

COUNCIL OF THE COUNTY OF MAUI

# BUDGET AND FINANCE COMMITTEE

August 24, 2010

**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 1, 2010 and August 3, 2010, makes reference to a Miscellaneous Communication dated May 20, 2010, from the Council Chair, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 3.48.305, MAUI COUNTY CODE, PERTAINING TO REAL PROPERTY TAX LAND CLASSIFICATION".

The purpose of the proposed bill is to combine the land classifications for "Improved residential" and "Unimproved residential" into one land classification entitled "Residential", and delete the consideration of actual use for properties subdivided into condominium units.

According to the Director of Finance, condominium owners currently have the ability to self-certify the use of their units. The County assesses each unit according to the use identified in the self-certification. However, the County assesses all other parcels at their highest and best use, except for homeowner and bed and breakfast units, without allowing the owner to declare a lower use. The Director indicated that if the proposed bill had been implemented in Fiscal Year 2011, condominium units would have been assessed at their highest and best use, generating approximately \$8.5 million in real property tax revenue. The Director identified 11 condominium projects that would be most affected by the proposed bill. These are condominiums that are not rented or are rented on a long-term basis, and would be charged the hotel/resort real property tax rate under the proposed bill, instead of a lower apartment rate.

After considering extensive public testimony, your Committee decided to allow condominium owners to continue to self-certify the use of their units, provided the condominium association submits, to the Department of Finance before December 1 of each calendar year, an annual list of how the units in the association were used. The list would be used by the Department as one mechanism to ensure that the real property tax classifications are accurate. Furthermore, your Committee decided that the Director of Finance should be allowed to classify all of the units in a condominium association at their highest and best use if there is evidence that the association is deliberately providing

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inaccurate information in its annual report. If the Director finds a condominium association to be in violation of the owner's certification of actual use, the Director may reclassify and reassess any unit.

As requested by the Director of Finance, your Committee recommended that the proposed bill be revised to add timeshare units in the list of exceptions to classifications that are assessed according to highest and best use.

By correspondence dated July 23, 2010, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 3.48.150, MAUI COUNTY CODE, RELATING TO ASSESSMENT OF PROPERTY – GENERALLY, SECTION 3.48.305, MAUI COUNTY CODE, RELATING TO REAL PROPERTY TAX LAND CLASSIFICATION, AND AMENDING SECTION 18.16.320, MAUI COUNTY CODE, RELATING TO PARKS AND PLAYGROUNDS".

The revised proposed bill revises Sections 3.48.150 and 18.16.320, Maui County Code (MCC), to strike references to land classifications for "Improved" and "Unimproved" residential and reflect the new "Residential" land classification; deletes Subsections 3.48.305(D) and (E), defining "Improved Residential" and "Unimproved Residential" for consistency within the proposed bill; adds timeshare units in the list of exceptions to classifications according to the property's highest and best use; allows condominium units to be classified according to the owner's self-certified use, provided that the condominium association files an annual report of the actual use of all units in the association; and provides an enforcement mechanism for the consideration of actual use for properties subdivided into condominium units.

Your Committee recommended that Subsection 3.48.305(C), MCC, be revised to allow any entity filing a condominium property regime to file an annual report certifying the use of the units. The revision will enable any condominiums that do not have a condominium association to self-certify the use of the units.

Your Committee also recommended that Subsection 3.48.305(C)(3), MCC, be revised to identify "parcel" or "parcels" as "unit" or "units", and add language to clarify that the Director of Finance may reclassify units in a condominium association at their highest and best use if there is evidence that the association is deliberately providing inaccurate information in its annual report that would lower the tax classification of the units.

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Your Committee also recommended that Subsection 3.48.305(C)(4) be revised to allow a condominium owner, a condominium association, or any entity filing a condominium property regime, to notify the Director of Finance of any change in a unit's classification within 30 days of the change. The revision will allow a condominium owner, condominium association, or entity filing the condominium property regime to notify the County of any change in a unit's classification instead of requiring notification from all entities. Your Committee also recommended nonsubstantive revisions.

Your Committee voted 7-2 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, Molina, Nishiki, and Victorino voted "aye". Committee members Baisa and Johnson voted "no".

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

Your Budget and Finance Committee RECOMMENDS the following:

1. That Bill No. \_\_\_\_\_ (2010), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 3.48.150, MAUI COUNTY CODE, RELATING TO ASSESSMENT OF PROPERTY – GENERALLY, SECTION 3.48.305, MAUI COUNTY CODE, RELATING TO REAL PROPERTY TAX LAND CLASSIFICATION, AND AMENDING SECTION 18.16.320, MAUI COUNTY CODE, RELATING TO PARKS AND PLAYGROUNDS", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That the Miscellaneous Communication be FILED.

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

  
\_\_\_\_\_  
JOSEPH PONTANILLA, Chair

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

BILL NO. \_\_\_\_\_ (2010)

A BILL FOR AN ORDINANCE AMENDING SECTION 3.48.150,  
MAUI COUNTY CODE, RELATING TO ASSESSMENT OF  
PROPERTY--GENERALLY, SECTION 3.48.305, MAUI COUNTY CODE,  
RELATING TO REAL PROPERTY TAX LAND CLASSIFICATION,  
AND AMENDING SECTION 18.16.320, MAUI COUNTY CODE,  
RELATING TO PARKS AND PLAYGROUNDS

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

SECTION 1. Section 3.48.150, Maui County Code, is amended to  
read as follows:

**"3.48.150 Assessment of property--Generally.** A.  
["Improved residential land" as used in this section  
means land improved with a single-family dwelling on it.

