

COUNCIL OF THE COUNTY OF MAUI  
**BUDGET AND FINANCE COMMITTEE**

December 17, 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 November 30, 2010, makes reference to County Communication No. 10-247, from the Director of Finance, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLES 2 AND 3, MAUI COUNTY CODE, RELATING TO REAL PROPERTY TAX REVIEW BOARDS".

The purpose of the proposed bill is to establish up to three Real Property Tax ("RPT") Review Boards to assist with the backlog and timely processing of RPT appeals.

The Director of Finance informed your Committee that enactment of the proposed bill would improve the County's efficiency in resolving appeals and appropriately collecting revenue owed to the County. He assured your Committee that any expenses incurred by the County in staffing new Review Boards would be substantially exceeded by additional RPT revenue to the County.

Your Committee revised the proposed bill to establish that it shall take effect upon enactment.

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Pontanilla, Vice-Chair Mateo, and members Baisa, Johnson, Medeiros, Nishiki, and Victorino voted "aye". Committee members Kaho`ohalahala and Molina were excused.

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 revision.

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**BUDGET AND FINANCE COMMITTEE**

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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 TITLES 2 AND 3, MAUI COUNTY CODE, RELATING TO REAL PROPERTY TAX REVIEW BOARDS", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 10-247 be FILED.

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

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

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

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

A BILL FOR AN ORDINANCE AMENDING  
TITLES 2 AND 3, MAUI COUNTY CODE,  
RELATING TO REAL PROPERTY TAX REVIEW BOARDS

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

SECTION 1. Section 2.40.170, Maui County Code, is amended to read as follows:

**"2.40.170 Real property tax review [board.] boards.**  
There [is] are established [a] up to three real property tax review [board] boards as provided by law."

SECTION 2. Section 2.56.060, Maui County Code, is amended by amending subsection A to read as follows:

"A. Filing Deadlines.

1. Candidates for Elective Office. All candidates for nomination or elective office in County government shall file a public financial disclosure statement within fifteen days of filing their nomination papers. A new public financial disclosure statement shall be filed each year a person becomes a candidate for office.

2. Appointed Officers. All appointed officers having significant discretionary or fiscal powers shall file a public financial disclosure statement within fifteen days after starting employment. Appointed officers having significant discretionary or fiscal powers shall include executive and legislative department heads and first deputies.

3. Members of Boards and Commissions. All members of boards and commissions having significant discretionary or fiscal powers shall file a confidential financial disclosure statement within fifteen days after taking the oath of office. The following boards and commissions have significant discretionary or fiscal powers:

- a. Board of variances and appeals;
- b. Charter commission;
- c. Civil service commission;
- d. Board of ethics;
- e. Board of code appeals;

- f. Salary commission;
- g. Cultural resources commission;
- h. Liquor control commission;
- I. Liquor control adjudication board;
- j. Maui planning commission;
- k. Police commission;
- l. Cost of government commission;
- m. Maui redevelopment agency;
- n. Board of water supply;
- o. [Board] Boards of review;
- p. Molokai planning commission;
- q. Lanai planning commission; and
- r. Public safety commission.

4. The board of ethics shall request an annual updating of all financial disclosure statements."

SECTION 3. Section 3.48.595, Maui County Code, is amended to read as follows:

**"3.48.595 Generally.** Any taxpayer[, who may deem himself] aggrieved by an assessment made by the director, or by the director's refusal to allow any exemption, may appeal from the assessment or from such refusal to the [board] boards of review or the tax appeal court pursuant to section 232-16 of the Hawaii Revised Statutes on or before April [9th] 9 preceding the tax year, as provided in this chapter. Where such an appeal is based upon the ground that the assessed value of the real property for tax purposes is excessive, the valuation claimed by the taxpayer in the appeal shall be admissible in evidence, in any subsequent condemnation action involving the property, as an admission that the fair market value of the real property as of the date of assessment is no more than the value arrived at when the assessed value from which the taxpayer appealed is adjusted to one hundred percent fair market value; provided, that such evidence shall not in any way affect the right of the taxpayer to any severance damages to which [he] the taxpayer may be entitled."

SECTION 4. Section 3.48.610, Maui County Code, is amended to read as follows:

**"3.48.610 Second appeal.** In every case in which a taxpayer appeals a real property tax assessment to the [board] boards of review or to a tax appeal court and there is pending an appeal of the assessment, the taxpayer shall not be required to file a notice of the

second appeal; provided the first appeal has not been decided prior to April [9th] 9 preceding the tax year of the second appeal; and provided further, the director gives notice that the tax assessment has not been changed from the assessment which is the subject of the appeal."

