

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE TO AMEND THE
ACQUISITION, EXCHANGE AND APPRAISAL REQUIREMENTS
PERTAINING TO INFRASTRUCTURE-RELATED PROPERTY

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

SECTION 1. Purpose and intent. The purpose of this Ordinance is to improve the County's infrastructure by granting the Administration greater authority to acquire real property and easements. This Ordinance authorizes the Administration to acquire the following: (1) real property for a purchase price of up to \$250,000; (2) certain housing units for a purchase price of less than \$500,000; and (3) infrastructure-related real property and easements.

SECTION 2. Chapter 3.44, Maui County Code, is amended to read as follows:

"Chapter 3.44

ACQUISITION AND DISPOSITION OF REAL PROPERTY

Sections:

- 3.44.010 Definitions.
- 3.44.015 Acquisition of real property.
- 3.44.020 Disposition by council.
- 3.44.030 [Auctions] Disposition by auction.
- 3.44.040 [Sealed bids] Disposition by sealed bids.
- 3.44.050 [Negotiation] Disposition by negotiation.
- 3.44.060 [Exchanges] Exchange of real property.
- 3.44.070 Appraisals.

3.44.010 Definitions. As used in this chapter, unless the context clearly requires otherwise, "real property" means lands and structures or fixtures [permanently] attached[.] thereto.

3.44.015 Acquisition of real property. A. Except as otherwise provided for by law, any acquisition of real property by the County, whether by agreement, purchase, exchange, gift, devise, eminent domain or otherwise, shall be accomplished in accordance with the provisions of this chapter.

B. The director of finance may negotiate for the purchase of real property for purposes in the public interest. In negotiating the purchase price, the director of finance shall obtain an appraisal by a disinterested appraiser contracted for by the County, or accept an appraisal furnished by the prospective seller [which] that has been reviewed by an appraiser employed by the County. In the case of real property with a purchase price that exceeds [~~\$100,000,~~] \$250,000, the [County] council shall authorize the acquisition by the [passage] adoption of a resolution [, approved by a majority of its members]; provided that, council approval is not required for the purchase of housing units for less than [~~\$150,000~~] \$500,000 pursuant to repurchase options and other buy-back provisions granted to the County as follows:

1. Deed restriction in a County housing project that [~~was developed (~~] secured final subdivision approval or certificate of occupancy [~~)] prior to January 1, 1999; and~~

2. Agreement that was executed by and between the County and the developer of a housing project prior to January 1, 1999 under a County housing program.

C. The [County] council may accept gifts or donations of real property or any interest in real property by the [passage] adoption of a resolution [, approved by a majority of its members].

D. The director of [water supply] finance may accept the conveyance of real property [~~interests~~] and easements to the County [~~of Maui of water storage tank lots, water reservoir sites, and easements for waterline and related improvements when such a conveyance is neither a gift or donation, but is required by the department of water supply.]~~ when approved by the director of water supply and:

1. The conveyance is necessary for improvement to a public water system, as defined in section 14.01.040; or

2. The conveyance is part of a capital improvement project by the department of public works.

[The director of public works, the director of finance shall review and approve such a conveyance prior to acceptance by the director of water supply. In the event the director of water supply does not accept such a conveyance within ninety days of its

submittal, the conveyance shall be immediately transmitted to the council with the appropriate resolution and an explanation of its rejection for consideration under subsection (C).]

If the director of water supply rejects the conveyance, the council may accept the conveyance under subsection (C). The director of water supply shall submit [quarterly] annual reports to the council of all conveyances accepted pursuant to this section no later than thirty days after the end of [each quarter.] each calendar year.

E. The director of finance may accept the conveyance of real property and easements to the County when approved by the director of public works and:

1. The conveyance is required in accordance with title 16 or title 18;

2. The real property is a road lot or easement therein that complies with title 16 or title 18; or

3. The conveyance is part of a capital improvement project by the department of public works.

If the director of public works rejects the conveyance, the council may accept the conveyance under subsection (C). The director of public works shall submit annual reports to the council of all conveyances accepted pursuant to this section no later than thirty days after the end of each calendar year.

F. The director of finance may accept the conveyance of real property and easements to the County when approved by the director of environmental management and:

1. The conveyance is necessary for improvement to publicly owned treatment works, as defined in section 14.19A.040; or

2. The conveyance is part of a capital improvement project by the department of environmental management.

If the director of environmental management rejects the conveyance, the council may accept the conveyance under subsection (C). The director of environmental management shall submit annual reports to the council of all conveyances accepted pursuant to this section no later than thirty days after the end of each calendar year.

