

REQUEST FOR LEGAL SERVICES

Date: April 17, 2017
From: Riki Hokama, Chair
Budget and Finance Committee


TRANSMITTAL

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

Subject: **FISCAL YEAR ("FY") 2018 BUDGET** (CC-4) (BF-1)

Background Data: Bill to repeal Kihei collection/transmission system project assessment fee

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Riki Hokama	Contact Person Carla Nakata or Traci Fujita (Telephone Extension: 7659 or 7687)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): April 20, 2017
REASON: Receipt prior to posting for decision-making meetings

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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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 _____

By _____

(Rev. 7/03)

bf:2018bgt:170405acc01:cmn

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 14.34, MAUI COUNTY CODE, TO REPEAL THE COLLECTION AND TRANSMISSION SYSTEM PROJECT ASSESSMENT FEE

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

SECTION 1. Chapter 14.34, Maui County Code, is amended to read as follows:

“Chapter 14.34

**WASTEWATER ASSESSMENT FEES FOR FACILITY EXPANSION
[AND THE COLLECTION/TRANSMISSION SYSTEM UPGRADE]
FOR THE KIHEI REGIONAL WASTEWATER TREATMENT
SYSTEM**

Sections:

- 14.34.010 Purpose.
- 14.34.020 Authority.
- 14.34.030 Definitions.
- 14.34.040 Scope of assessments.
- 14.34.050 Payment of assessments.
- 14.34.060 Facility expansion assessment fee.
- 14.34.070 [Collection/transmission system project assessment fee.
- 14.34.080] Credits.
- [14.34.090] 14.34.080 Exemptions.
- [14.34.100] 14.34.090 Appeal.

14.34.010 Purpose. The purpose of this chapter is to establish wastewater assessment fees for the expansion of the Kihei Wastewater Treatment Plant [and the upgrade/expansion of the Kihei wastewater transmission system]. Assessment fees shall be paid by developers before the issuance of building permits or as otherwise provided in this chapter, for those developments which will utilize expansion capacity in the Kihei regional wastewater

treatment system [and which will create additional impact upon the Kihei wastewater transmission system].

14.34.020 Authority. This chapter is adopted pursuant to article VIII of the Constitution of the State of Hawaii, the charter of the State of Hawaii, the charter of the county of Maui, and the authority granted to the county by chapters 46, 205, and 205A of the Hawaii Revised Statutes.

14.34.030 Definitions. For purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used in this chapter are defined as follows:

["Accessory dwelling" shall have the same meaning as contained in section 19.04.040 of this code.

"Affordable housing" means a publicly or privately constructed long-term residential development in which units are to be either (1) sold at a price at which persons or families whose incomes are not more than one hundred forty percent of the area median income, as determined by the United States Department of Housing and Urban Development, and can qualify for mortgage financing; or (2) rented at an annual amount which constitutes no more than thirty percent of the area median income. Qualified purchasers must not have owned real property within the State of Hawaii for at least three years preceding such qualification. "Affordable housing" also means housing built by an applicant as an owner occupant and whose income is not more than one hundred forty percent of the area median income.]

"Applicant" means any person, partnership, corporation, trust, or agent who has applied for a building permit.

"Assessment" means the dollar amount to be paid by an applicant as the pro rata share for the construction of the expansion of wastewater facilities [and collection/transmission system upgrade] for the Kihei regional wastewater treatment system as determined in accordance with this chapter.

"Building" shall have the same meaning as defined in the Uniform Building Code as adopted, amended, or replaced by the county.

"Building permit" means the official document or certificate [required in section 16.04.090 of the Maui County Code,] issued by the county, authorizing the construction, erection, enlargement, alteration, or repair of any building or structure.

“Churches” means structures used primarily for religious or sectarian purposes.

["Collection/transmission system project assessment fee" means the fee to be paid by an applicant as the pro rata share of the cost for upgrading the Kihei wastewater transmission system.

“Component cost” means costs for sewer pump station improvements, force main replacements, and interceptor sewer replacement for the Kihei collection/transmission upgrade project.

“County” means the county of Maui, a political subdivision of the State of Hawaii.]

“Department” means the department of public works of the county.