B.] Real property shall be assessed in its entirety  
to the owner thereof; provided, that where [improved  
residential] land has been leased for a term of fifteen  
years or more, the real property shall be assessed in its  
entirety to the lessee or his successor in interest  
holding the land for such term under such lease and the  
lessee or successor in interest shall be deemed the owner  
of the real property in its entirety for the purpose of  
this chapter, provided, however, that the lease and any  
extension, renewal, assignment, or agreement to assign  
the lease:

1. Shall have been duly entered into and  
recorded in the bureau of conveyances or filed in  
the office of the assistant registrar [or] of the  
land court prior to January [1st] 1 preceding the  
tax year for which the assessment is made; and

2. Shall provide that the lessee shall pay  
all taxes levied on the property during the term of  
the lease.

[C.] B. For the purpose of this chapter, life  
tenants, personal representatives, trustees, guardians,  
or other fiduciaries may be, and persons holding  
government property under an agreement for the conveyance  
of the same to such persons shall be, considered as  
owners during the time any real property is held or  
controlled by them as such. Lessees holding under any  
government lease shall be considered as owners during the  
time any real property is held or controlled by them as  
such, as more fully provided in [Section] section  
3.48.530, and further, notwithstanding any provisions to

the contrary in this chapter, any tenant occupying government land, whether such occupancy be on a permit, license, month-to-month tenancy, or otherwise, shall be considered as owner where such occupancy has continued for a period of one year or more, as more fully provided in [Section] section 3.48.530. Persons holding any real property under an agreement to purchase the same shall be considered as owners during the time the real property is held or controlled by them as such; provided the agreement to purchase shall have been recorded in the bureau of conveyances[, ] or filed in the office of the assistant registrar of the land court, and shall provide that the purchasers shall pay the real property taxes levied on the property. Persons holding any real property under a lease for a term to last during the lifetime of the lessee shall be considered as owners during the time the real property is held or controlled by them as such; provided, that the lease:

1. Shall have been duly entered into and recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court prior to January [1st] 1 preceding the tax year for which the assessment is made; and
2. Shall provide that the lessee shall pay all taxes levied on the property during the term of the lease."

SECTION 2. Section 3.48.305, Maui County Code, is amended to read as follows:

**"3.48.305 Classification of land[.] and building.**

A. Except as otherwise provided in subsection B of this section, land and building shall be classified, upon consideration of [its] the real property's highest and best use, into the following general classes:

1. [Improved residential;] Residential;
- [2. Unimproved residential;]
- [3.] 2. Apartment;
- [4.] 3. Hotel and resort;
- [5.] 4. Time share;
- [6.] 5. Commercial;
- [7.] 6. Industrial;
- [8.] 7. Agricultural;
- [9.] 8. Conservation;
- [10.] 9. Homeowner; and
- [11.] 10. 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 that influence highest and best use, except that:

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 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[.]; and

3. A parcel that is subject to a time share plan as defined in section 514E-1, Hawaii Revised Statutes, as amended, shall be classified as "time share".

C. When property is subdivided into condominium units, each [unit and its appertaining common interest shall be:] condominium association or any entity filing a condominium property regime shall file an annual report with the director of finance of all units in the association, by tax map key number, before December 1 of each calendar year.

1. The director of finance shall prescribe the form of the list and any supporting evidence as necessary. The list shall include whether the unit is vacant, owner occupied, or rented long term or short term, by month;

2. Each unit and its appertaining common interest shall be:

[1.] a. Classified upon consideration of its actual use into one of the general classes as follows:

[a.] i. 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."

[b.] ii. 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."

[c.] iii. Commercial. Only those units occupied by the owner or a lessee

for business or mercantile activities shall be classified as "commercial."

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

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

[f.] vi. 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"; and

[2.] b. Deemed a parcel and assessed separately from other units[.]; and

3. The director of finance may classify all of the units in a condominium association at their highest and best use if there is evidence that the association is deliberately providing inaccurate information in its annual report that would lower the tax classification of the units, and may re-classify and re-assess any unit in a condominium association found to be in violation of the owner's certification of actual use; and

4. A condominium owner and/or the condominium association or any entity filing a condominium property regime shall notify the director of finance of any change in a unit's classification within thirty days of that change.

[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 3. Section 18.16.320, Maui County Code, is amended by amending subsection C to read as follows:

"C. In-lieu Payment and Dedication. In lieu of providing land in perpetuity or dedicating land, the director of parks and recreation shall require the subdivider to:

1. Pay to the County a sum of money equal to the number of square feet that would have been required by subsection (B)(2)(c) of this section, multiplied by the average of the following values, determined at subdivision approval, in accordance with the most recent certified assessment for real property tax purposes in the respective community plan area where the subdivision is located:

a. The average value per square foot of lands classified as [improved] residential;  
and

[b. The average value per square foot of lands classified as unimproved residential;  
and]

[c.] b. The average value per square foot of lands classified as apartment.

2. Combine the payment of money with land to be provided or dedicated, as required by subsection (B)(2)(c) of this section; or


3. Provide improvement to parks and playgrounds in the community plan area where the subdivision is located. The value of such improvements shall be at least equal to the sum of money required to be paid pursuant to this section. The estimate for the cost of the improvements provided shall be based upon cost estimates certified by an engineer licensed to practice in the State of Hawaii. For subdivisions which qualify as affordable housing or residential workforce housing projects pursuant to chapter 2.96 of this code, this park assessment fee shall be deferred for either one year from the date of final subdivision approval or until fifty per cent of the

dwelling units of the affordable housing project are sold or rented, whichever occurs first."

SECTION 4. 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 5. This ordinance, upon its approval, shall be effective for tax years beginning on or after July 1, 2011.

APPROVED AS TO FORM  
AND LEGALITY:



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TRACI FUNITA VILLAROSA  
First Deputy Corporation Counsel  
County of Maui

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