CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 10-31

BILL **35 (2010), CD1**

A BILL FOR AN ORDINANCE

RELATING TO REAL PROPERTY TAXATION.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. The purpose of this ordinance is to replace "homeowner" and "non-homeowner" real property tax classifications with the "residential" real property tax classification and make other conforming amendments.

SECTION 2. Section 8-7.1, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"**Sec. 8-7.1 Valuation—Considerations in fixing.**

(a) The director of budget and fiscal services shall cause the fair market value of all taxable real property to be determined and annually assessed by the market data and cost approaches to value using appropriate systematic methods suitable for mass valuation of real property for taxation purposes, so selected and applied to obtain, as far as possible, uniform and equalized assessments throughout the county.

(b) So far as practicable, records shall be compiled and kept which shall show the methods established by or under the authority of the director, for the determination of values.

(c) (1) Land shall be classified, upon consideration of its highest and best use, into the following general classes, unless it qualifies for a different class as defined in this section:

(A) [Non-homeowner;] <u>Residential;</u>

(B) Hotel and resort;

(C) Commercial;

(D) Industrial;

(E) Agricultural;

(F) Preservation;

(G) Public service; <u>and</u>

(H) Vacant agricultural[; and

(I) Homeowner].

(2) In assigning land to one of the general classes, the director shall give major consideration to the districting established by the city in its general plan and zoning ordinance, and such other factors which influence highest and best use.

Notwithstanding the city's zoning district classification, the director shall assign to the agricultural class any land classified as tree farm property under HRS Chapter 186.

(3) When real property is subdivided into condominium units, each unit and its appertaining common interest:

(A) Shall be classified upon consideration of the unit's actual use into one of the general classes in the same manner as land; and

(B) Shall be deemed a parcel and assessed separately from other units.

(4) Notwithstanding any provision contained in this subsection, a condominium unit which is used at any time during the assessment year as a time share unit shall be classified for the following tax year as "hotel and resort" unless:

(A) The unit is on property zoned as apartment, apartment mixed use, apartment precinct, or apartment mixed use precinct,

(B) The property on which the unit is located does not include a lobby with a clerk's desk or counter with 24-hour clerk service facilities for registration and keeping of records relating to persons using the property, and

(C) The unit is part of a condominium property regime established pursuant to HRS Chapter 514A.

If the requirements of (A), (B) and (C) are met, the time share unit shall be classified as ["non-homeowner."] "residential." For purposes of this paragraph, "assessment year" shall mean the one-year period beginning

October 2nd of the previous calendar year and ending October 1st, inclusive, of the calendar year preceding the tax year, and "time sharing" shall be as defined in Section 21-10.1.

(5) "Vacant agricultural" means a parcel, or portion thereof, which would otherwise be classified agricultural by the director upon major consideration of the districting established by the city in its general plan and zoning ordinance and of such other factors which influence highest and best use, but which parcel, or portion thereof: (i) has no residential buildings; and (ii) is not dedicated for agricultural purposes. If a portion of a parcel is dedicated as vacant agricultural, the remainder of the parcel that is zoned agricultural must be dedicated for agricultural use.

(6) Notwithstanding any provision contained in this subsection, all lands actually used by a public service company in its public service business shall be classified public service. For purposes of this subsection, a public service company is defined as a public utility, except airlines, motor carriers, common carriers by water, and contract carriers, where:

(A) "Public utility" means and includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use, for the transportation of passengers or freight, or the conveyance or transmission of telecommunications messages, or the furnishing of facilities for the transmission of intelligence by electricity by land or water or air within the state, or between points within the state, or for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil, or for the storage or warehousing of goods, or the disposal of sewage; provided that the term:

(i) Shall include any person insofar as that person owns or operates a private sewer company or sewer facility;

(ii) Shall include telecommunications carrier or telecommunications common carrier;

(iii) Shall not include any person insofar as that person owns or operates an aerial transportation enterprise;

(iv) Shall not include persons owning or operating taxicabs, as defined in this subsection;

(v) Shall not include common carriers transporting only freight on the public highways, unless operating within localities or along routes or between points that the public utilities commission of the State of Hawaii finds to be inadequately serviced without regulation under this chapter;

(vi) Shall not include persons engaged in the business of warehousing or storage unless the public utilities commission of the State of Hawaii finds that regulation thereof is necessary in the public interest;

(vii) Shall not include:

(aa) The business of any carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the state and the carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally; and

(bb) The business of any carrier by water, substantially engaged in interstate or foreign commerce, transporting passengers on luxury cruises between points within the state or on luxury round-trip cruises returning to the point of departure;

(viii) Shall not include any person who:

(aa) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from nonfossil fuel sources; and

