

REQUEST FOR LEGAL SERVICES

RECEIVED

By Corporation Counsel at 2:52 pm, Nov 17, 2016

Date: November 17, 2016
From: DON S. GUZMAN, Chair

Economic Development, Energy, Agriculture, and Recreation Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jeffrey Ueoka, Esq.

Subject: SPECIAL IMPROVEMENT DISTRICTS (EAR-36)

Background Data: Please revise the attached proposed bill by: (1) adding the phrase "and establishment of the district" at the end of the sentence in section 3.70.190(D); and (2) revising the name for section 3.70.230 in the table at the beginning of the bill from "Special assessment obligation for parcel of land acquired by the County" to "Special assessment obligation for parcel of land acquired by foreclosure," to be consistent with the section name within the article. Please provide a hard copy response.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☒ OTHER: Please revise the proposed bill as stated above.

Requestor's signature

Don S. Guzman

Contact Person

Sharon Brooks

(Telephone Extension: 7137)

☐ ROUTINE (WITHIN 15 WORKING DAYS)
☐ PRIORITY (WITHIN 10 WORKING DAYS)

☐ RUSH (WITHIN 5 WORKING DAYS)
☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 22, 2016

REASON: To meet posting deadline for the Council's December 2, 2016 meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: JTU

ASSIGNMENT NO. 2014-3080

BY: LUV

TO REQUESTOR: ☒ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)

☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

DEPARTMENT OF THE CORPORATION COUNSEL

Date

11/18/16

By

[Signature]

(Rev. 7/03)

ear:ltr:036acc02:scb

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AMENDING TITLE 3,
MAUI COUNTY CODE, RELATING TO SPECIAL IMPROVEMENT DISTRICTS

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

SECTION 1. Title 3, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 3.70

SPECIAL IMPROVEMENT DISTRICTS

Sections:

Article I. General Provisions

- 3.70.010 Definitions.
- 3.70.020 Provision of alternate method of financing supplemental services and improvements.
- 3.70.030 Types of supplemental services and improvements.
- 3.70.040 Advances of funds, work, or property in kind.
- 3.70.050 Superiority over conflicting provision of other ordinance.
- 3.70.060 Limitation on challenges.
- 3.70.070 Construction of chapter.
- 3.70.080 Validity of proceedings.

Article II. Proceedings to Establish a Special Improvement District

- 3.70.090 Institution of proceedings.
- 3.70.100 Ordinance establishing the district.
- 3.70.110 District boundaries.
- 3.70.120 District term.
- 3.70.130 Financing of supplemental services and improvements; payment of debt service on any bonds issued to finance improvements; payment of incidental expenses identified in ordinance establishing the district.

- 3.70.140 Designation of supplemental services and improvement area.
- 3.70.150 District association.
- 3.70.160 Financial records.

Article III. Special Assessments

- 3.70.170 Special assessment apportionment.
- 3.70.180 Special assessment levy.
- 3.70.190 Special assessment payment and collection.
- 3.70.200 Special assessment lien.
- 3.70.210 Special assessment notice to owners of land.
- 3.70.220 Special assessment notice to prospective buyer or lessee of parcel of land.
- 3.70.230 Special assessment obligation for parcel of land acquired by foreclosure.

Article IV. Proceedings to Change Authorized Supplemental Services, Improvements, and Special Assessment

- 3.70.240 Authorization to change supplemental service and improvements or special assessment.
- 3.70.250 Request for changes.
- 3.70.260 Contents of proposed ordinance for consideration.
- 3.70.270 Filing of notice.

Article V. Proceedings to Annex Land

- 3.70.280 Authorization to annex; contiguity not required.
- 3.70.290 Ordinance of annexation.
- 3.70.300 Contents of proposed ordinance of annexation.
- 3.70.310 Filing of notice.

Article VI. Public Hearing

- 3.70.320 Public hearing.
- 3.70.330 Notice of hearing.

Article VII. Proceedings to Terminate a District

- 3.70.340 Authorization to terminate the district.
- 3.70.350 Ordinance terminating the district.
- 3.70.360 Contents of proposed ordinance terminating the district.

Article VIII. Protests

- 3.70.370 Protests against proposed ordinance.
- 3.70.380 Protests by a majority.

Article IX. Bonds

- 3.70.390 Bond ordinance.
- 3.70.400 Costs includable in bond principal.
- 3.70.410 Minimum value-to-lien ratio.
- 3.70.420 Covenant to pursue foreclosure action to collect delinquent special assessments.
- 3.70.430 Signing of bonds.
- 3.70.440 Manner of sale.
- 3.70.450 Bond fund.
- 3.70.460 Refunding bonds.
- 3.70.470 Prohibition on issuance of general obligation bonds secured by general credit.
- 3.70.480 Debt limit calculation.