[E.] G. The [County] council may authorize proceedings in eminent domain by the passage of a resolution [approved by a majority of its members]. Any proceedings so authorized shall be subject to the requirements of chapter 101, Hawaii Revised Statutes.

[F.] H. The director of finance [parks and recreation] may accept the conveyance of real property [interests] from a subdivider to the County [of Maui] when approved by the director of parks and recreation and the conveyance is made in accordance with a park

assessment agreement approved by council resolution pursuant to section 18.16.320.

I. The corporation counsel shall review and approve any conveyance made in accordance with subsection (D), (E), (F), or (H), prior to acceptance.

J. The director of public works shall review and approve the metes and bounds description of any property involved in a conveyance made in accordance with subsection (D), (E), (F), or (H), prior to acceptance.

3.44.020 Disposition by Council. A. Except as otherwise provided by law and subject to other provisions of this chapter, the [county] council may [, by resolution, approved by a majority of its members,] dispose of real property in fee simple or easements[.] by the adoption of a resolution.

B. The [county] council may hold a public hearing prior to the [passage] adoption of any resolution authorizing the disposition of real property in fee simple under this chapter.

3.44.030 [Auctions.] Disposition by auction. A. [Unless the county council finds that it is in the public interest to dispose the real property in some other manner, and passes a resolution to that effect approved by two-thirds of its members, all disposition] Disposition of real property shall be made at public auction, after public notice [as provided in subsection B.] pursuant to subsection (B), unless the council finds that it is in the public interest to dispose of the real property in another manner and adopts a resolution to that effect approved by two-thirds of its members. [All such auctions shall be held at the offices of the director of finance of the county or at such other place as is convenient in the district in which the real property is located, as set by the finance director and] The auction shall be conducted by the [finance] director of finance or [by his] an authorized representative[.] and held at the director of finance's office or at a place in the community plan area where the real property is located that is accessible by the public and set by the director of finance.

B. Notice of any proposed disposition by [auctions] auction shall be published at least once in [each of three] two successive weeks in a newspaper of general circulation in the [county,] County, the last publication to be not less than five days before the date of the auction. Notice of the auction shall contain the following:

1. Time and place of auction;
2. General description of the real property, including the address and the tax map key;

3. Specific use for which the disposition is intended, if any; and

4. Upset price.

C. The map showing the metes and bounds description and the classification of the land shall be kept in the office of the [finance] director of finance and shall be open for inspection at all reasonable hours.

3.44.040 [Sealed bids.] Disposition by sealed bids. A.

Real property may be sold by a call for sealed bids, upon a finding by the [county] council that disposition in such a manner is in the public interest and the [passage] adoption of a resolution to that effect is approved by two-thirds of its members. The [finance] director of finance shall provide notice [by publication for a call for bids] of a proposed disposition by sealed bids as provided in subsection (B). All bids shall be sealed [and] when delivered to the [finance] director of finance and [shall be] opened by [him] the director of finance at the time and place stated in the [call for bids.] notice. The [finance] director of finance may reject [any or all bids] any bid and waive any defects [when in his opinion such rejection or waiver will be in the best interest of the public.] if the rejection or waiver is in the public interest.

B. Notice of any proposed disposition by sealed bids shall be published at least once in [each of three] two successive weeks in a newspaper of general circulation in the [county,] County, the last publication to be not less than five days before the date set for the receipt of proposals. Notice of [the call for] a proposed disposition by sealed bids shall contain the following:

1. Time and place for opening of the sealed bids;
2. General description of the real property, including the address and the tax map key; and
3. Location where bid forms and instructions for bidders may be secured.

C. When deemed necessary by the [finance] director of finance, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to a return of their bid deposit when [the finance director has required such.] required by the director of finance. A successful bidder shall forfeit any bid deposit required by the [finance] director of finance upon failure on his part to enter into a required contract within ten days after the award.

3.44.050 [Negotiation.] Disposition by negotiation. A.

Real property may be sold through negotiation upon a finding by the [county] council that disposition in such a manner is in the

public interest and the [passage] adoption of a resolution to that effect is approved by two-thirds of its members.

