accomplished in a reasonable time without tax increment financing.
- (c) The assessment base of the property proposed to be included in the district shall not cause the total assessed valuation of all property included in tax increment districts, determined at the time the districts were created as supplemented by the assessed valuation of property subsequently included in a district at such time of inclusion, to exceed ten percent of the total assessed value of all taxable real property in the County.
- (d) The project area is also designated as an improvement district or community facilities district pursuant to the Hawai'i County Code.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-8. Limitation on time to sue.**

No action or proceeding to review any acts or proceedings or to question the validity or enjoin the performance of any act, the issue or payment of any bonds, or the allocation of any tax increment authorized by this chapter, whether based upon irregularities or jurisdictional defects, or otherwise, shall be maintained unless begun within thirty days after performance of the act or the passage of the resolution or ordinance complained of.

(1994, Ord. No. 94-76, sec. 3.)

**Article 2. Procedure.****Section 33-9. Initiation by council; study of proposed project.**

- (a) The council shall, by resolution requiring not more than one reading for its adoption:
  - (1) Determine the boundaries of a proposed district.
  - (2) Direct the director of finance to investigate and report to the council within sixty calendar days:
    - (A) The total assessed value of:
      - (i) All taxable real property in the County, and
      - (ii) The assessment base of the proposed district;

- (B) The total assessed values of all taxable real property in the proposed district compared to the total assessed values of all taxable real property in the County over the two years immediately preceding the current year;
- (3) Direct the director of public works to investigate and report to the council within sixty calendar days:
  - (A) Preliminary data concerning the current status of improvements within the proposed district, including:
    - (i) Any revisions recommended to the proposed boundaries of the district;
    - (ii) The present extent of public and private infrastructure located within the boundaries of the proposed district;
    - (iii) The infrastructure needs within the proposed district, listed in order of their priority.
  - (B) The general character and extent of any improvements to be proposed, and their estimated cost;
  - (C) Whether any new land will be necessary to be acquired, and the estimated cost thereof and the proportion of the cost, if any, which should be borne by the County;
  - (D) Upon consultation with the planning director, determine:
    - (i) The present zoning within the proposed district;
    - (ii) The extent to which the present land use within the proposed district conforms to the County general plan;
    - (iii) The extent to which the present land use within the proposed district relates to any community development plan for the area;
    - (iv) The likelihood of the needs identified in subsection (a)(3)(A)(iii) of this section being addressed by the County or private means without the use of tax increment financing;
    - (v) Any additional information which may assist the council in determining if the proposed district is a targeted area.
  - (E) If the proposed district includes the construction or improvement of a water system or any part thereof, the director of public works shall consult with the department of water supply in determining the estimate of the cost to be included in the preliminary report to the council.
- (b) After the above reports have been furnished and filed with the council, they shall not be acted upon until one week has elapsed from the date of the filing of the last report. If any one or more of the reports required in subsection (a) above are not filed with the council within the required sixty days, the council may proceed with the district without such reports.
- (c) Thereafter the council may, by resolution requiring one reading for its adoption:
  - (1) Find that the area proposed to be included in a tax increment district meets all of the requirements of section 33-7.
  - (2) Direct the finance director to prepare and submit to the council within sixty calendar days a tax increment financing plan which shall contain estimates of:
    - (A) Project costs;
    - (B) Amount of tax increment bonds to be issued;
    - (C) Sources of revenue to finance or otherwise pay project costs;
    - (D) The most recent assessed value of taxable real property in the district;
    - (E) The duration of the district's existence;
    - (F) The recommended adjustment rate for the district;
    - (G) Statement regarding the financial and budgetary impacts on the County resulting from the proposed tax increment financing plan.

(1994, Ord. No. 94-76, sec. 3.)