SECTION 5. Section 3.48.620, Maui County Code, is amended to read as follows:

**"3.48.620 [Board] Boards of review--Members--Generally.** There [is] are created [a] up to three [board] boards of review for the [county] County, each of which shall consist of five members who shall be citizens of the state and residents of the [county,] County, shall have resided at the time of appointment for at least three years in the state, and shall be appointed by the mayor and confirmed by the [county] County council as provided by charter. The appointment of a member shall be to serve on one of the boards of review for the duration of the member's appointment and, in accordance with section 3.48.625, to serve, temporarily, as a substitute member of one of the other boards of review at meetings for which such other board is unable to establish a quorum, but not due to a vacancy on such board. A [chairman] chair shall be elected annually by members from the membership. The [vice-chairman] vice-chair shall serve as the [chairman] chair of [the] a board during the temporary absence from the [county,] County, illness, or disqualification of the [chairman.] chair. Any vacancy in [the] a board shall be filled for the unexpired term as provided for in the charter. Each member may receive and be paid out of the treasury [compensation for his services for each day's actual attendance and his] the member's actual traveling expenses. No officer or employee of the [county] County shall be eligible for appointment to any such board."

SECTION 6. Section 3.48.625, Maui County Code, is amended to read as follows:

**"3.48.625 [Board] Boards of review--Powers and duties.** A. The [board] boards of review for the [county] County shall hear all disputes between the director and any taxpayer in all cases in which appeals have been duly taken, and the fact that a notice of appeal has been duly filed by a taxpayer shall be conclusive evidence of the existence of a dispute; provided, that this provision shall not be construed to permit a taxpayer to dispute an assessment to the extent

that it is in accordance with [his] the taxpayer's return unless [he] the taxpayer shows lack of uniformity or inequality as set forth in section 3.48.605.

B. The [board] boards shall hold public meetings at some central location in the County commencing not later than June [1st] 1 of each year and shall hear, as speedily as possible, all appeals presented for each year. The [board] boards shall have the power and authority to decide all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the taxpayer or the [county] County in the notice of appeal; provided, that the [board] boards shall not have power to determine or declare an assessment illegal or void. Without prejudice to the generality of the foregoing, the [board] boards shall have power to allow or disallow exemptions pursuant to law whether or not previously allowed or disallowed by the director and to increase or lower any assessment.

C. The assignment of particular tax appeals to a board of review shall be made by the director.

D. Upon the request of the chair of a board of review, the chair of one of the other boards may administratively, and without formal action of that chair's board, temporarily assign a member of that board to serve as a substitute member of the requesting board for purposes of establishing a quorum at one or more designated meetings of the requesting board. The substitute member shall serve only for the board meeting or meetings designated and only for as long as necessary to maintain a quorum. While so assigned, the substitute member shall have seat, voice, and vote on all matters before the board. Nothing herein shall prevent a member from being assigned again as a substitute member."

SECTION 7. Section 3.48.630, Maui County Code, is amended to read as follows:

**"3.48.630 [Board] Boards of review--Decision.** The [board] boards shall base [its decision] their decisions on the evidence before [it,] them, and, as provided in section 3.48.065, the assessment made by the director shall be deemed prima facie correct. Assessments for the same year upon other similar property situated in the [county] County shall be received in evidence upon the hearing. In increasing or lowering any real property assessment, the [board] boards shall be governed by this chapter. The [board] boards shall file with the director [its decision] their decisions in writing on each appeal

decided by [it,] them, and a certified copy thereof shall be furnished by the director forthwith to the taxpayer concerned by delivery thereof to [him,] the taxpayer, or by mailing the copy addressed to [his] the taxpayer's last known place of residence or business."

SECTION 8. Section 3.48.635, Maui County Code, is amended to read as follows:

**"3.48.635 [Board] Boards of review--Report.** Upon completion of [its] their review of the property tax appeals for the current year, the [board] boards shall compile and submit to the mayor and the council, and shall file with the director for the use of the public, a copy of a report covering such features of [its] their work as, in the opinion of the [board,] boards, will be useful in attaining the objectives set forth in this chapter. In this report, the [board] boards shall additionally note instances in which, in the opinion of the [board,] boards, the director in the application of the methods selected by [him,] the director, erred as to a particular property or particular properties not brought before the [board] boards by any appeal, whether the error is deemed to have been by way of underassessment or [over-assessment.] overassessment. Before commencing this phase of [its] their work, the [board] boards shall publish, during the first week of September, a notice specifying a period of at least ten days within which complaints may be filed by any taxpayer. Each complaint shall be in writing, shall identify the particular property involved, shall state the valuation claimed by the taxpayer and the grounds of objections to the assessment, and shall be filed with the director who shall transmit the same to [the] a board. Not earlier than one week after the close of the period allowed for filing complaints, the [board] boards shall hear the [same,] assigned complaints, if any, after first giving reasonable notice of the hearing to all interested taxpayers and the director. Like notice and hearing shall be given in order for the [board] boards to include in [its report] their reports any other property not brought before [it] them by an appeal. The [board] boards may proceed by districts designated by their tax map designation, and may from time to time publish the notice above provided for as the work proceeds by districts."

SECTION 9. Section 3.48.640, Maui County Code, is amended to read as follows:

**"3.48.640 [Board] Boards of review report-Consideration by director.** The director, in making of assessments for the succeeding year, shall give due consideration to the report of the [board] boards made pursuant to section 3.48.620."