Article I. General Provisions

3.70.010 Definitions. The following definitions shall apply for the purposes of this chapter.

“Assessed value of real property” means the gross value of a parcel of land, as defined below, as assessed by the County’s real property tax office, including the assessed value of any improvements thereon.

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

“Bond ordinance” means an ordinance of the council, which authorizes bonds.

“Costs of supplemental improvements” means the following:

1. Cost of acquiring, improving, or rehabilitating supplemental improvements.
2. Cost of acquiring land or right-of-way for supplemental improvements.
3. Payment of any water, sewer, or other utility connection fee necessary for supplemental improvements.
4. Payment of fees and expenses for planning, architectural, engineering, inspection, legal, financial, or other consultants for supplemental improvements.
5. Reimbursement of an advance of funds for acquiring, constructing, installing, improving, or rehabilitating supplemental improvements.

6. Contribution to a reserve fund for the payment of debt service on bonds issued to finance the costs of supplemental improvements.

7. Not more than two years of interest on bonds issued to finance the costs of supplemental improvements.

8. Costs of issuance related to the issuance of bonds issued to finance the costs of supplemental improvements, including, payment of underwriter's discount or fees, legal fees and expenses (including bond counsel), trustee or fiscal agent fees and expenses, bond insurance premium, letter of credit, or other credit enhancement fees and expenses.

"Costs of supplemental services and improvements" means the following:

1. Cost of obtaining the supplemental services and improvements other than costs of supplemental improvements financed from the proceeds of bonds.

2. Payment of any water, sewer, or other utility connection fee necessary for supplemental services and improvements.

3. Payment of fees and expenses for planning, architectural, engineering, inspection, legal, financial, or other consultants for supplemental services and improvements.

4. Reimbursement of an advance of funds for the costs of obtaining supplemental services and improvements.

"District association" means an association established pursuant to section 3.70.150.

"District board" means the board of directors of a district association.

"Incidental expenses" means the following:

1. Administrative expense of the County associated with the proceedings undertaken pursuant to this chapter or collection of special assessments.

2. Management and administrative costs incurred by the district association.

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

"Land" or "parcel of land" means the real property identified by a tax map key parcel number within the district. For purposes of section 3.70.380, apartments or units of a condominium property regime shall be deemed to be one parcel of land.

"Landowner" or "owner of land" means:

1. The owner of land as shown on the real property tax assessment list, except as otherwise provided under paragraphs (2), (3), or (4) of this definition.

2. Lessee of land or other holder of possessory interest when the owner of land is an entity of the federal, state, or county government and the real property is subject to real property taxation under sections 3.48.530, 3.48.535, and 3.48.540 of this code.

3. Lessee of land who is not shown as the owner on the list, unless the fee simple owner or lessee files with the county clerk one of the following documents before the public hearing described in section 3.70.320, in which case the fee simple owner shall be deemed the “landowner”:

a. A written statement that the lease does not require the lessee to pay any proposed special tax and a written undertaking by the owner to pay any special tax and to refrain from imposing the obligation to pay any special tax upon any successor lessee; or

b. A written waiver of any requirement in the lease that the lessee pay any special tax and a written undertaking by the owner to pay any proposed special tax and to refrain from imposing the obligation to pay any special tax upon any successor lessee.

4. The term does not include any entity of the federal, state, or city government. The governmental entity and its said land shall be disregarded when computing the total number of landowners and amount of land eligible for petition or protest purposes.

“Majority” means more than fifty percent.

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

“Ordinance of consideration” means an ordinance that changes the authorized supplemental services and improvements, the supplemental improvements to be financed, the rate or apportionment of a special assessment, or the boundaries of the district other than an annexation provided in article V, or that requires the levy of a new special assessment.

“Ordinance terminating the district” means an ordinance that terminates a district at the expiration of the then-occurring five-year term.

“Special improvement district” or “district” means a district of land established by the County pursuant to this chapter for providing and financing supplemental services and improvements.

“Supplemental improvement” means any of the undertakings described in section 3.70.030(A)(2), and (3).

“Supplemental services and improvement area” means an area within a district as set forth in section 3.70.110.

“Supplemental service” means any service referred to in sections 3.70.030(A)(1), and (3).

3.70.020 Provision of alternate method of financing supplemental services and improvements. Pursuant to section 46-80.5, Hawaii Revised Statutes, the council may use the provisions of this chapter in addition to, in combination with, or instead of, any other law for or related to the creation of improvement districts, the levying, assessment, and collection of special assessments, the financing of supplemental services and improvements, the issuance of bonds, or other matters covered by this chapter.

