

ORDINANCE NO. _____

BILL NO. 118 (2021)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, RELATING TO REAL PROPERTY DEDICATED AS 'ĀINA KŪPUNA

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

SECTION 1. Chapter 3.48, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

“3.48.361 Real property dedicated as ‘āina kūpuna. A.
For use in this section, the following definitions apply:

1. “Agriculture” means the production of plant and animal life for food and fiber, and for raw materials for processed products, and includes the following along with their accompanying services and facilities: fruit, vegetable, and flower growing; forestry; aquaculture; beekeeping; and grazing and dairying.

2. “Āina kūpuna” means real property owned in whole or in part in fee simple by one or more descendants of the person who owned the property at least eighty years prior to the application.

“Descendant” has the same meaning as defined in section 560:1.201, Hawai‘i Revised Statutes.

A descendant may own the property as an individual or with other individuals, or a descendant’s beneficial ownership interest may be represented by one or more trustees. Ownership of the property may also be held by a corporation, limited liability company, or similar entity, as long as the descendant’s ownership interest in the entity is greater than 50 percent and the entity is not a corporation where the stock is sold to or owned by the general public.

3. “Commercial purposes” means the production, processing, manufacturing, warehousing, distribution, or sale of goods, or the operation of transient vacation rentals, short term rental homes, and bed and breakfast homes. Commercial purposes do not include:

a. Agriculture.

b. Real property that does not serve as the owner’s principal residence and was granted, prior to

May 23, 2012, a conditional permit for transient vacation rental use in accordance with the comprehensive zoning ordinance and was classified as “commercialized residential” prior to May 23, 2012.

B. A special reserve is established to enable the owner of any real property to dedicate the real property as ‘āina kūpuna for a period of ten years and to have the dedicated real property subject to the minimum tax when all of the following criteria are met:

1. The real property dedicated must qualify as ‘āina kūpuna.

2. The real property dedicated must not be conveyed to a non-descendant for the duration of the dedication.

3. The real property dedicated must not be used for commercial purposes for the duration of the dedication.

4. The real property must be located in the special management area as defined in section 205A-22, Hawai‘i Revised Statutes.

5. The aggregate real property taxes assessed on the property for the prior ten tax years exceeded \$50,000.

6. The majority of owners, trustees, board of directors, or shareholders are residents of the County.

C. If any owner desires to dedicate their real property as ‘āina kūpuna, they must petition the director and declare in the application that if the application is approved, no portion of the dedicated real property will be conveyed to a non-descendant or used for commercial purposes for no less than ten years following approval of the application. The owner is responsible for the cost of obtaining evidence in support of the application.

1. If the applicant is not identified as an owner of the property in the records of the director, the director will require the applicant, at applicant’s expense, to obtain a deed, court order, or other reliable evidence to verify ownership of the property.

2. For purposes of determining whether the lineal descendancy requirement has been satisfied, genealogy verification by the Office of Hawaiian Affairs or by court order will be deemed sufficient.

3. Evidence includes conveyance deeds, wills, trusts, birth certificates, death certificates, and other legally valid documentation demonstrating legal ownership and lineal descendancy.

D. The ‘āina kūpuna application described in subsection C must be filed with the director by December 31 of any calendar year, in a form prescribed by the director.

1. Following receipt of an application the director must make a finding of fact as to whether the applicant described in the application qualifies. If the finding is favorable to the

owner, the director must approve the application and declare the real property to be dedicated. If approved, the minimum tax takes effect the succeeding tax year, and penalties and interest from the 2021 and 2022 tax years must be removed from these portions of the real property designated as ‘āina kūpuna. No new penalties and interest will be assessed during the dedication period and the director will have the authority to waive section 3.48.250.

2. If the applicant does not qualify for the ‘āina kūpuna dedication, the director must notify the applicant on or before March 1 preceding the tax year.

E. To maintain the ‘āina kūpuna dedication on real property, the owner must apply for renewal during the ninth year of each dedication period, for an additional period of no less ten years subject to cancellation by the owner.

F. Failure to comply with the ‘āina kūpuna restrictions on real property use beyond a period of two weeks after a notice and warning to the owner by the director, or the conveyance to a non-linear descendant automatically terminates the special minimum tax privilege retroactive to the date of the dedication, or the commencement of the latest renewal period; and all differences in the amount of taxes that were paid and those that would have been due from assessment without the minimum tax privilege are payable with a 10 percent penalty from the respective dates that these payments would have been due. The additional taxes and penalties, due and owing as a result of a breach of the dedication, constitute a paramount lien upon the real property assessed. Nothing in this subsection precludes the County from pursuing any other remedy to enforce the covenant on the use of the real property.

G. The applicant may appeal any disapproved application as in the case of an appeal from an assessment.

H. To place prospective buyers on notice of the roll back liability, the applicant must, within thirty days of notice of approval, record the dedication in accordance with the procedures of the bureau of conveyances or land court. The director will prescribe the form of the dedication.”

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This Ordinance takes effect on approval.

paf:kmat:21-330b

DIGEST

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A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY
CODE, RELATING TO REAL PROPERTY DEDICATED AS 'ĀINA KŪPUNA

This bill proposes to amend Chapter 3.48, Real Property Tax, Maui County Code, to add a section relating to taxes on parcels dedicated as 'āina kūpuna.

I, KATHY L. KAOHU, County Clerk of the County of Maui, State of Hawaii, DO
HEREBY CERTIFY that the foregoing BILL NO. 118 (2021) was passed on First Reading
by the Council of the County of Maui, State of Hawaii, on the 5th day of November, 2021,
by the following vote:

AYES: Councilmembers Gabriel Johnson, Natalie A. Kama, Michael J.
Molina, Tamara A.M. Paltin, Shane M. Sinenci, Yuki Lei K. Sugimura,
Vice-Chair Keani N.W. Rawlins-Fernandez, and Chair Alice L. Lee.

NOES: None.

EXCUSED: Councilmember Kelly T. King.

DATED at Wailuku, Maui, Hawaii, this 12th of November, 2021.



KATHY L. KAOHU, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk,
County of Maui, for use and examination by the public.