CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL **3 (2011), CD1,FD1**
Proposed

# A BILL FOR AN ORDINANCE

RELATING TO THE REAL PROPERTY TAX EXEMPTION FOR HISTORIC RESIDENTIAL REAL PROPERTY.

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

SECTION 1. The purpose of this ordinance is to amend the requirements of the real property tax exemption for historic residential real property dedicated for preservation by adding definitions and clarifying provisions to facilitate enforcement of the exemption requirements.

SECTION 2. Section 8-10.22, Revised Ordinances of Honolulu 1990, as amended, is hereby repealed:

["**Sec. 8-10.22 Exemption—Historic Residential real property dedicated for preservation.**

(a) Portions of residential real property which are dedicated and approved by the director of budget and fiscal services as provided for by this section, shall be exempt from real property taxation except as provided by Section 8-9.1. The owners shall assure reasonable visual access to the public.

(b) An owner of taxable real property, that is the site of a historic residential property that has been placed on the Hawaii Register of Historic Places after January 1, 1977, desiring to dedicate a portion or portions thereof for historic preservation, shall petition the director of budget and fiscal services.

(c) The director of budget and fiscal services shall review the petition and determine what portion or portions of the real property shall be exempted from real property taxes. The director shall consult with the state historic preservation office in making this determination. The director may take into consideration whether the current level of taxation is a material factor which threatens the continued existence of the historic property, and may determine the total area or areas of real property that shall be exempted.

(d) The approval of the petition by the director shall constitute a forfeiture on the part of the owner of any right to change the use of the owner's exempted property for a minimum period of 10 years, automatically renewable indefinitely, subject to cancellation by either the owner or the director upon five years' notice at any time after the end of the fifth year.

(e) Failure of the owner to observe the restrictions of subsection (d) of this section shall cancel the tax exemption and privilege retroactive to the date of the dedication, and all differences in the amount of taxes that were paid and those that would have been due but for the exemption allowed by this section shall be payable together with interest at 12 percent per annum from the respective dates that these payments would have been due, provided the provision in this subsection shall not preclude the county from pursuing any other remedy to enforce the covenant on the use of the land.

(f) Any person who becomes an owner of real property that is permitted an exemption under this section shall be subject to the restrictions and duties imposed under this section.

(g) The director shall prescribe the form of the petition. The petition shall be filed with the director by September 1st of any calendar year and shall be approved or disapproved by October 31st of such year. The exemption provided for by this section shall be effective October 1st of the same calendar year.

(h) An owner applicant may appeal any determination as in the case of an appeal from an assessment.

(i) Subject to HRS Chapter 91, the director shall adopt rules and regulations decreed necessary to accomplish the foregoing.

(j) The owner of a historic residential property that has received an exemption from real property taxation pursuant to this section shall place and maintain on that property a sign or plaque that has been approved by the director and the state historic preservation officer. Subject to HRS Chapter 91, the director shall adopt rules prescribing the requirements for such a sign or plaque."]

SECTION 3. Chapter 8, Article 10, Revised Ordinances of Honolulu 1990, as amended, is hereby amended by adding a new Section 8-10.22 to read as follows:

"**Sec. 8-10.22 Exemption—Historic Residential real property dedicated for preservation.**

(a) As used in this section:

"Alternative visual visitations" means the alternative visual access provided to the public from a viewing point on the property.

"Average condition of property" means a finding by the director that all major components of a property are still functional and contributing toward an extended life expectancy and effective age and utility are standard for like properties of its class and usage; this finding will allow for some deferred maintenance and normal obsolescence with age, in that a few minor repairs and some refurbishing is needed.

"Day" means the seven consecutive hours running from 9:00 a.m. to 4:00 p.m.

"Historic property" means property that has been placed on the Hawaii Register of Historic Places.

"Public way" means and includes any area open to the general public, such as a road, alley, street, way, right-of-way, lane, trail, bikeway, highway, bridge, sidewalk, park or beach and any private property usually open to the public, such as a parking lot.

"Residential property" means property improved with a one or two-family detached dwelling or a duplex unit. This definition includes associated structures, such as carriage houses, ohana units and outbuildings. This definition specifically excludes vacant parcels, districts, areas, or sites, including heiaus, burial and underwater sites.

"Visual access" means visual access at all times with the unaided eye from a distance of not more than 50 feet from the owner's property line from a public way as defined in this section, of the entire front or rear of the one or two-family detached dwelling or duplex unit that is the subject of the petition for dedication under this section.

(b) An owner of taxable historic residential property may dedicate a portion or portions of the residential property thereof for historic preservation by petitioning the director of budget and fiscal services, provided the residential property has visual access or the owner allows alternative visual visitations.

(1) If the historic residential property does not provide visual access, the petition shall provide the public with alternative visual visitations to the property from a viewing point on the historic residential property for at least the twelve days a year designated in the rules adopted by the director.

(2) The viewing point on the historic residential property for alternative visual visitations shall: (A) Be clearly identified on the sketch or site plan included in the petition for dedication; (B) Be identified by a sign on the historic residential property marking the location of the viewing point; and (C) Establish the point beyond which the public shall not advance.

