

COUNCIL OF THE COUNTY OF MAUI

# BUDGET AND FINANCE COMMITTEE

July 7, 2009

**Committee  
Report No.** \_\_\_\_\_

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Budget and Finance Committee, having met on June 16, 2009, makes reference to County Communication No. 08-249, from the Director of Finance, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTIONS 3.48.305 AND 3.48.450, MAUI COUNTY CODE, PERTAINING TO BED AND BREAKFAST REAL PROPERTY TAX CLASSIFICATION".

The purpose of the proposed bill is to establish a "bed and breakfast" real property tax classification, and to clarify that a homeowner's exemption shall not be allowed for real property classified as a bed and breakfast.

Your Committee notes that the Council's Budget and Finance Committee (2007 - 2009 Council term) met on November 17, 2008 and December 1, 2008.

By correspondence dated June 9, 2009, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTIONS 3.48.305 AND 3.48.450, MAUI COUNTY CODE, PERTAINING TO COMMERCIALIZED RESIDENTIAL PROPERTY TAX CLASSIFICATION".

The purpose of the revised proposed bill is to create a "commercialized residential" real property tax classification, which would include bed and breakfast and transient vacation rental units, and to clarify that a homeowner's exemption shall not be allowed for real property classified as "commercialized residential".

The Director of Finance explained that bed and breakfast and transient vacation rental units will be taxed at the highest and best use for the property if a new classification is not created for these type of units. He stated that the highest and best use for these operations will be the hotel classification, which may be inappropriate for operations that do not provide the full services of a hotel.

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Your Committee noted that taxing these units at the hotel rate would result in a large real property tax rate increase, from \$2.00 to \$8.20 for homeowners and from \$4.85 to \$8.20 for improved residential properties. Your Committee decided that there should be a specific real property tax rate for commercialized residential units.

Your Committee further noted that the revised proposed bill establishes a new “commercialized residential” class for bed and breakfast and transient vacation rental units, but does not set the real property tax rate. The real property tax rate will be set by the Council during the Fiscal Year 2011 budget deliberations.

Your Committee further noted that the revised proposed bill will bring consistency between Section 19.64.030, Maui County Code (MCC), relating to restrictions and standards for bed and breakfast homes, and Section 3.48.450, MCC, relating to standards for valuation for real property tax purposes.

In response to concerns expressed in testimony about the term “commercialized residential”, the Director of Finance explained that the MCC defines the word “commercial” as any revenue generating activity. He said that the name of the new real property tax classification will not have any impact on the eventual rate established for this classification.

Your Committee voted 5-3 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Pontanilla, Vice-Chair Mateo, and members Kaho`ohalahala, Medeiros, and Nishiki voted “aye”. Committee members Baisa, Johnson, and Molina voted “no”. Committee member Victorino was excused.

Your Budget and Finance Committee RECOMMENDS the following:

1. That Bill No. \_\_\_\_\_ (2009), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING SECTIONS 3.48.305 AND 3.48.450, MAUI COUNTY CODE, PERTAINING TO COMMERCIALIZED RESIDENTIAL PROPERTY TAX CLASSIFICATION”, be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 08-249 be FILED.

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This report is submitted in accordance with Rule 7 of the Rules of the Council.

  
\_\_\_\_\_  
JOSEPH FONTANILLA, Chair

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ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2009)

A BILL FOR AN ORDINANCE AMENDING SECTIONS  
3.48.305 AND 3.48.450, MAUI COUNTY CODE, PERTAINING  
TO COMMERCIALIZED RESIDENTIAL PROPERTY TAX CLASSIFICATION

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

SECTION 1. Section 3.48.305, Maui County Code, is amended  
to read as follows:

**"3.48.305 Classification of land.** A. Except as otherwise provided in subsection B of this section, land shall be classified, upon consideration of its highest and best use, into the following general classes:

1. Improved residential;
2. Unimproved residential;
3. Apartment;
4. Hotel and resort;
5. Time share;
6. Commercial;
7. Industrial;
8. Agricultural;
9. Conservation; [and]
10. Homeowner[.]; and
11. Commercialized residential.

B. In assigning land to one of the general classes, the director of finance shall give major consideration to the districting established by the land use commission pursuant to chapter 205 of the Hawaii Revised Statutes, the districting established by the county in its general plan and zoning ordinance, use classifications established in the general plan of the State, and such other factors [which] that influence highest and best use, except that [a parcel which]:

1. A parcel that is used exclusively as the owner's principal residence and has been granted a home exemption in accordance with sections 3.48.410 and 3.48.475 of this chapter shall be classified as "homeowner" without regard to [the] its highest and best use[.], and

2. A parcel that has been granted a bed and breakfast permit, a transient vacation rental permit, or a conditional permit to operate a transient vacation rental pursuant to title 19 of

this code shall be classified "commercialized residential" without regard to its highest and best use.