3.70.030 Types of supplemental services and improvements. A. A district may be established to provide and finance supplemental services and improvements as follows:

1. To provide and finance additional maintenance, security, or other additional services required for the enjoyment and protection of the public and the promotion and enhancement of such district to restore or promote business activity whether or not in conjunction with improvements authorized by this section, including:

- a. Services to enhance the security of persons and property within the district.
- b. Landscaping services.
- c. Enhanced sanitation services.
- d. Services promoting and advertising activities within the district.
- e. Marketing education for businesses within the district.
- f. Decorations and lighting for seasonal and holiday purposes.

2. To provide and finance, to the extent permitted by law, supplemental improvements located on or within the County or the district which will restore or promote business activity in the district, including:

- a. Construction and installation of landscaping, planting, and park areas.
- b. Construction of lighting facilities.
- c. Construction of safety fixtures, equipment, and facilities.
- d. Construction of improvements to enhance security of persons and property within the district.
- e. Construction of pedestrian overpasses and underpasses and connections between buildings.
- f. Closing, opening, widening, or narrowing of existing streets.

g. Construction of ramps, sidewalks, plazas, and pedestrian malls.

h. Rehabilitation or removal of existing structures.

i. Removal and relocation of utilities and utility vaults.

j. Construction of parking lot and parking garage facilities.

k. Construction of fixtures, equipment, facilities, and appurtenances, as may enhance the movement, convenience, and enjoyment of the public and be of economic benefit to district properties, such as bus stop shelters, benches and street furniture, booths, kiosks, display cases and exhibits, signs, receptacles, canopies, pedestrian shelters, and fountains.

3. To provide for the operation, maintenance, removal, and replacement of any supplemental service or improvement.

B. Any supplemental service or improvement undertaken by a district shall conform with all applicable laws, rules, and regulations.

3.70.040 Advances of funds, work, or property in kind.

After the formation of a district, the district board may accept advances of funds, work, or property in-kind from any source. The district board may enter into an agreement with the person or entity advancing the funds, work, or property in-kind to repay all or a portion of the funds advanced or to reimburse the person or entity for the value or cost, whichever is less, of the work or property in-kind, as determined by the district board, with or without interest; the proposal to repay the funds or reimburse the value or cost of the work or property in-kind shall be included in the ordinance of formation for the district. 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 assessments levied pursuant to this chapter.

3.70.050 Superiority over conflicting provision of other ordinance. When any provision of this chapter conflicts with any other provision or ordinance, the provision of this chapter shall prevail.

3.70.060 Limitation on challenges. Pursuant to section 46-80.5, Hawaii Revised Statutes, no action or proceeding to object to, or question the validity of, or enjoin any ordinance, action, or proceeding undertaken pursuant to this chapter (including the liability for, or the determination of, the amount of any special assessment levied with respect to any property or the levy or assessment thereof) shall be maintained unless begun within thirty days of the effective date of the ordinance, determination, levy, assessment, or other act, as the case may be.

3.70.070 Construction of chapter. This chapter shall be liberally construed in order to effectuate its purposes. No error, irregularity, or informality and no neglect or omission of any officer or other person in any procedure taken under this chapter which does not directly affect the jurisdiction of the County to create a district for the provision of supplemental services and improvements shall invalidate such proceeding or any levy for the costs of such services or improvements.

3.70.080 Validity of proceedings. The failure of any person to receive a notice, 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.

Article II. Proceedings to Establish a Special Improvement District

3.70.090 Institution of proceedings. A. Proceedings for the establishment of a special improvement district may be instituted by the council on its own initiative or by the council at the request of the mayor.

B. Proceedings for the establishment of a special improvement district may be instituted by the council after receipt by the county clerk of a petition requesting the institution of the proceedings signed by owners of land within the proposed district that have a real property tax assessed value of at least twenty-five percent of the total real property tax assessed value of all land in the proposed district.

3.70.100 Ordinance establishing the district. If the council determines to establish a special improvement district, it shall do so by ordinance. The ordinance establishing the district shall:

1. State that a district is established under the terms of this chapter.

2. State the name of the district in substantially the following form: "County of Maui Special Improvement District No. ____." One or more additional descriptive words may be used in the name of the district to indicate its geographic area.

3. State the term of the district.

4. List by tax map key number the parcels of land to be assessed within the district.

5. State the general boundaries of the district and provide a map showing the same. Should any discrepancy exist between the map and the description of the boundaries of the district, the map shall control.

6. State the supplemental services and improvements to be provided and financed by the district and the total annual amount proposed to be expended for the supplemental services and improvements in the first operating year, including incidental expenses.