**Section 33-10. Tax increment financing plan.**

In preparing the report required by section 33-9(c)(2), the director of finance may consult with the director of public works, the planning director, or with such financial consultant as has been specially employed by the mayor on behalf of the County to assist in the proceedings or who may otherwise be available to the County. The report may include such sums as deemed proper by the director of finance for reserve funds, bond discount allowances, and construction contingencies in determining the estimate of project costs. (1994, Ord. No. 94-76, sec. 3.)

**Section 33-11. Establishment of tax increment district.**

The council may provide for tax increment financing by approving a tax increment financing plan and adopting an ordinance establishing the tax increment district. The ordinance shall:

- (a) Describe the boundaries of the tax increment district;
- (b) Provide for the date of commencement of the tax increment district and the date of termination of the district;
- (c) Provide for the establishment of a tax increment fund for the district; and
- (d) Provide for such other matters deemed to be pertinent and desirable for tax increment financing and not inconsistent with the County general plan or any relevant redevelopment or community development plan.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-12. Termination of a tax increment district.**

A tax increment district shall terminate at the time designated in the ordinance creating the district or at an earlier time designated by a subsequent ordinance, but in no event shall the district terminate until such time as all project costs and tax increment bonds issued for the district and the interest thereon have been paid in full, or sufficient funds have been irrevocably deposited in a special fund or other escrow account held in trust for all outstanding tax increment bonds issued for such district to provide for the payment of such bonds at maturity or date of redemption and interest and premium, if any, thereon.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-13. Provisional tax increment district.**

A provisional tax increment district may be created by the council when an area meets the definition of a targeted area and the council finds either that tax increment financing alone will be unable to adequately address the conditions in the targeted area or that the owners of land in the targeted area should participate in the expense of addressing the conditions to a greater extent than is provided for with tax increment financing.

- (a) The council shall, by resolution requiring not more than one reading for its adoption:
  - (1) Determine the boundaries of a proposed district.
  - (2) Direct the director of finance and director of public works to investigate and report to the council the same information as required by subsections 33-9(a)(2) and 33-9(a)(3).
  - (3) Fix a date of public hearing upon the proposed provisional tax increment district, which date shall be not less than fifteen days after the first publication of notice thereof in a newspaper of general circulation in the County.
- (b) After the above reports have been furnished and filed with the council, they shall not be acted upon until one week has elapsed from the date of the filing of the last report. If any one or more of the reports required in subsection (a) above are not filed with the council within the required sixty days, the council may proceed with the district without such reports.

- (c) After the adoption of the resolution, the County clerk shall cause a notice of the public hearing to be published twice a week for two successive weeks (four publications in all) in accordance with the requirements of the County Charter and the Hawai'i Revised Statutes for public notice, giving notice, generally, to all owners of land proposed to be included in the provisional district and to all others interested in the general details of the improvements as proposed by the council and stating the time and place of public hearing and where the resolution and reports and other data may be seen and examined prior to the hearing. Like notices shall be posted at least ten days prior to the hearing at a public place in the judicial district in which the proposed provisional district is located.
- (d) Any failure to post, mail, or receive the notice described above, shall not invalidate the proceedings held thereafter.
- (e) If, as a result of the public hearing, the council finds that the owners of property in the proposed district do not support the proposed improvements, or are not willing to pay for the improvements through the improvement district or similar process if necessary, the council may at its sole discretion terminate the provisional tax increment district proceedings.
- (f) If the council decides to proceed with the creation of a provisional tax increment district after the public hearing, it may by ordinance provide for the creation of a provisional tax increment district. This ordinance shall accept the reports of the director of finance and director of public works required by subsection (a) of this section, and shall:
  - (1) Find that the area proposed to be included in a provisional tax increment district meets all of the requirements of section 33-7;
  - (2) Create a provisional tax increment district which will terminate not later than five years from the date of its creation if it has not been converted by ordinance passed in accordance with section 33-11 to a tax increment district before its termination;
  - (3) Describe the boundaries of the provisional tax increment district;
  - (4) Provide for the date of commencement and termination of the provisional tax increment district;
  - (5) At the option of the council, this ordinance may provide that until an improvement district is approved by the owners of land in a proposed provisional tax increment district, funds in the tax increment fund may be used only for:
    - (A) Preliminary costs for initiating an improvement district in accordance with section 12-10, Hawai'i County Code, including but not limited to the cost of title searches, postage, and other administrative costs;
    - (B) Any preliminary plans and engineering specifically authorized by the council as necessary for the initiation of an improvement district in the targeted area.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-14. Restrictions on provisional district.**