(bb) Provides, sells, or transmits all of that power, except such power as is used in its own internal operations, directly to a public utility for transmission to the public;

(ix) Shall not include a telecommunications provider only to the extent determined by the public utilities commission of the State of Hawaii, pursuant to applicable state law;

(x) Shall not include any person who controls, operates, or manages plants or facilities developed pursuant to applicable state law for conveying, distributing, and transmitting water for irrigation and such other purposes that shall be held for public use and purpose; and

(xi) Shall not include any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:

(aa) The services of the facility shall be provided pursuant to a service contract between the person and a state or county agency and at least 10 percent of the wastewater processed is used directly by the state or county which has entered into the service contract;

(bb) The primary function of the facility shall be the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility that is owned by a state or county agency;

(cc) The facility shall not make sales of water to residential customers;

(dd) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this subparagraph xi, "recycled water" and "reclaimed water" mean treated wastewater that by design is intended or used for a beneficial purpose; and

(ee) The facility shall not be engaged, either directly or indirectly, in the processing of food wastes.

(B) "Motor carrier" means a common carrier or contract carrier transporting freight or other property on the public highways, other than a public utility or taxicab.

(C) "Contract carrier" means a person other than a public utility or taxicab which, under contracts or agreements, engages in the transportation of persons or property for compensation, by land, water, or air.

(D) "Carrier" means a person who engages in transportation, and does not include a person such as a freight forwarder or tour packager who provides transportation by contracting with others, except to the extent that such person oneself engages in transportation.

(E) "Taxicab" means and includes:

(i) Any motor vehicle used in the movement of passengers on the public highways under the following circumstances, namely, the passenger hires the vehicle on call or at a fixed stand, with or without baggage for transportation, and controls the vehicle to the passenger's destination; and

(ii) Any motor vehicle having seating accommodations for eight or less passengers used in the movement of passengers on the public highways between a terminal, i.e., a fixed stand, in the city of Honolulu, and a terminal in a geographical district outside the limits of the city of Honolulu, and vice versa, without picking up passengers other than at the terminals or fixed stands; provided that passengers may be unloaded at any point between terminals; and provided further that this definition relating to motor vehicles operating between terminals shall pertain only to those motor vehicles whose operators or owners were duly licensed under any applicable provision of law or ordinance and doing business between such terminals on January 1, 1957.

(F) "Telecommunications carrier" or "telecommunications common carrier" means any person that owns, operates, manages, or controls any facility used to furnish telecommunications services for profit to the public, or to classes of users as to be effectively available to the public, engaged in the provision of services, such as voice, data, image, graphics, and video services, that make use

of all or part of their transmission facilities, switches, broadcast equipment, signalling, or control devices.

(G) "Telecommunications service" or "telecommunications" means the offering of transmission between or among points specified by a user, of information of the user's choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium, and does not include cable service as defined under applicable state law.

(d) Whenever land has been divided into lots or parcels as provided by law, each such lot or parcel shall be separately assessed.

(e) When a parcel of land which has been classified as agricultural is improved with a single-family dwelling and has been granted a home exemption for the tax year, that portion of the parcel which is used for residential purposes shall be classified as [homeowner.] residential. This classification shall:

(1) Apply only to that portion used for residential purposes;

(2) Not exceed 5,000 square feet of land and the buildings and improvements on that land; and

(3) Remain in effect only so long as the property qualifies for a home exemption.

(f) When a parcel of land which has been classified as preservation is improved with a single-family dwelling and has been granted a home exemption for the tax year, that portion of the parcel which is used for residential purposes shall be classified as [homeowner.] residential. This classification shall:

(1) Apply only to that portion used for residential purposes;

(2) Not exceed 5,000 square feet of land and the buildings and improvements on that land; and

(3) Remain in effect only so long as the property qualifies for a home exemption.

(g) (1) In determining the value of buildings, consideration shall be given to any additions, alterations, remodeling, modifications or other new construction, improvement or repair work undertaken upon or made to existing buildings as the same may result in a higher assessable valuation of said buildings; provided, however, that any increase in value resulting from any additions, alterations, modifications or other new construction, improvement or repair work to buildings undertaken or made by the owner-occupant thereof pursuant to the requirements of any urban redevelopment, rehabilitation or conservation project under the provisions of Part II of HRS Chapter 53, shall not increase the assessable valuation of any building for a period of seven years from the date of certification as hereinafter provided.