7. Specify the principal amount of bonds to be issued, if any, to finance supplemental improvements in the district.

8. State the incidental expenses to be paid from the special assessment.

9. If establishment of a supplemental services and improvement area within the district is proposed, state and describe the following:

a. Boundaries of the proposed supplemental services and improvement area.

b. Name proposed for the supplemental services and improvement area.

c. Supplemental services and improvements proposed to be financed by the district.

d. The extent to which district special assessments will be used to finance such services and improvements.

10. State the rate and method of apportionment for the levy of the special assessment.

11. State the exemptions from assessment, in accordance with section 46-80.5(e), Hawaii Revised Statutes.

12. Prescribe the procedures for approval by the appropriate agency of the County for the design, plans, and specifications of any supplemental improvements to be undertaken in a district.

13. Include any other information required by section 46-80.5, Hawaii Revised Statutes, or this chapter.

3.70.110 District boundaries. A. A special improvement district may include areas of land that are not contiguous.

B. Land may be included in more than one special improvement district.

3.70.120 District term. The initial term of the special improvement district shall be for a specified calendar period unless earlier terminated under article VII of this chapter. The ordinance establishing the district shall not set the district term to expire on a date that is earlier than the date by which all outstanding debt service on bonds and incidental expenses for the district are due to be fully paid.

3.70.130 Financing of supplemental services and improvements; payment of debt service on any bonds issued to finance improvements; payment of incidental expenses identified in ordinance establishing the district. A. Only the costs of supplemental services and improvements identified in the ordinance establishing a district may be paid from the special assessments levied within a district.

B. Only the debt service on any bonds issued to finance costs of supplemental improvements within the district and identified in the ordinance establishing the district may be paid from the special assessment levied within a district.

C. Only the incidental expenses identified in the ordinance establishing the district may be paid from the special assessments levied within a district.

3.70.140 Designation of supplemental services and improvement area. For the purpose of financing specified supplemental improvements, the council may designate a portion of a special improvement district as a supplemental services and improvement area. The designation shall be made in the ordinance establishing the district or an amendment thereto. A specified supplemental services and improvement area shall be known as "Service Area No. ____ of County of Maui Special Improvement District No. ____." After the designation of a supplemental services and improvement area, all proceedings to levy special assessments for the financing of the specified supplemental services and improvements shall apply only to the service area, except to the extent otherwise provided in the ordinance establishing the district.

3.70.150 District association. A. There may be a district association for each special improvement district established pursuant to this chapter as provided in the ordinance establishing

the district. The district association shall be a nonprofit corporation in good standing and registered with the State of Hawaii and shall have one or more classes of membership, voting or nonvoting. The purpose of the district association shall be the carrying out of such activities as may be prescribed in the ordinance establishing the district. The articles of incorporation or bylaws of such association shall provide for voting representation of fee simple owners and lessees of land within the district and may provide that the votes of members who are owners of land be weighted in proportion to the assessment levied or to be levied against the parcels of land within the district and that members whose properties are exempt from the assessment be nonvoting members.

B. The district board shall be composed of representatives of fee simple owners, lessees of land, and tenants of commercial space within the district. Not less than a majority of the district board members shall represent fee simple owners, lessees of land, and tenants of commercial space within the district. The district board shall also include the following, all of whom shall serve as the incorporators of the association pursuant to the Hawaii Nonprofit Corporations Act:

1. The director of public works or the director's designated representative, who shall be a nonvoting member.

2. The director of finance or the director's designated representative, who shall be a nonvoting member.

3. The mayor or the mayor's designee, who shall be a voting member.

4. The council member of the district within which the majority of the land area within which the district is located or the council member's designated representative, who shall be a voting member.

C. The nonprofit corporation may be incorporated prior to the effective date of any district established pursuant to this chapter.

D. In addition to such other powers as are conferred to it by law or this chapter, the district board may carry out the activities prescribed in the ordinance establishing the district, including but not limited to:

1. Determining the scope and specifications for the performance standards.

2. Awarding contracts for the supplemental services or for the management of operations of the district.

3. Entering into contracts for the planning, design, construction, and renovation of supplemental improvements.

4. Adopting the annual budget for the district.

E. Any board or association established for the purposes of carrying out the management and activities described in this chapter shall not be deemed a government department or agency, or county, nor to be performing services on behalf of a government department, agency, or county.

3.70.160 Financial records. The district board shall maintain financial records regarding the operation of the district and the contracts for supplemental services and improvements. The district board shall make the financial records available to the public during regular business hours upon reasonable notice to the district board. If required by the ordinance establishing the district, financial records under this section shall be audited by a certified public accountant and the audit report submitted to the council and made available to the public.