- (a) A provisional tax increment district shall be subject to the following:
  - (1) No tax increment bonds or bond anticipation notes shall be issued to provide funds for a provisional tax increment district.
  - (2) The council may by ordinance extend the term of a provisional tax increment district for no more than two years beyond its original term.
  - (3) During the term of a provisional tax increment district, and subject to the limitation of subsection 33-13(f)(5) above, if appropriate, the money in the tax increment fund may be used only for:
    - (A) Preliminary costs for initiating an improvement district in accordance with section 12-10, Hawai'i County Code, including but not limited to the cost of title searches, postage, and other administrative costs;

- (B) Professional service costs and administrative costs to prepare financial projections and to identify all methods available to remedy the condition in the targeted area, including but not limited to determining the feasibility of the proposed tax increment district to accomplish its goals through tax increment financing and/or the improvement district process as established in chapter 12, Hawai‘i County Code;
  - (C) Preparation of a tax increment financing plan for the district if this mechanism is determined to be feasible; and
  - (D) Professional service costs and administrative costs for the district to prepare detailed plans and specifications for the projects proposed.
- (4) During the term of a provisional tax increment district, the council may not exercise the power of eminent domain in connection with the acquisition of property in the tax increment district.
- (b) At any time during the term of a provisional tax increment district the council may approve a tax increment financing plan in accordance with section 33-11 and by ordinance convert the provisional tax increment district into a tax increment district. The council at its option may require that an improvement district be approved by the owners of land in the targeted area before a provisional tax increment district is converted to a tax increment district.
- (c) If a provisional tax increment district is converted to a tax increment district, the adjusted assessment base of the provisional tax increment district at the time of the conversion shall become the assessment base of the tax increment district.
- (d) If at the end of its term a provisional tax increment district has not been converted to a tax increment district, all money remaining in the tax increment fund of the provisional tax increment district shall, to the extent it is not encumbered, be returned to the general fund.
- (1994, Ord. No. 94-76, sec. 3.)

### **Article 3. Tax Increments.**

#### **Section 33-15. Computation of tax increments.**

Upon or after creation of a tax increment district or a provisional tax increment district, the director of finance shall certify the assessment base of the tax increment district and shall certify in each year thereafter the amount by which the assessment base has increased or decreased as a result of a change in tax exempt status of property within the district, or reduction or enlargement of the district. The amount to be added to the assessment base of the district as a result of previously tax exempt real property within the district becoming taxable shall be equal to the assessed value of the real property as most recently assessed or, if the assessment was made more than one year prior to the date of transfer rendering the property taxable, the value which shall be assessed by the director of finance at the time of such transfer. The amount to be added to the assessment base of the district as a result of enlargements thereof shall be equal to the assessed value of the additional real property as most recently certified by the director of finance as of the date of modification of the tax increment financing plan. The amount to be subtracted from the assessment base of the district as a result of previously taxable real property within the district becoming tax exempt, or a reduction in the geographic area of the district, shall be the amount of assessment base initially attributed to the property becoming tax exempt or being removed from the district.

