

COUNCIL OF THE COUNTY OF MAUI
BUDGET AND FINANCE COMMITTEE

November 21, 2014

**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 September 16, 2014, October 14, 2014, and October 28, 2014, makes reference to County Communication 14-197, from Councilmember Mike White, relating to the matter of short-term rental property taxes.

By correspondence dated October 8, 2014, the Chair of your Committee transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE TO CLASSIFY REAL PROPERTY USED AS SHORT-TERM RENTAL HOMES AS "COMMERCIAL" FOR TAX VALUATION PURPOSES". The purpose of the proposed bill is to classify real property, for tax valuation purposes, as "commercial," without regard to its highest and best use, if the property has been granted a permit to operate a transient vacation rental, pursuant to Title 19, Maui County Code ("MCC").

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING 3.48.305, MAUI COUNTY CODE, TO CLASSIFY REAL PROPERTY USED AS SHORT-TERM RENTAL HOMES AS "COMMERCIAL" FOR TAX VALUATION PURPOSES". The revised proposed bill specifies that parcels granted a Short-term Rental Home Permit, a Transient Vacation Rental Permit, or a Conditional Permit allowing transient vacation rental use, pursuant to Title 19, MCC, and not serving as the owner's primary residence, shall be classified as "commercial" for tax valuation purposes.

Your Committee noted short-term rental homes are currently classified as "hotel and resort," consistent with the highest and best use of the real property. The Department of Finance receives a list of permits from the Department of Planning, and classifies the properties of permit holders accordingly.

Your Committee expressed concern that legal operators are negatively impacted by those who do not abide by the law. Your Committee desired to minimize the tax burden being incurred by legal operators who have obtained the required permits for their

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short-term rental accommodations, compared to illegal operators who are not taxed for short-term rental use and may be receiving significantly lower tax bills. Legal operators generally receive a higher tax bill than those who have not obtained a permit. For example, operators of illegal vacation rental properties may be representing their real property use as a long-term residential use. Therefore, their real property may be classified at a lower tax classification than the real property of permitted short-term rental operators. In some cases, the illegal operators may even be receiving a home exemption.

The Deputy Director of Finance expressed concern with the proposed use of the “commercial” classification for short-term rental home uses. He stated the “commercial” classification would be inconsistent with the actual use of the real property. He recommended a new tax classification category for short-term rentals be created.

Your Committee noted the importance and complexity of the real property tax laws. Your Committee recommended the Council undertake a comprehensive review of Section 3.48.305, MCC, relating to the classification of land and building, by December 31, 2015.

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair White and members Baisa, Carroll, Cochran, Couch, Crivello, and Victorino voted “aye”. Committee Vice-Chair Hokama and member Guzman were excused.

Your Committee is in receipt of a further revised proposed bill, entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, TO CLASSIFY REAL PROPERTY USED AS SHORT-TERM RENTAL HOMES AS “COMMERCIAL” FOR TAX VALUATION PURPOSES”, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Budget and Finance Committee RECOMMENDS the following:

1. That Bill _____ (2014), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, TO CLASSIFY REAL PROPERTY USED AS SHORT-TERM RENTAL HOMES AS “COMMERCIAL” FOR TAX VALUATION PURPOSES”, be PASSED ON FIRST READING and be ORDERED TO PRINT; and

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2. That County Communication 14-197 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



MIKE WHITE, Chair

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ORDINANCE NO. _____

BILL NO. _____ (2014)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE,
TO CLASSIFY REAL PROPERTY USED AS SHORT-TERM RENTAL HOMES AS
“COMMERCIAL” FOR TAX VALUATION PURPOSES

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

SECTION 1. The purpose of this ordinance is to classify real property, for tax valuation purposes, as “Commercial,” without regard to its highest and best use, if the property has been granted either a short-term rental home permit or a conditional permit allowing transient vacation rental use, pursuant to Title 19, Maui County Code.

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,] 3.48.305(B), land and building shall be classified, upon consideration of the real property's highest and best use, into the following general classes:

1. Residential;
2. Apartment;
3. Hotel and resort;
4. Time share;
5. Commercial;
6. Industrial;
7. Agricultural;
8. Conservation;
9. Homeowner; and
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] 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;

2. A parcel that serves as the owner's primary residence and has been granted a bed and breakfast permit, a transient vacation rental permit, or a conditional permit [to operate a] allowing transient vacation rental use 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"[.] ; and

4. A parcel that does not serve as the owner's primary residence and has been granted a short-term rental home permit, a transient vacation rental permit, or a conditional permit allowing transient vacation rental use pursuant to title 19 of this code shall be classified as "commercial" without regard to its highest and best use.

C. When property is subdivided into condominium units, each condominium association or any entity filing a condominium property regime, shall file an annual report with the director of all units in the association, by tax map key number, before December 1 of each calendar year.

1. The director 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:

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

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."

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."

iii. Commercial. Only those units occupied by the owner or a lessee for business or mercantile activities; or those units that do not serve as the owner's primary residence, and have been granted a short-term rental home permit, a transient vacation rental permit, or a conditional permit allowing transient vacation rental use pursuant to title 19 of this code shall be classified as "commercial."

iv. Hotel and [Resort.]resort. Unless classified as "time share," "commercial," or "commercialized residential,"[.] units occupied by transient tenants for periods of less than six consecutive months, excluding properties granted a short-term rental home permit, transient vacation

rental permit, conditional permit allowing transient vacation rental use, or bed and breakfast permit, shall be classified as "hotel and resort." In addition, unless classified as "time share," "commercial," or "commercialized residential,"[.] units advertised for occupancy by transient tenants for periods of less than six consecutive months for any period during the course of any assessment year, shall be reclassified to "hotel and resort" and the real property tax shall be adjusted to taxes at the "hotel and resort" tax rate for the applicable tax year.

v. Time share. Units occupied by transient tenants for periods of less than six consecutive months 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."

vi. Commercialized residential. Units that serve as the owner's primary residence and that have been granted a bed and breakfast permit, a transient vacation rental permit, or a conditional permit [to operate a] allowing transient vacation rental use pursuant to title 19 of this code, shall be classified as "commercialized residential." [.]

b. Deemed a parcel and assessed separately from other units.

3. The director may, after investigation, [re-classify] reclassify and [re-assess] reassess any unit in a condominium association found to be in violation of the owner's certification of actual use.

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

5. If the required annual report is not filed on or before December 1, the director may classify all units in the project in accordance with subsection B for the following assessment year.

D. The Council shall review this section by December 31, 2015."

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 for the tax year beginning July 1, 2015.

APPROVED AS TO FORM AND
LEGALITY:



JEFFREY UEOKA
Department of the Corporation Counsel
County of Maui
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