Article III. Special Assessments

3.70.170 Special assessment apportionment. A special assessment levied pursuant to this chapter may be based on benefit received by a parcel of land, the cost of making a supplemental service available to a parcel of land, the cost of supplemental services and improvements benefitting a parcel of land, the stage or type of development or use of a parcel of land, the occurrence of one or more specified events related to the development or improvement of all or certain parcels of land, or any reasonable basis or formula as determined by the council. Any determination by the council of the reasonableness of any special assessment or the rate or method of the apportionment thereof in the ordinance establishing the district shall be final and conclusive.

3.70.180 Special assessment levy. A. During the first assessment year, the special assessment shall be levied and apportioned pursuant to the rate and method specified in the ordinance establishing the district. Prior to the commencement of the second and each subsequent special assessment year, the district board shall prepare and submit a report to the council that shall include the anticipated surplus or deficit from the preceding special assessment year as well as the proposed new rate or method of special assessment for the next assessment year. The report shall be due by the date set in the ordinance establishing the district or, if the ordinance does not include such a date, the thirtieth day preceding the commencement of the next assessment year.

1. If the proposed total annual special assessment for a special assessment year does not exceed one hundred ten percent of the preceding special assessment year's total annual special assessment, the new rate based upon the method of special assessment specified in the ordinance establishing the district shall take effect upon the new special assessment year.

2. If the proposed total annual special assessment for a special assessment year exceeds one hundred ten percent of the preceding special assessment year's total annual special assessment, the district board may recommend to the council a change to the rate or method of apportionment of an existing special assessment for a district and the recommendation shall be accompanied by a justification and proposed ordinance of consideration.

B. The district board shall:

1. Determine the annual amount due from each landowner subject to the special assessment; and

2. Adjust annual amounts due when required by the special assessment base or formula in the applicable ordinance establishing the district.

C. Special assessments shall be levied only as long as needed to pay costs of supplemental services and improvements, debt service, and incidental expenses.

3.70.190 Special assessment payment and collection.

A. The director of finance shall collect the special assessment for a district. The director of finance shall deposit all moneys so collected in an account for the district in the general trust fund unless another county fund is identified as the depository in the ordinance establishing the district.

B. All special assessments levied shall be due and payable according to terms established by the district board.

C. Failure to pay the amount assessed when due shall thereafter bear penalty and interest at rates and terms determined by the district board. Penalties and interest shall be sufficient to cover the administrative expenses of the director of finance and shall comply with any provisions relating thereto in any bond ordinance. Any penalties and interest collected shall be deposited in that district's fund.

D. The director of finance may deduct from special assessments collected the administrative expenses incurred in collection and establishment of the district.

E. Special assessments collected shall be transmitted to the district board within fifteen days after the date that they are due and payable to the County.

F. By a date set in the ordinance establishing the district or written agreement between the district board and the County, the director of finance shall prepare and submit a report to the district board summarizing the special assessments collected or that remain unpaid by parcel of land and landowner, the amount of interest and penalties collected, the amount of moneys paid out for district purposes, and the amount of administrative expenses incurred in the collection of special assessments.

3.70.200 Special assessment lien. A. The special assessment levied on real property and the applicable penalty, interest, and costs of collection shall be a lien upon the property assessed. The lien shall attach from the effective date of the ordinance establishing a district and levying the special assessment on the parcel of land and shall be extinguished when the special assessment and any applicable penalties, interest, and costs of collection are fully paid or terminated.

B. The lien of the special assessment shall have priority over all other liens, except the lien of general real property taxes, and shall be on a parity with the lien of assessments levied under sections 46-80 and 46-80.1, Hawaii Revised Statutes, and chapter 14.50 of this code. All liens of assessments made pursuant to this chapter shall be on a parity as to each other without regard to when made or for what purpose.

C. If any special assessment is not paid when due, the department of finance may, after not less than two months of delinquency, foreclose the lien of special assessment to collect the delinquent amount and any penalties, interest, and costs, in the same manner as the foreclosure of the lien of real property taxes.

D. In any event, the department of finance shall foreclose the lien as provided in any bond ordinance and before the end of the sixth year of a delinquency.

3.70.210 Special assessment notice to owners of land. A. For the first assessment year of a district, notices of the special assessment shall be sent to all assessed landowners at the address shown on the real property tax assessment list. The notice shall be sent by the date set in the ordinance establishing the district or, if the ordinance does not include such a date, by the date agreed to by the district board and director of finance. Each notice shall set forth the amount of the special assessment levied, the rate and method of apportionment of the assessment, and the date when the special assessment is due. Failure to give or receive such notice to or by any landowner shall not affect the validity of the special assessment nor entitle the landowner to an extension of time within which to pay the special assessment.

B. After the first special assessment year, notice of special assessments may be sent annually to the assessed landowners or may be included with the real property tax bill at the discretion of the director of finance. The date of the annual notice may be adjusted by the County in accordance with the ordinance establishing the district.