If the assessed value of property located within the tax increment district is reduced or increased by reason of a board of review decision, court-ordered abatement, stipulated agreement, or voluntary abatement made by the director of finance, the increase or reduction shall be applied to the assessment base of the district when the property upon which the change is made has not been improved since the date of creation of the district, and to the assessment increment of the district in each year thereafter when the change relates to improvements made after the date of creation.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-16. Tax on leased redevelopment property.**

Whenever property in the tax increment district has been redeveloped and thereafter is leased by the County to any person or whenever the County leases real property in any tax increment district to any person for redevelopment, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes upon the assessed value of the entire property and not merely the assessed value of the lessee's leasehold interest.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-17. Collection of tax increments.**

(a) Commencing with the first payment of real property taxes levied by the County subsequent to the time a district takes effect, receipts from real property taxes collected for this district shall be allocated and paid as follows:

- (1) The amount of real property tax produced from the original assessment base shall be paid to the general fund; and
- (2) The tax increments produced from the assessment increment in the district shall be applied as follows:
  - (A) First, an amount equal to (i) the installment of principal and interest falling due for any tax increment bonds, or (ii) any project cost approved by the council, shall be deposited into a tax increment fund established when the district was created.
  - (B) Second, an amount equal to the amount of real property tax produced on the adjusted assessment base reduced by the amount already paid to the general fund in subsection (1) of this section shall be paid to the general fund.
  - (C) Third, the remaining amount of tax increments, if any, shall be deposited into the tax increment fund.

(b) The allocation of real property taxes pursuant to this section shall not limit the power of the County under section 47-12, Hawai'i Revised Statutes, to levy ad valorem taxes without limitation as to rate or amount on all real property subject to taxation by the County for the payment of principal and interest of its general obligation bonds.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-18. Tax increment fund.**

(a) Money shall be disbursed from the tax increment fund for a tax increment district only to:

- (1) Satisfy the claims of holders of tax increment bonds issued for the tax increment district;
- (2) Pay project costs for the district;
- (3) Make payments for project costs or debt service to a special assessment fund established upon the creation of an improvement district whose boundaries are identical to that of the tax increment district;
- (4) Make payments to the County as provided in subsection (c) of this section or section 33-29(d).

(b) Subject to an agreement with the holders of tax increment bonds, money in a tax increment fund may be temporarily invested in the same manner as other funds in the County.

(c) In any year in which the tax increment exceeds the amount necessary to pay all project costs, and all installments of principal and interest of tax increment bonds issued for a district falling due, and the amount paid to the general fund pursuant to section 33-17(a)(2)(B), and subject to any agreement with bondholders, any excess money in the tax increment fund at the option of the council shall be used to

redeem or purchase any outstanding tax increment bonds issued for the district, discharge the pledge of tax increment therefor, be paid into an escrow account dedicated to the payment of such bonds, be paid over to the general fund, or any combination thereof.  
(1994, Ord. No. 94-76, sec. 3.)

#### **Article 4. Tax Increment Bonds.**

##### **Section 33-19. Tax increment bonds authorized.**

The council may authorize the issuance of tax increment bonds, the proceeds of which may be used to pay project costs for a district or to satisfy claims of bondholders. Both principal, interest and premium, if any, on tax increment bonds shall be made payable solely from the tax increment fund established for the district.

The County may provide in its contract with the owners or holders of the tax increment bonds that the County will pay into the tax increment fund all or any part of the revenue or money produced or received as a result of the operation or sale of a facility acquired, improved, or constructed pursuant to either a redevelopment plan, as defined in section 53-1, Hawai'i Revised Statutes, or a community development plan, as defined in section 206E-5, Hawai'i Revised Statutes, to be used to pay principal and interest on the tax increment bonds and, if the County so agrees, the owners or holders of tax increment bonds may have a lien or mortgage on any facility acquired, improved or constructed with the proceeds of the tax increment bonds.

The County may issue such types of bonds as it may determine including bonds on which the moneys in the tax increment funds are derived:

- (a) Exclusively from the income and revenues of the projects financed with the proceeds of the bonds, or with such proceeds together with financial assistance from the State or Federal government in aid of the projects.
  - (b) Exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of the bonds.
  - (c) In whole or in part from taxes allocated to, and paid into the tax increment fund pursuant to the provisions of this chapter.
  - (d) From its revenues generally.
  - (e) From any contributions or other financial assistance from the State or Federal government.
  - (f) By any combination of these methods.
- (1994, Ord. No. 94-76, sec. 3.)