“Development” means any man-made change to improved or unimproved real property which shall include the construction, expansion, or erection of buildings or structures, exclusive of any filling, excavation, or grading work.

“Director” means the director of public works of the county.

“Expansion study” means the Kihei District Wastewater System Expansion Study by Norman Saito Engineering Consultants, Inc., dated March, 1989.

“Facility expansion assessment fee” means the fee to be paid by an applicant as the pro rata share, based on contract cost to construct the expansion of the Kihei Wastewater Treatment Plant.

“Long-term residential or long-term residential basis” means a single-family, two-family, or multifamily dwelling which is occupied by an owner or lessee for terms of not less than six months.

“Project flow” means the estimated wastewater discharge as a result of development. Such estimates for residential developments shall be based upon standards set forth in the expansion study. Estimates for nonresidential developments shall be based upon engineering estimates submitted by applicant and approved by the department.

“Public schools” means any schools constructed by or on behalf of the department of education, State of Hawaii.

“Structure” shall have the same meaning as defined in the [Uniform] International Building Code as adopted, amended, or replaced by the county.

14.34.040 Scope of assessments. All developments which will require expansion capacity in the Kihei regional wastewater

treatment system [and which will create additional impact in the Kihei wastewater transmission system] shall be subject to the provisions of this chapter.

14.34.050 Payment of assessments. A. [Payment of the assessments] Assessments contained in this chapter shall be paid to the department prior to the approval of a building permit. For those developments which have been granted building permits or have been issued certificates of occupancy but would otherwise be subject to the provisions of this chapter, assessments shall be paid within sixty days of notice of the assessment.

B. Upon payment of the assessment, the wastewater capacity paid for shall be for the benefit of the development requiring such capacity and shall not be transferred, exchanged, sold or otherwise conveyed.

14.34.060 Facility expansion assessment fee. Applicants for building permits to construct developments shall be assessed a fee as set forth in the annual budget.

[14.34.070 Collection/transmission system project assessment fee. Applicants for building permits to construct developments shall be assessed a fee for the collection/transmission system upgrade. Such project assessment fee shall be determined by multiplying the component cost times the quotient of the project flow divided by the total number of gallons.

14.34.080] 14.34.070 Credits. A. Credit may be given to an applicant if the applicant has made financial contributions to the expansion study and has not been reimbursed by the county. The applicant shall submit to the director documentation to substantiate contributions made to the expansion study.

B. The assessment fee shall be reduced by the contributions made.

C. Credits may not be transferred or assigned by developer.

[14.34.090] 14.34.080 Exemptions. This chapter shall not apply to those developments granted building permits after January 1, 1989 [and] which are:

A. County housing projects [and] or other county facilities;

[B. Affordable housing units which, for a period of five years after the original purchase, are:

1. Sold to the county of Maui at a price which shall not exceed the sum of:

a. The original cost to the purchaser,

b. The cost of any improvements added by the purchaser, and

c. Simple interest on the case equity of the property at the rate of seven percent a year, pursuant to section 2.86.610B6aiii, of this code.

2. If the county does not exercise its right to purchase the unit, the homeowner may sell the unit at the market price, but must pay the county the assessment; and

3. Within the five-year period, the homeowner may pay the assessment, in which case the unit may be sold at the market price.

4. The terms of the exemption from the assessment fee shall be set forth in a unilateral agreement. The agreement shall be recorded with the bureau of conveyances or the land court and the agreement shall run with the land and shall bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. The agreement shall be enforceable by the county, by appropriate action at law or suit in equity, against the parties and their heirs, personal representatives, successors, and assigns;

C. Accessory dwellings which meet affordable housing requirements;]

[D.] B. Churches; or

[E.] C. Public schools.

[14.34.100] 14.34.090 Appeal. Any decision regarding the amount of the assessment may be appealed to the board of variances and appeals in accordance with chapter 18.36 of this code.”

SECTION 2. Any balance remaining in the Kihei Collection System Assessment account as of June 30, 2017, shall be transferred to the Sewer Fund.

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This ordinance shall take effect on July 1, 2016.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

bf:2018bgt:kihei wastewater collection (4-7-
17)