C. The notices of special assessment for the first year and any subsequent year shall be sent by the director of finance or by the district association on behalf of the director if so agreed to by the director and district board.

3.70.220 Special assessment notice to prospective buyer or lessee of parcel of land. Before entering into an agreement to sell or lease a parcel of land subject to a special assessment levy and lien, the landowner shall notify the prospective buyer or lessee of the existence of the levy and lien in writing. Failure to give or receive such notice to or by any landowner shall not affect the validity of the assessment nor entitle the landowner or lessee to an extension of time within which to pay the special assessment.

3.70.230 Special assessment obligation for parcel of land acquired by foreclosure. If a parcel of land subject to a special assessment is acquired by foreclosure, the purchaser of the parcel of land shall take title subject to the lien of the special assessment and shall pay the special assessments then due as part of the purchase price. The purchaser shall be responsible for all special assessments that become due from and after the sale date.

Article IV. Proceedings to Change Authorized Supplemental Services, Improvements, and Special Assessment

3.70.240 Authorization to change supplemental service and improvements or special assessment. A. Upon request of the district board, or on its own initiative, the council may by ordinance, change the authorized supplemental services and improvements, the supplemental services and improvements to be financed, the rate or method of apportionment of a special assessment, or the boundaries of the district other than an annexation provided in Article 5, or the council may require the levy of a new special assessment. Such change or new levy shall be accomplished in accordance with this article.

B. Any other amendments to the ordinance establishing the district not specifically governed by this chapter may be accomplished by ordinance, but need not comply with this article, or article V, or article VII of this chapter.

3.70.250 Request for changes. The council may commence proceedings to approve an ordinance of consideration on its own initiative or upon receiving a request from the district board requesting a change permitted under section 3.70.260 or the levy of a new special assessment.

3.70.260 Contents of proposed ordinance for consideration. A proposed ordinance for consideration shall:

1. State the name of the district.
2. Describe the boundaries of the district.
3. Specify the proposed change to the supplemental services or improvements, the supplemental services or improvements to be financed, or the boundaries.
4. Specify whether the issuance and sale of bonds to finance any supplemental improvements is required.
5. Specify any proposed new special assessment that will be levied to finance new or existing supplemental services and improvements or payment of debt service for supplemental improvements.
6. Specify any proposed change to the rate or method of apportionment of an existing special assessment.

3.70.270 Filing of notice. After the effective date of an ordinance of consideration, the director of finance shall provide notice of any change in the district or the special assessment or levy in the manner specified under section 3.70.210.

Article V. Proceedings to Annex Land

3.70.280 Authorization to annex; contiguity not required. The council may annex an area of land to an existing district in accordance with this article. The annexed land need not be contiguous to the existing district.

3.70.290 Ordinance of annexation. If the council determines that the public convenience and necessity require the addition of land to an existing district, the council may approve an ordinance of annexation adding the land. The ordinance of annexation adding land to an existing district shall be deemed an amendment of the ordinance establishing that district.

3.70.300 Contents of proposed ordinance of annexation.

A. A proposed ordinance of annexation shall:

1. State the name and term of the existing district.
2. Describe the boundaries of the existing district and the area proposed to be annexed.
3. Identify the supplemental services and improvements provided and financed by the existing district, the supplemental services and improvements to be provided and financed by the area proposed to be annexed, and the supplemental services and improvements to be provided and financed in common by both.
4. Specify the proposed special assessment that will be levied within the area proposed to be annexed.
5. Specify any proposed change to the special assessment within the existing district as a result of the proposed annexation.

B. The special assessment rate in the existing district shall not be increased as a result of annexation proceedings pursuant to this article.

3.70.310 Filing of notice. After the effective date of an ordinance of annexation, the director of finance shall provide notice of any special assessment change or levy in the manner specified under section 3.70.230.

Article VI. Public Hearing

3.70.320 Public hearing. The council shall hold a hearing on any of the following proposed ordinances:

1. Ordinance establishing the district.
2. Ordinance of consideration.
3. Ordinance of annexation.
4. Ordinance terminating the district.

3.70.330 Notice of hearing. A. In addition to any public notice given pursuant to applicable law, the county clerk shall mail notice of the council public hearing to each owner of land in the district or proposed district or annexation. The notice shall be sent to the same address to which the real property tax assessment notice is sent. When more than one person is listed as fee owner or as lessee, one notice sent to one fee owner and to one lessee, as applicable, shall be sufficient for this section. The notice shall be mailed at least fifteen days before the council public hearing and shall contain the following information:

1. A summary of the proposed ordinance and the fact that the ordinance and the district map are on file in the county clerk's office for public inspection.

2. The time and place of the public hearing on the proposed ordinance.

3. A statement that, at the hearing, the testimony of all interested persons and landowners regarding the proposed ordinance will be heard.