##### **Section 33-20. Exemption from taxes.**

- (a) Pursuant to section 46-106(b), Hawai'i Revised Statutes, tax increment bonds, and the income therefrom, issued under this chapter shall be exempt from all State and County taxation, except estate and transfer taxes.
- (b) Bonds issued under this chapter, to the extent practicable, shall be issued so as to comply with requirements imposed by valid Federal law providing that the interest on those bonds shall be excluded from gross income for Federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance is authorized to enter into arrangements, establish funds or accounts, and take any action required in order to comply with any valid Federal law. Nothing in this chapter shall be deemed to prohibit the issuance of bonds, the interest on which may be included in gross income for Federal income tax purposes.

For the purpose of ensuring that interest on bonds issued pursuant to this chapter which is excluded from gross income for Federal income tax purposes (except as provided above) on the date of issuance shall continue to be so excluded, no County officer or employee or user of an undertaking or loan program shall authorize or allow any change, amendment, or modification to an undertaking or loan

program financed or refinanced with the proceeds of the bonds which change, amendment or modification would affect the exclusion of interest on the bonds from gross income for Federal income tax purposes unless the change, amendment or modification shall have received the prior approval of the director of finance. Failure to receive the approval of the director of finance shall render any change, amendment, or modification void.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-21. Contents of bonds.**

- (a) The director of finance, upon authorization by the council by ordinance, may issue tax increment bonds. Tax increment bonds shall bear the name of the district, shall be dated, be payable upon demand or mature at a time or times not exceeding thirty years from their date of issuance, bear interest at a rate or rates, be in a denomination or denominations, be in registered form, have a rank or priority, be executed in a manner, be payable at a place or places, and be subject to terms of redemption (with or without premium), be secured in a manner, and have other characteristics as may be determined by the council or the director of finance as herein provided. The County may sell tax increment bonds in such manner, either at public or private sale, and for such price as it may determine.
- (b) Unless the council shall itself perform the actions, the director of finance shall:
  - (1) Determine the date, denomination or denominations, interest payment dates, maturity date or dates, place or places of payment, registration privileges and place or places of registration, redemption price or prices and time or times and terms and conditions and method of redemption;
  - (2) The rights of the holder to tender for purchase and the price or prices and time or times and terms and conditions upon which those rights may be exercised;
  - (3) The rights to purchase and price or prices and the time or times and terms and conditions upon which those rights may be exercised and the purchase may be made; and
  - (4) Determine all other details of bonds issued under this chapter.
- (c) The principal of and interest and premium, if any, on all bonds issued under this chapter shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts. Tax increments bonds shall be subject to call but not prior to the second interest date thereof as hereinafter provided and at such premium, if any, as may have been provided for in the ordinance authorizing such bonds.
- (d) Prior to the preparation of definitive tax increment bonds, the County may authorize issuance of interim receipts or temporary bonds exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-22. Execution of bonds; records; funds for payment.**

- (a) Tax increment bonds shall be executed by the director of finance, or by a deputy of the director of finance duly designated by the director to execute such bonds, and issued pursuant to and under the authority and requirements of the ordinance of the council. The bonds shall bear the lithographed or engraved facsimile signature of the mayor and shall be impressed with a lithographed or engraved facsimile of the seal of the County. If the council provides that no such tax increment bond shall be valid or obligatory unless and until there shall be manually executed a certificate of authentication thereof, all signatures of County officials on the bonds may be facsimiles of their respective signatures.
- (b) The director of finance shall preserve a record of the bonds in a suitable book kept for that purpose. The council shall provide for books of registry to be kept for the registration of improvement bonds issued in fully registered form.