(c) 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, approval in part, or disapproval of the petition for dedication. The owner may appeal any petition for dedication approved in part or disapproved, on or before the date for appealing an assessment as set forth in section 8-12.1. If the petition is approved or approved in part, the exemption provided for by this section shall be effective October 1st of the same calendar year.

(d) The director shall review the petition and determine what portion or portions of the residential real property shall be exempted from real property taxes. Any building or portion of a building less than fifty years old shall not be exempted from real property taxes. The director shall consult with the state historic preservation office in making this determination. The director shall take into consideration whether the historic property has been maintained, at a minimum, in average condition, and shall determine the total area or areas of real property that shall be exempted. The director shall confirm that the historic residential property has visual access. If the director determines that the historic residential property does not provide visual access, then the director shall confirm that the petition provides the public with acceptable alternative visual visitations.

(e) If the director determines that the historic residential property does not provide visual access to the public or that the petition does not provide the public with acceptable alternative visual visitations, the application for dedication shall be denied.

(f) Portions of residential real property which are dedicated and approved by the director as provided for by this section, shall be exempt from real property taxation except as provided by Section 8-9.1.

(g) The approval of the petition by the director shall constitute an obligation on the part of the owner to meet the following requirements:

(1) The owner shall provide visual access to the public of the dedicated historic residential property, or shall provide alternative visual visitations as described in the approved petition;

(2) The owner shall certify that the historic property shall meet or exceed average condition, and, during the dedicated period, shall maintain the historic property in at least average condition. All repair, maintenance and improvements to the property, and use of the property, shall comply with all statutes, ordinances, rules and regulations, and standards for historic properties; and

(3) The owner of a historic residential property that has been approved for dedication pursuant to this section shall place and maintain on the dedicated historic residential property a plaque that has been approved by the director and the state historic preservation officer. The director shall adopt rules prescribing the requirements for such a plaque;

for a minimum period of 10 years, automatically renewable indefinitely, subject to cancellation by either the owner or the director upon five years' notice at any time after the end of the fifth year. Legally permitted uses of the historic residential property may continue during the dedication period without cancellation of the dedication.

(h) An owner may appeal any cancellation of the dedication or imposition of any rollback tax or penalty as in the same manner as an appeal from an assessment.

(i) Any person who becomes an owner of historic residential property that is subject to a dedication under this section shall be subject to the requirements imposed under subsection (g).

(j) The director shall cancel the dedication and disallow the tax exemption if:

(1) the owner fails to observe the requirements and obligations of this section and the rules adopted to implement this section,

(2) a city department issues a citation for noncompliance with or violation of chapters 16 through 21, or

(3) the property is removed from the historic register.

The cancellation and disallowance shall subject the owner to a rollback tax and penalty, retroactive to the date of the last 10-year renewal of the dedication. All differences in the amount of taxes that were paid and those that would have been due but for the exemption allowed by this section shall be payable, together with a 12 percent penalty and interest at 12 percent per year for each year of the rollback tax provided the provision in this subsection shall not preclude the city

from pursuing any other remedy to enforce the covenant on the use of the property.

(k) The director shall cancel the dedication and the retroactive assessment shall not apply: (1) where the owner submits the written notice of cancellation within the prescribed time as provided in subsection (g); and (2) where the subject property is destroyed by any natural disaster or by fire, and upon verification by the Historic Preservation Officer that the restoration or reconstruction of the property is not feasible.

(l) The director shall adopt rules and regulations deemed necessary to accomplish the foregoing in accordance with HRS Chapter 91."

SECTION 4. Notwithstanding the foregoing provisions of the ordinance, if the director determines that a historic residential property for which a petition was previously granted does not provide visual access, the owner shall provide the public with alternative visual visitations to the property from a viewing point on the property for at least the twelve days a year designated in the rules adopted by the director. The viewing point on the historic residential property for alternative visual visitation shall: (A) Be clearly identified on the sketch or site plan submitted to the director by August 1, 2011, as a supplement to the previously granted petition, and approved by the director; (B) Be identified by a sign on the historic residential property marking the location of the viewing point; and (C) Establish the point beyond which the public cannot advance.

SECTION 5. Notwithstanding the foregoing provisions of the ordinance, if the owner of historic property for which a petition was previously granted has not properly placed or maintained on the property a plaque approved by the director and the state historic preservation officer, the owner shall have until August 1, 2011, to comply with this section and the rules adopted to implement this section regarding placement and maintenance of a plaque.

SECTION 6. Notwithstanding the foregoing provisions of the ordinance, any owner of a historic residential property who no longer desires to dedicate his property, may cancel the dedication, effective July 1, 2011, without rollback taxes or penalty and interest, by giving written notice of cancellation by mail or hand delivery on or before July 1, 2011, provided, however, no owner exercising this cancellation shall be absolved from liability for past violations of the ordinance, including, but not limited to, changing the use of the property during the most recent 10-year dedication period.

SECTION 7. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling or printing the ordinance for inclusion in the

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Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material or the underscoring.

SECTION 8. This ordinance takes effect upon approval and shall apply to the tax years beginning July 1, 2011 and thereafter.

INTRODUCED BY:

Nestor Garcia (BR)

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DATE OF INTRODUCTION:

January 19, 2011
Honolulu, Hawaii

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Councilmembers

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

APPROVED this _____ day of _____, 20___.

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PETER B. CARLISLE, Mayor
City and County of Honolulu