(2) It is further provided that the owner-occupant shall file with the director, in the manner and place which the director may designate, a statement of the details of the improvements certified in the following manner:

(A) In the case of additions, alterations, modifications or other new construction, improvement or repair work to a building that are undertaken pursuant to any urban redevelopment, rehabilitation or conservation project as hereinabove mentioned, the statement shall be certified by the mayor or any governmental official designated by the mayor and approved by the council, that the additions, alterations, modifications, or other new construction, improvement or repair work to the buildings were made and satisfactorily comply with the particular urban development, rehabilitation or conservation act provision; or

(B) In the case of maintenance or repairs to a residential building undertaken pursuant to any health, safety, sanitation or other governmental code provision, the statement shall be certified by the mayor or any governmental official designated by the mayor and approved by the council, that (i) the building was inspected by them and found to be substandard when the owner-occupant made the claim, and (ii) the maintenance or repairs to the buildings were made and satisfactorily comply with the particular code provision.

(h) Notwithstanding the provisions of subsection (c)(2), properties operating as transient vacation units in accordance with Section 21-4.110-1, and which have a valid nonconforming use certificate, shall be classified based on their underlying zoning.

[(i) "Non-homeowner" means a parcel or portion thereof which:

(1) Is used as a residence but is not classified as "homeowner";

(2) Includes vacant land zoned residential; and

(3) Excludes land classified as hotel and resort, commercial, industrial, agricultural, preservation, public service, and vacant agricultural.

(j) "Homeowner" means a parcel or portion thereof which:

(1) Is used as a residence, has been granted a home exemption under subsections (e) or (f) herein or has been dedicated for residential use under Section 8-7.5;

(2) Has been granted a home exemption under Section 8-10.4 of this chapter for each dwelling unit on the parcel; and

(3) Excludes land classified as hotel and resort, commercial, industrial, agricultural, preservation, public service, and vacant agricultural.

Notwithstanding any provision in this chapter to the contrary, properties operating as transient vacation units in accordance with Section 21-4.110-1 and properties operating as bed and breakfast homes in accordance with Section 21-4.110-2 shall not be classified as "homeowner."]"

SECTION 3. Section 8-7.5, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"Sec. 8-7.5 Certain property dedicated for residential use.

(a) As used in this section:

"Apartment building" means a multi-family dwelling that is situated on a single parcel, which parcel: (1) is exclusively in residential use, and (2) is not subdivided into condominium units.

"Multi-family dwelling" means a building containing three or more dwelling or lodging units, as defined in Section 21-10.1, which is not a hotel.

"Owner" means a person who is the fee simple owner of real property, or who is the lessee of real property whose lease term extends at least five years from the date of the petition.

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"Residential use" means the actual use of a dwelling unit or lodging unit: (1) by occupants for compensation for periods of 30 or more consecutive days; (2) by the unit owner personally or (3) by the unit owner's guest(s) without compensation. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services or labor of employees. Residential use specifically excludes the use of the unit as a transient vacation unit or for time sharing.

(b) The owner of a parcel may dedicate the parcel for residential use and have the property classified as residential and assessed at its value in residential use, provided that the property meets either of the following requirements, as applicable:

(1) The parcel is within an apartment, resort, business or industrial district [. The parcel may be classified as homeowner, provided, that:] and meets the following requirements:

(A) The parcel dedicated shall be limited to a parcel used only for single-family dwelling residential use;

(B) The owner of the parcel dedicated shall use it as the owner's home;

(C) The parcel dedicated has been granted a home exemption under Section 8-10.4 of this chapter for each dwelling unit on the parcel; and

(D) Not more than one parcel shall be dedicated for residential use by any owner; or

(2) The parcel is improved with an apartment building and is:

(A) Zoned BMX-3, BMX-4, AMX-1, AMX-2, AMX-3, IMX-1, I-1, I-2, I-3, B-1 or B-2;

(B) In the Waikiki special district and is zoned apartment mixed use subprecinct, resort mixed use precinct, or resort-commercial precinct; or

(C) In a transit-oriented development zone pursuant to Section 21-9.100.

[Such parcel shall be classified as non-homeowner.]

(c) The owner of real property who wishes to dedicate such property for residential use and have the property assessed at its value in residential use according to subsection (b) shall petition the director and declare in such petition that if the petition is approved, the owner shall meet the applicable requirements of subsection (b) pertaining to the property.

(d) The approval of the petition by the director to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of such person's land for a minimum period of five years, automatically renewable thereafter for additional periods of five years subject to cancellation by either the owner or the director. Cancellation of the dedication by the owner must be in writing and submitted to the director by September 1st within the 10th year of the date of the dedication, or the latest five-year renewal period.

(e) (1) Failure of the owner to observe the restrictions on the use of such person's property or the sale of the property shall cancel the special tax assessment privilege retroactive to the date of the dedication, or the latest five-year renewal period, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a 10 percent per year penalty retroactive to the date of the dedication, or the latest five-year renewal period. Failure to observe the restrictions on the use means failure for a period of over 12 consecutive months to use the property in the manner requested in the petition or the overt act of changing the use for any period, or the sale of the real property. Nothing in this subsection shall preclude the county from pursuing any other remedy to enforce the covenant on the use of the property.