4. A summary of the protest procedure and the form of any protests.

B. Failure to give notice to any owner or failure of any owner to receive such notice shall not affect the validity or effectiveness of the public hearing or any other proceedings taken under this chapter or any special assessment levied under this chapter if the council determines that a reasonable effort was made to give such notice. The council's determination shall be final and conclusive.

C. At the conclusion of the hearing, the council, after considering all protests and such other relevant factors (such as the general plan or community plan) as it deems appropriate, may approve the proposed ordinance.

Article VII. Proceedings to Terminate a District

3.70.340 Authorization to terminate the district. A. The council may terminate a district or appoint replacement board members of a district at any time for cause due to the willful misconduct or gross negligence on the part of the district board. The council shall initiate proceedings to terminate the district for cause by a resolution and shall terminate the district by an ordinance.

B. The council, on its own initiative, may terminate a district prior to the expiration of the district term in accordance with this article. The council shall initiate proceedings to terminate a district at the expiration of the then occurring district term by a resolution and shall terminate the district by an ordinance.

C. The council may terminate a district at any time upon request from the district board. A termination shall be accomplished in accordance with this article.

D. Except as set forth herein, the council may not initiate proceedings to terminate a district.

E. The council shall not terminate a district prior to all outstanding debt service on bonds being paid in full.

3.70.350 Ordinance terminating the district. A. Upon its own initiative or receipt of the request from the district board, as set forth in section 3.70.340, if the council determines that the public convenience and necessity will be promoted by terminating a district, the council may approve an ordinance terminating the district.

B. The council shall not approve an ordinance terminating a district:

1. Unless provisions are included to assure the payment of all outstanding debt service on any bonds issued to finance improvements within the district from the assessments or accumulated reserves of the district or as council otherwise deems necessary; and

2. Unless provisions are included to assure the payment of all outstanding incidental expenses and supplemental services expenses accrued for the district from the assessments or accumulated reserves of the district or as council otherwise deems necessary.

3.70.360 Contents of proposed ordinance terminating the district. A proposed ordinance terminating the district shall:

1. State the name of the district.
2. Describe the boundaries of the district.
3. Identify the proposed termination date of the district.

4. Give a narrative justification for the proposed termination.

5. With respect to bonds issued to finance improvements for the district:

- a. Guarantee the payment of the bonds before the termination of the district; or

- b. Establish a method by which the bonds will be paid after the termination of the district.

6. With respect to incidental expenses accrued for the district:

- a. Guarantee the payment of the incidental expenses before the termination of the district; or

- b. Establish a method by which incidental expenses, if any, will be paid after the termination of the district.

7. With respect to supplemental services expenses accrued for the district:

- a. Guarantee the payment of the supplemental services expenses before the termination of the district; or

b. Establish a method by which supplemental service expenses, if any, will be paid after the termination of the district.

Article VIII. Protests

3.70.370 Protests against proposed ordinance. Protests against an ordinance establishing a district, an ordinance of consideration, or an ordinance of annexation may be made in writing by owners of lands assessed or proposed to be assessed within a district and if made shall be in such form as may be prescribed by the county clerk. All written protests shall be filed with the county clerk before or at the hearing. The council may waive any irregularities in the form or content of any written protest. Written protests may be withdrawn in writing by the owner who protested at any time before the conclusion of the hearing.

3.70.380 Protests by a majority. A. If the owners of lands assessed or proposed to be assessed within a district that have a real property tax assessed value constituting more than fifty percent of the total real property tax assessed value of all lands assessed or proposed to be assessed within the proposed district, district, or annexation to the district, or a majority of the landowners being assessed or proposed to be assessed within the proposed district, district, or annexation to the district file written protests with the council before or at the public hearing against a proposed ordinance establishing a district, an ordinance of consideration, or an ordinance of annexation and if protests are not withdrawn so as to reduce the amount of the protests to less than a majority, the ordinance shall not be approved. No proceedings to adopt such an ordinance shall again be undertaken for a period of ninety days from the date of the public hearing. The council may continue the public hearing or recess the hearing to provide the county clerk time to count the protests and any withdrawals.

B. For the purpose of determining whether a majority of the landowners or owners of land have filed protests, the owner of each apartment or unit in a condominium property regime that is specially assessed or proposed to be specially assessed shall have a vote equal to the following fraction: one over the number of apartments or units in the condominium property regime which are, or are proposed to be, specially assessed.