- (c) The bonds shall be payable only out of moneys in the tax increment fund of the district for which they are issued or from the reserve fund established pursuant to section 33-23, if the moneys in the tax increment fund are insufficient to pay the bonds or the interest thereon as they become due. The County shall not otherwise guarantee payment of any such bonds issued under the provisions of this chapter.
- (1994, Ord. No. 94-76, sec. 3.)

**Section 33-23. Reserve fund.**

The council may provide in the ordinance adopted pursuant to section 33-19 for a reserve fund as additional security for the payment of principal and interest on tax increment bonds issued in proceedings taken pursuant to this chapter. The reserve fund may be initially funded from the proceeds from the sale of tax increment bonds with respect to which such reserve fund is established in such amount as is designated by the council in the ordinance authorizing such bonds. Moneys in a reserve fund shall be used in accordance with the provisions of section 33-22(c) and to pay the principal or interest, or both, in whole or in part, on the last outstanding maturity or maturities of the bonds.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-24. Sale of bonds.**

- (a) The director of finance may make such arrangements as may be necessary or proper for the sale of each issue of bonds or part thereof as are issued under this article, including, without limitation, arranging for the preparation and printing of the bonds, the official statement and any other documents or instruments deemed required for the issuance and sale of bonds and retaining those financial, accounting, and legal consultants, all upon such terms and conditions as the director of finance deems advisable and in the best interest of the County. The council may authorize the director of finance to offer the bonds at competitive sale or to negotiate the sale of the bonds to:
- (1) Any person or group of persons;
  - (2) The United States of America, or any board, agency, instrumentality, or corporation thereof;
  - (3) The employees retirement system of the State;
  - (4) Any political subdivision of the State;
  - (5) Any board, agency, instrumentality, public corporation, or other governmental organization of the State; or of any political subdivision of the State.
- (b) Subject to any limitation imposed by the council by the ordinance authorizing the bonds, the sale of the bonds by the director of finance by negotiation shall be at such price or prices and upon such terms and conditions, from time to time in such manner, as the director of finance shall approve.
- (c) Subject to any limitation imposed by the council by the ordinance authorizing the bonds, the sale of the bonds by the director of finance at competitive sale shall be at such price or prices and upon such terms and conditions, and the bonds shall bear interest at such rate or rates or such varying rates determined from time to time in the manner, as specified by the successful bidder, and the bonds shall be sold in accordance with this subsection. The bonds offered at competitive sale shall be sold only after published notice of sale advising prospective purchasers of the proposed sale. The bonds offered at competitive sale may be sold to the bidder offering to purchase the bonds at the lowest interest cost, the interest cost, for the purpose of this subsection, being determined on one of the following bases as selected by the director of finance:
- (1) The figure obtained by adding together the amounts of interest payable on the bonds from their date to their respective maturity dates at the rate or rates specified by the bidder and deducting from the sum obtained the amount of any premium offered by the bidder;