(2) The additional taxes and penalties, due and owing as a result of failure to use or any other breach of the dedication shall be a paramount lien upon the property as provided for by this chapter.

(f) The director shall prescribe the form of the petition. The petition shall be filed with the director by September 1st of any calendar year. The notice of assessment shall serve as notification of approval or disapproval of the petition for dedication. If the petition is approved, the assessment based upon the use requested in the dedication shall be effective on October 1st of the same calendar year.

(g) The owner may appeal any disapproved petition as in the case of an appeal from an assessment."

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SECTION 4. The council is aware that at the time this bill is considered for final approval by the council, there may be another bill that was given final approval by the council but not yet enacted as an ordinance that amends the same provisions of the revised ordinances of Honolulu that this bill amends. If this bill is enacted as an ordinance, the revisor of ordinances shall give maximum effect to all amendments to the revised ordinances made in this bill and made in any other bill situated as described above. The absence in this bill of amendments made in the other bill shall not be construed as a repeal of the amendments made in the other bill.

SECTION 5. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material or the underscoring.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 10-31

BILL 35 (2010), CD1

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SECTION 6. This ordinance shall take effect upon approval and shall apply to the tax years beginning July 1, 2011 and thereafter.

INTRODUCED BY:

Todd Apo

DATE OF INTRODUCTION:

June 3, 2010
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Susan A. Bender
Deputy Corporation Counsel

APPROVED this _____ day of _____, 20___.

~~Mayor~~ PETER B. CARLISLE, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE 10-31 **BILL 35 (2010), CD1**

Introduced: 06/03/10 By: TODD APO Committee: BUDGET

Title: A BILL FOR AN ORDINANCE RELATING TO REAL PROPERTY TAXATION.

Links: BILL 35 (2010)
BILL 35 (2010), CD1
CR-301
CR-312

		NOTE: EFFECTIVE MAY 25, 2010, COUNCILMEMBER CHARLES DJOU, REPRESENTING COUNCIL DISTRICT IV, RESIGNED FROM OFFICE. (Refer to Communication CC-99) ON JUNE 9, 2010, THE APPOINTMENT OF LEE DONOHUE WAS APPROVED (Refer to RES10-132, CD1, FD1 (VERSION A) AND HE WAS SWORN INTO OFFICE AS A MEMBER OF THE HONOLULU CITY COUNCIL REPRESENTING DISTRICT IV TO FILL THE REMAINING TERM OF FORMER COUNCILMEMBER CHARLES DJOU.
COUNCIL	06/09/10	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON BUDGET.
ANDERSON Y	APO Y	CACHOLA Y DELA CRUZ Y DONOHUE Y
GARCIA Y	KOBAYASHI Y	OKINO Y TAM A
PUBLISH	09/11/10	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
BUDGET	09/15/10	CR-301 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING.
COUNCIL	09/22/10	CR-301 ADOPTED. BILL PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON BUDGET.
ANDERSON Y	APO Y	CACHOLA Y DELA CRUZ N DONOHUE Y
GARCIA Y	KOBAYASHI Y	OKINO Y TAM Y
PUBLISH	09/30/10	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
BUDGET	10/06/10	CR-312 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING AS AMENDED IN CD1 FORM.
COUNCIL	10/13/10	CR-312 WAS ADOPTED AND BILL 35 (2010), CD1 PASSED THIRD READING AS AMENDED.
ANDERSON A	APO Y	CACHOLA Y DELA CRUZ N DONOHUE Y
GARCIA Y	KOBAYASHI Y	OKINO Y TAM Y

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.

Bernice K. N. Mau
BERNICE K. N. MAU, CITY CLERK

Todd Apo
TODD K. APO, CHAIR AND PRESIDING OFFICER

ORDINANCE NO. 10-31

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

CERTIFICATE

I hereby certify that on October 14, 2010, Bill 35, CD1 was presented to the Honorable Peter B. Carlisle, Mayor of the City and County of Honolulu, for his approval or otherwise; and that on October 27, 2010, the Mayor returned said Bill without his signature; therefore, pursuant to Section 3-203 of the Revised Charter of Honolulu, said Bill 35, CD1 became a duly enacted ordinance on October 27, 2010.

Dated, Honolulu, State of Hawaii, this 27th day of October, 2010.

CITY COUNCIL

By _____
TODD K. APO
Chair and Presiding Officer

ATTEST:

_____
BERNICE K. N. MAU
City Clerk