B. After a determination is made to negotiate the disposition, the [finance] director of finance shall:

1. Give public notice of the [county's] County's intention to sell the real property through negotiation, published at least once in [each of three] two successive weeks in a newspaper of general circulation in the [county.] County. [Such] The notice shall invite proposals by sealed bid and state [in general terms,] the size, location, and prices of real property to be sold, the terms of sale, and the last date [on which] that applications will be received by the [finance director, which date shall not be less than thirty days after the last date of publication of the notice.] director of finance. Final publication of the notice shall occur not less than thirty days prior to the last date that applications will be received by the director of finance. The notice shall also state the times and places [at which] that interested persons may obtain more detailed information with respect to the sale [may be secured by interested persons];

2. Establish reasonable [written] criteria for the selection of the buyer [; which criteria] that shall be available in writing for study by the public at the offices of the [director] department of finance [at the time] when public notice is given pursuant to [subdivision 1 of this subsection;] subsection (B)(1); and

3. Determine the applicants who meet the criteria for selection and notify all applicants of [his] the determination. [Any applicant may examine the] The basis of the determination [, which] shall be in writing and available for review by an applicant. Any applicant may appeal the [finance director's] determination to the council [of the county] by notifying the council [chairman] chair, in writing, of objections, and the grounds therefor, [in writing,] within twenty days of receipt of the notice. Upon receipt of objection within the time period identified above, the [chairman of the] council chair shall set a hearing date for the council to hear and determine the appeal from the [finance director's] director of finance's decision.

C. If only one applicant meets the criteria for selection of the buyer, the [finance] director of finance [may, after notice as provided in subsection B3 of this section,] may dispose the real property by negotiation[.] after giving notice pursuant to subsection (B)(3). If two or more applicants meet the criteria for selection of the buyer, the [finance] director of finance shall select

the buyer who submits the highest offer contained in the sealed bid deposited with the director of finance [director].

3.44.060 [Exchanges.] Exchange of real property. A. No [exchanges] exchange of real property for private property shall be made except upon a finding by the council that the purpose of the exchange is in the public interest and the [passage] adoption of a resolution to that effect is approved by two-thirds of its members. Such purposes may include [, but not by way of limitation]:

1. Consolidation of holdings of real property;
2. Realigning boundaries of real property; or
3. Acquisition of adequate access for landlocked real property.

B. Exchanges shall be effective without public auction. Public notice of [any proposed] an exchange shall be published at least once in [each of three] two successive weeks in a newspaper of general circulation in the [county.] County. The notice shall contain a general description of the real property proposed to be disposed, including the size, location, address and tax map key.

C. Notwithstanding the foregoing provisions of this section, the director of finance may exchange real property for private property for road-related, bridge-related, and drainage-related improvements without public notice.

3.44.070 Appraisals. A. An appraisal is required for any sale or other disposition of real property in fee simple, unless waiver of such appraisal is authorized by council resolution.

B. [The appraisal of real property for sale at public auction or by sealed bids for the determination of the upset price may be] The upset price of real property disposed of by public auction or sealed bids shall be determined by an appraisal performed by an appraiser employed by the County[,] or by one but not more than three disinterested appraisers [whose services shall be] contracted for by the [county.] County, provided that the director of finance may establish the upset price at less than the appraised value. [No such real property shall be sold for a sum less than the value fixed by such appraisal; provided, that for any sale at public auction or by sealed bids, the finance director may establish the upset sale at less than the appraised value and the real property may be sold at that price.] Real property disposed of by public auction or sealed bids shall be sold at a price not less than the upset price determined by the appraisal or established by the director of finance.

C. [The sale of real] Real property [to be] disposed of by [negotiations] negotiation shall be [no] sold at a price not less than

the value determined by an appraiser [whose services shall be] contracted for by the County.

D. Real property disposed of by exchange shall be exchanged for property of [not less than equal] reasonably equivalent value [. Such property for which the real property is exchanged may be] that is realty or a combination of realty and payment. The value of all real estate involved in [the transaction, both the county's and the other party's,] an exchange shall be determined by an appraiser [whose services shall be] contracted for by the County.

E. Whenever more than one appraiser is appointed, each shall prepare and submit an independent appraisal. All appraisal reports shall be available for study by the public.

F. Notwithstanding the foregoing provisions of this section, no appraisal is required for an exchange made in accordance with section 3.44.060(C)."

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 upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

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