Article IX. Bonds

3.70.390 Bond ordinance. A. Whenever the council deems it necessary or appropriate that special improvement district bonds be issued to finance the cost of supplemental improvements or to reimburse the cost thereof previously paid, the council may authorize the issuance of bonds. The issuance shall be authorized by a bond ordinance approved with or after the approval of the ordinance establishing the district and levying the special assessment to finance the costs of supplemental improvements. The bond ordinance shall provide for the following:

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 thirty years after the issuance date of the bonds.
4. The rate or maximum rate of interest on the bonds, which shall not exceed the maximum rate permitted by law and which may be fixed or variable and 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 assessments collected from the district thereof, the liens securing such assessments, or any other funds which are intended by the council to secure payment of the bonds. The pledge shall be valid and superior to all other claims on the assessments, except to the extent otherwise provided in this chapter and the bond ordinance.
15. The establishment and handling of a separate special fund or funds to pay or secure the bonds or to pay for the costs of supplemental improvements or incidental expenses.
16. The obligations in which may be invested the proceeds of the bonds and any other funds, including special assessments pledged to secure payment of the bonds.

17. Any other provisions for the issuance, payment, security, credit enhancement, handling of funds, default, remedy, or other matter related to the bonds, which the council deems appropriate.

B. The bond ordinance may provide that any or all of the terms listed in this section or elsewhere in this article may be determined and fixed by the director of finance at or prior to the delivery of the bonds or in an indenture, trust agreement, or fiscal agent agreement between the County and a corporate trustee or fiscal agent located within or without the State.

3.70.400 Costs includable in bond principal. The principal amount of bonds authorized to be issued may include all costs and estimated costs of supplemental improvements and related expenses, including costs of issuance of the bonds.

3.70.410 Minimum value-to-lien ratio. The principal amount of bonds authorized to be issued for a district shall not exceed one-third of the value of the real property upon which an assessment 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, the improvements thereon and the improvements, within the meaning of section 3.70.030, to be constructed within the district, as shown by the real property tax assessed values of the subject property. The improvements to be constructed within the district may be assumed to have fair market value equal to the cost of such improvements.

3.70.420 Covenant to pursue foreclosure action to collect delinquent special assessments. The director of finance may covenant, for the benefit of bond owners, to commence and diligently pursue to completion any foreclosure action regarding delinquent assessments. The covenant may specify a deadline for commencement of the foreclosure action and any other terms and conditions the director of finance determines reasonable regarding the foreclosure action.

3.70.430 Signing of bonds. Unless otherwise specified in the bond ordinance, the bonds shall be signed by the mayor and countersigned by the director of finance or the director's deputy. Signatures on the bonds may be manual or facsimile. If any officer whose signature appears on the bonds vacates the office before the delivery of the bonds, the signature shall be effective as if the officer had remained in office.

3.70.440 Manner of sale. The director of finance may sell bonds 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.

3.70.450 Bond fund. All of the collections for payment of principal, of and interest on, bonds and related expenses shall be paid into a district bond or reserve fund and shall be used solely for the payment of the principal of, and interest on, the outstanding bonds of the district and related expenses, all as provided in the bond ordinance.

3.70.460 Refunding bonds. A. The council may authorize the issuance of bonds to refund any or all of the district bonds outstanding that have been issued pursuant to this article. The refunding bonds shall be authorized by a bond ordinance.

B. 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.

C. The designated costs of issuing refunding bonds shall be paid from proceeds of the refunding bonds, interest earned on such proceeds, or special assessments from the district. However, any interest or special assessments paid for the designated costs 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 subsection B.

The designated costs of issuing the refunding bonds may include any of the following costs and expenses and shall be designated by the council in the bond ordinance authorizing the issuance of the refunding bonds:

1. All expenses incident to the calling, retiring, or paying of the bonds to be refunded and incident to the issuance of refunding bonds, including the charges of any agent in connection with the issuance of the refunding bonds or the redemption or retirement of the bonds to be refunded.

2. The interest upon the refunding bonds from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

3. Any premium necessary in the calling or retiring of the bonds to be refunded.

4. Any insurance premium or fee payable to the issuer of a bond insurance policy or letter of credit insuring all or part of the principal and interest due on the refunding bonds.

5. Any other incidental expenses related to the issuance or carrying of the refunding bonds or the redemption or refunding of the bonds to be refunded.

D. The saving achieved through the issuance of refunding bonds shall be used by the council to reduce the special assessment levied in the district.


At the time the council authorizes the issuance of refunding bonds, the council shall also authorize the reduction of the special assessments levied in the district. The reduction shall be made through an ordinance of consideration pursuant to article IV.

3.70.470 Prohibition on issuance of general obligation bonds secured by general credit. The County's general credit shall not secure any bonds issued hereunder.

3.70.480 Debt limit calculation. Bonds issued under this article, 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 Hawaii."

SECTION 2. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



JEFFREY UEOKA
Department of the Corporation Counsel
County of Maui
EAR-36 2016-11-18 Ordinance