SECTION 10. Section 3.48.645, Maui County Code, is amended to read as follows:

**"3.48.645 [Board] Boards of review-Additional powers.** The [board] boards and each member thereof in addition to all other powers shall also have the power to subpoena witnesses, administer oaths, examine books and records, and hear and take evidence in relation to any subject pending before the [board.] boards. [It] The boards may request the tax appeal court[, ] to order the attendance of witnesses and the giving of testimony by them, and the production of books, records, and papers at the hearings of the [board.] boards."

SECTION 11. Section 3.48.655, Maui County Code, is amended to read as follows:

**"3.48.655 Appeal to [board] boards of review. A.** The notice of appeal of a real property assessment must be lodged with the [board] boards of review on or before the date fixed by law for the taking of the appeal by personal delivery, private delivery service, or U.S. Postal Service. Private delivery services shall be those designated by the Internal Revenue Service as meeting the "timely mailing as timely filing/paying" rule for tax returns and payments. A notice of appeal shall not be lodged by facsimile transmission. Notwithstanding any other provision to the contrary:

1. A notice of appeal with payment of costs personally delivered shall be deemed to have been lodged with the [board] boards of review when received by the department of finance, real property tax division, during the division's business hours; and

2. A notice of appeal with payment of costs sent by U.S. Postal Service or private delivery service, postage prepaid, and properly addressed to the [board] boards of review, shall be deemed to have been lodged with the [board] boards of review on the date shown by the postage mark stamped on the envelope or other appropriate wrapper containing the notice of appeal. If the envelope or other appropriate wrapper containing the notice



does not indicate a postage mark, the notice shall be deemed to have been lodged with the [board] boards of review when received by the department of finance, real property tax division, during the division's business hours.

B. The notice of appeal shall be completed in accordance with the administrative rules of the [board] boards of review.

C. The appeal shall be considered and treated for all purposes as a general appeal and shall bring up for determination all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary for the determination of the objections raised by the taxpayer in the notice of appeal. Any objection involving the Constitution or laws of the United States may be included by the taxpayer in the notice of appeal, and in such case, the objections may be heard and determined by the tax appeal court on appeal from a decision of the [board] boards of review; but this provision shall not be construed to confer upon the [board] boards of review the power to hear or determine such objections. Any notice of appeal may be amended at any time prior to the decision of the [board] boards of review, provided the amendment does not substantially change the dispute or lower the valuation claim."

SECTION 12. Section 3.48.660, Maui County Code, is amended to read as follows:

**"3.48.660 Costs-Deposit.** A. The costs to be deposited by the taxpayer for each appeal to the [board] boards of review shall be as set forth in the annual budget ordinance.

B. The cost to be deposited by the taxpayer on any appeal to the tax appeal court or the state supreme court shall be as provided in sections 232-22 and 232-23 of the Hawaii Revised Statutes."

SECTION 13. Section 3.48.665, Maui County Code, is amended to read as follows:

**"3.48.665 Costs-Taxation.** In the event of an appeal by a taxpayer to the [board] boards of review, if the appeal is compromised, or sustained as to fifty [per cent] percent or more of the valuation in dispute, the costs deposited shall be returned to appellant. Otherwise, the entire amount of costs deposited shall be retained by the County."

SECTION 14. Section 3.48.670, Maui County Code, is amended to read as follows:

**"3.48.670 Taxes paid pending appeal.** A. The tax paid upon the amount of any assessment, actually in dispute and in excess of that admitted by the taxpayer, and covered by an appeal to the tax appeal court duly taken, shall, pending the final determination of the appeal, be paid by the director into the litigated claims account. If the final determination is in whole or in part in favor of the appealing taxpayer, the director shall repay the taxpayer out of the account, or if investment of the account should result in a deficit therein, out of the general fund of the County, the amount of the tax paid upon the amount held by the court to have been excessive or nontaxable, together with interest at a rate based on the average rate of return earned on County investments during the previous calendar year, rounded down to the nearest quarter [per cent.] percent. Interest shall be calculated from the date of each payment into the litigated claims account. The balance, if any, of the payment made by the appealing taxpayer, or the whole of the payment, in case the decision is wholly in favor of the assessor, shall, upon the final determination become a realization of the general fund.

B. In a case of an appeal to [a] the [board] boards of review, the tax paid upon the amount of the assessment actually in dispute, and in excess of that admitted by the taxpayer, shall, during the pendency of the appeal and until and unless an appeal is taken to the tax appeal court, be held by the director in a special deposit. In the event of final determination of the appeal in the [board] boards of review, the director shall repay to the appealing taxpayer out of the deposit the amount of the tax paid upon the amount held by the [board] boards to have been excessive or nontaxable, if any, the balance, if any, or the whole of the deposit, in case the decision is wholly in favor of the director to become a realization of the general fund."

SECTION 15. Section 3.48.680, Maui County Code, is amended to read as follows:


**"3.48.680 [Board] Boards of review.** The [board] boards shall have power consistent with this chapter and chapter 91, Hawaii Revised Statutes, to make rules relating to procedure, and to prescribe forms to be used,

including procedures and forms for the issuance of subpoenas and other process by the [board] boards as members thereof. The rules shall have the force and effect of law."

SECTION 16. 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 17. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

  
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TRACI FUJITA VILLAROSA  
First Deputy Corporation Counsel  
County of Maui  
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