- (2) Where the interest on the bonds is payable annually, the annual interest rate (compounded annually), or, where the interest on the bonds is payable semiannually, the rate obtained by doubling the semiannual interest rate (compounded semiannually), necessary to discount the principal and interest payments on the bonds from the dates of payment thereof to the date of the bonds and to the price bid (the price bid for the purpose of this paragraph shall not include the amount of interest accrued on the bonds from their date to the date of delivery and payment); or
- (3) Where the interest on the bonds is payable other than annually or semiannually or will vary from time to time, upon such basis as, in the opinion of the director of finance, shall result in the lowest cost to the County; provided that in any case the right shall be reserved to reject any or all bids and waive any irregularity or informality in any bid.
- (d) Bonds offered at competitive sale, without further action of the council, shall bear interest at the rate or rates specified by the successful bidder or varying rate or rates determined from time to time in the manner specified by the successful bidder with the consent of the director of finance. The notice of sale required by this section shall be published at least once and at least five days prior to the date of the sale in a newspaper circulating in the County and in a financial newspaper or newspapers published in any of the cities of New York, Chicago, or San Francisco, and shall be in such form and contain such terms and conditions as the director of finance shall determine. The notice of sale shall comply with the requirements of this section if it merely advises prospective purchasers of the proposed sale and makes reference to a detailed notice of sale which is available to the prospective purchasers and which sets forth the specific details of the bonds and terms and conditions upon which such bonds are to be offered. The notice of sale published and any detailed notice of sale may omit the date and time of sale, in which event the date and time shall be either published in the same newspapers in which the notice of sale has been published or transmitted via electronic communication systems deemed proper by the director of finance which is generally available to the financial community, in either case at least forty-eight hours prior to the time fixed for the sale.
- (e) The proceeds of the sale of bonds shall be applied to pay the project costs of the district. If no purchaser is found, the County may be the purchaser of any such bonds, using any funds available and unspent. Bonds sold to a purchaser other than the County may be sold for such discount as is acceptable to the council.

(1994, Ord. No. 94-76, sec. 3.)

#### **Section 33-25. Lost, mutilated, stolen or destroyed bonds.**

Should any bond issued under this chapter become mutilated or be lost, stolen, or destroyed, the County may cause a new bond of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of such mutilated bond, or in lieu of and in substitution for, and upon the cancellation of such mutilated bond, or in lieu of and in substitution for such lost, stolen, or destroyed bond. Such new bond shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond:

- (a) Has paid reasonable expenses and charges in connection therewith;
- (b) In the case of a lost, stolen, or destroyed bond, has filed with the County or its fiduciary satisfactory evidence that such bond was lost, stolen, or destroyed, and that the holder was owner thereof; and
- (c) Has furnished indemnity satisfactory to the County.

(1994, Ord. No. 94-76, sec. 3.)

#### **Section 33-26. General provisions; bonds.**

- (a) Notwithstanding any of the provisions of this chapter or any recital in any tax increment bond issued under this chapter, all tax increment bonds shall be deemed to be investment securities under the Uniform



Commercial Code, chapter 490, Hawai'i Revised Statutes, subject only to the provisions pertaining to registration.

- (b) In any suit, action, or other proceeding involving the validity or enforceability of a bond issued under this chapter or the security for a bond or note issued under this chapter, a bond reciting in substance that it had been issued by the County for the tax increment district shall be conclusively deemed to have been issued for that purpose, and the development or redevelopment of the district conclusively shall be deemed to have been planned, located, and carried out as provided by this chapter.
  - (c) The tax increment bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all persons whose signatures appear thereon shall have ceased to be officers of the County.
  - (d) Tax increment bonds shall not be issued in an amount exceeding the total costs of implementing the tax increment financing plan for which they were issued.
- (1994, Ord. No. 94-76, sec. 3.)

**Section 33-27. Bonds not chargeable against general revenue.**

- (a) Tax increment bonds shall be payable only out of the tax increment fund. The council may pledge irrevocably all or a part of the fund for payment of the bonds. The part of the fund pledged in payment thereafter shall be used only for the payment of the bonds or interest or redemption premium, if any, on the bonds until the bonds have been fully paid. If the council has pledged a part of the fund for payment of bonds, a holder of the bonds shall have a lien against the fund for payment of the bonds and interest thereon and may either at law or in equity protect and enforce such lien.
  - (b) No officer of the County including any officer executing tax increment bonds shall be liable for the tax increment bonds by reason of the issuance thereof. Tax increment bonds issued under this chapter shall not be general obligations of the County, nor in any event shall they give rise to a charge against the general credit or taxing powers of the County or be payable other than as provided by this chapter. No holder of bonds issued under this chapter shall have the right to compel any exercise of the taxing power of the County to pay such bonds or the interest thereon, and no moneys other than the moneys in the tax increment fund pledged to the bonds shall be applied to the payment thereof. Tax increment bonds issued under this chapter shall state these restrictions on their face.
- (1994, Ord. No. 94-76, sec. 3.)