C. When property is subdivided into condominium units, each unit shall be classified upon consideration of its actual use into one of the general classes as follows:

1. Homeowner. Only those units owned and occupied as a principal home and for which a home exemption claim was filed and granted shall be classified as "homeowner."

2. Apartment. Only those units occupied by the owner for personal use or by a lessee for a term of six consecutive months or more shall be classified as "apartment."

3. Commercial. Only those units occupied by the owner or a lessee for business or mercantile activities shall be classified as "commercial."

4. Hotel and Resort. Units occupied by transient tenants for periods of less than six consecutive months shall be classified as "hotel and resort."

5. Time share. Units occupied by transient tenants for periods of less than six consecutive months and units subject to a time share plan as defined in section 514E-1, Hawaii Revised Statutes, as amended, shall be classified as "time share."

6. Commercialized residential. Units that have been granted a bed and breakfast permit, a transient vacation rental permit, or a conditional permit to operate a transient vacation rental pursuant to title 19 of this code shall be classified as "commercialized residential."

D. "Improved residential" means land which is classified as residential by the department of finance upon consideration of its highest and best use, and is property which fulfills the provisions of at least one of the following subparagraphs:

1. Land which has been subdivided prior to any assessment year as a lot for single-family or two-family residential use in conformity with the then existing county zoning ordinances, and has been approved for sale or approved as being in conformity with all of the subdivision requirements of the county; or

2. Land which is in actual single-family or two-family residential use at a density of at

least a single-family or a two-family residential building per acre; or

3. Land which is sufficiently developed with necessary land improvements to support a use density of at least a single-family or a two-family residential building per acre.

E. "Unimproved residential property" means all residential class lands not classified as "improved residential."

SECTION 2. Section 3.48.450, Maui County Code, is amended to read as follows:

**"3.48.450 Homes--standards for valuation.** A. Real property owned and occupied only as a principal home, as of the date of assessment, by an individual or individuals, shall be exempt only to the following extent from property taxes:

1. Totally exempt where the value of the property is not in excess of \$300,000; or

2. Where the value of the property is in excess of \$300,000, the exemption shall be in the amount of \$300,000.

B. The provisions of subsection A of this section shall apply, provided, as follows:

1. That no such exemption shall be allowed to any corporation, copartnership, or company;

2. That the exemption shall not be allowed on more than one home for any one taxpayer;

3. That where the taxpayer has acquired a home by a deed made on or after July 1, 1951, the deed shall have been recorded on or before December 31 immediately preceding the year for which the exemption is claimed;

4. That a husband and wife shall not be permitted exemption of separate homes owned by each of them, unless they are living separate and apart; in which case they shall be entitled to one exemption, to be apportioned between each of their respective homes in proportion to the value thereof; [and]

5. That a person living on premises, a portion of which is used for commercial purposes, shall not be entitled to an exemption with respect to such portion, but shall be entitled to an exemption with respect to the portion thereof used exclusively as a home[.]; and

6. That no such exemption shall be allowed for any real property that is classified as "commercialized residential."

C. For purposes of this section, "real property owned and occupied only as a principal home" means occupancy of a home in the County with the intent to reside in the County. Intent to reside in the County may be evidenced by, but not limited to, the following:

1. Occupancy of a home in the County for more than [tow] two hundred seventy calendar days of a calendar year;

2. Registering to vote in the County;

3. Being stationed in the County under military orders of the United States;

4. Filing of an income tax return as a resident of the State of Hawaii with a reported address in the County; or

5. A mailing address consistent with the subject property.


D. The director may demand documentary evidence of intent to reside in the County from a property owner applying for an exemption or from an owner as evidence of continued qualification for an exemption. Failure to respond to the director's request in a timely manner shall be grounds for denial of a claim for an exemption.

E. In the event the director obtains evidence that an individual resides in a home outside the County, such evidence shall serve as prima facie proof that the individual does not own and occupy real property in the County as a principal home, and the director shall provide written notice to the individual by certified mail that the individual shall not be qualified for an exemption or continued exemption under this section."

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 be effective for tax years beginning on or after July 1, 2011.

APPROVED AS TO FORM  
AND LEGALITY:

  
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TRACI FUJITA VILLAROSA  
First Deputy Corporation Counsel  
County of Maui

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