**Section 33-28. Tax increment bond anticipation notes.**

Whenever the County has authorized the issuance of tax increment bonds under this chapter, tax increment bond anticipation notes of the County may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All tax increment bond anticipation notes shall be authorized by the County, and the maximum principal amount of such notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the tax increment bonds in anticipation of which the notes are issued and the moneys in the tax increment fund from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such bonds, the maximum amount of bonds authorized in anticipation of which the notes are issued shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and details of such notes shall be governed by this chapter with respect to tax increment bonds insofar as the same may be applicable; provided that each note, together with renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-29. General obligation bonds.**

- (a) For any project initiated pursuant to this chapter, the council, in lieu of the issuance of tax increment bonds, may in its sole discretion issue general obligation bonds of the County or authorize payment of the required amount from the general fund of the County. The proceeds of such general obligation bonds or any amount paid by the County out of the general fund shall be deposited in the tax increment fund for the appropriate district and expended only in accordance with section 33-18.
- (b) All such general obligation bonds shall be authorized, issued and sold under, pursuant to, and in accordance with chapter 47, Hawai'i Revised Statutes, as amended, all of the provisions of which chapter shall be applicable thereto. 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 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 needs to be reserved in the issuance of such bonds, nor shall either the amounts or dates of the maturities of any such bonds be required to conform in any way to the amounts of tax increments to be collected.
- (c) The validity of such general obligation bonds shall not be dependent on or affected in any way by any proceedings taken or any contracts made, acts performed or done in connection with, or in furtherance of, any improvement or any assessments for such improvement.
- (d) If general obligation bonds are issued as provided in this section, all moneys collected on account of the tax increment may, to the extent so directed by the council, be applied to the reimbursement of the general fund of the County to the extent of the amounts paid for interest on and principal of such general obligation bonds. Any amounts collected on account of the tax increment as aforesaid to the extent not so directed by the council to be applied to such reimbursement or in excess of the amounts required for such reimbursement shall be applied in the manner set forth in section 33-17.
- (e) The provisions of sections 33-23, 33-24, 33-25, 33-26 and 33-27 shall not apply to the general obligation bonds authorized by this section and such sections shall be restricted in their application to tax increment bonds.

(1994, Ord. No. 94-76, sec. 3.)

**Article 5. Refunding Bonds.****Section 33-30. Refunding authorized.**

The County may issue tax increment refunding bonds for the purpose of paying or retiring or in exchange for tax increment bonds previously issued by the County. Both principal and interest on tax increment refunding bonds shall be made payable solely from the tax increment fund.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-31. Refunding bonds.**

- (a) Tax increment refunding bonds issued for the refunding of the outstanding indebtedness of any tax increment district shall bear the name of the tax increment district for which they are issued, and shall be issued and sold under all the conditions and terms as prescribed by article 4 of this chapter, except as otherwise provided in this chapter.
- (b) A different rate of interest than that authorized in the original issue of tax increment bonds may be prescribed and the tax increment refunding bonds may be authorized to run for a term exceeding thirty years from the date of their issuance or fifteen years from the final maturity date of the tax increment bonds being refunded.

- (c) If the final maturity date of the tax increment refunding bonds exceeds the final maturity date of the tax increment bonds being refunded, the council shall, if necessary, pass an ordinance amending the original ordinance passed in accordance with section 33-11 to change the termination date of the district to coincide with the final maturity of the tax increment refunding bonds. Such ordinance shall be passed by the council prior to the issuance of such refunding bonds.

(1994, Ord. No. 94-76, sec. 3.)

**Section 33-32. Obligations unimpaired.**

Nothing in this article shall be construed as giving the council the authority to impair the obligations of the tax increment district under any outstanding tax increment bonds.

(1994, Ord. No. 94-76, sec. 3.)