CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 12-16

BILL 30 (2012), CD1, FD1

A BILL FOR AN ORDINANCE

RELATING TO THE TAXATION OF REAL PROPERTY.

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

SECTION 1. Purpose. The purpose of this ordinance is to amend the provisions of the ROH concerning the dedication of agricultural land.

SECTION 2. Section 8-7.3, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"**Sec. 8-7.3 Dedication of lands for agricultural use.**

(a) As used in this section:

"Agricultural use of land" means the active[, commercial, and primary] use of the land for [aquaculture, crop production, livestock production and grazing of animals used in livestock production.] the production of agricultural products.

"Agricultural products" include such products as [livestock byproducts and plants for food, fiber, or energy; flowers and foliage; tree farms; aquatic animals and plants; bees and related natural byproducts; biomass; nuts; and seeds.] floricultural, horticultural, viticultural, aquacultural, forestry, nut, coffee, dairy, livestock, poultry, bee, animal, tree farm, animals raised by grazing and pasturing, and any other farm, agronomic, or plantation products.

["Land use change" means for land dedicated for a specific agricultural use either (i) a change in the state land use classification from agricultural to urban or rural district, (ii) a change in the county zoning from agricultural, preservation or country district, or (iii) a subdivision of the land dedicated for a specific agricultural use into parcels of five acres or less, which change or subdivision is initiated or authorized by the owner.]

["Land use change cancellation" means a written notice of cancellation, filed by the owner with the director, due to a land use change whereby the land dedicated for a specific agricultural use or a portion thereof is no longer being maintained as agricultural land. The notice shall specify the nature of the land use change, the acreage and location of the land removed from the dedication, and the acreage and location of the dedicated land remaining, if any. Upon receipt of the notice, the dedication shall be cancelled or amended, as the case may be, and the land affected by the land use change shall be subject to rollback tax and penalty as calculated in subsection m(1) or

(2) herein. Such cancellation shall be effective on the next July 1st which is at least nine months after the filing.]

["Livestock production" means raising of cattle, sheep, swine, goats and poultry for food or in the production of food.]

"Maintain as agricultural land" means that the land dedicated for [a specific] agricultural use [shall remain in substantial and continuous agricultural use] throughout the dedication period [, unless the owner files with the director a land use change cancellation.] is not, at the initiation of the owner or with the authorization of the owner, subject to (i) a change in the state land use classification from agricultural to urban or rural district, (ii) a change in the county zoning from agricultural, preservation or country district, or (iii) a subdivision of the land into parcels of five acres or less.

"Owner" or "property owner" [means] mean the fee simple owner of the real property provided that for government-owned real property, "owner" or "property owner" [means] mean a lessee of the land where (i) the lease allows the specific agricultural use, and (ii) the lease term extends through the period of the dedication.

"Residential homesite area" means that portion of the parcel, which is zoned agricultural and used for residential purposes, including land upon which the house is located and the land designated to be the yard space. A residential homesite area cannot be dedicated for agricultural use.

["Revenue-generating" means producing income from the agricultural uses of the property.]

"Substantial and continuous agricultural use" means no less than 75 percent of the area of the subject land, but excluding the area of unusable land, is in active, continuous and revenue-generating agricultural use throughout the subject time period. For lands dedicated for a period of five years or 10 years, substantial and continuous agricultural use shall include necessary and customary fallowing periods.

"Tree farm property" and "tree farm" mean land classified as tree farm property under HRS Chapter 186.

"Unusable land" means that portion of the lands dedicated for a specific agricultural use that the director determines to be unsuitable for the dedicated agricultural use.

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(b) Lands for which the director has approved a petition for dedication for a specific agricultural use for a period of one year, five years, or 10 years shall be classified and assessed for real property tax purposes at a percentage of the land's fair market value as established in subdivision (2) and shall be subject to the following:

(1) The land dedicated must be substantially and continuously used for the business of raising and producing agricultural products in their natural state.

(2) Dedicated land shall be assessed as follows:

(A) For land dedicated for a period of one year, the land shall be assessed at five percent of its fair market value.

[(A)] (B) For land dedicated for a period of five years, the land shall be assessed at three percent of its fair market value.

[(B)] (C) For land dedicated for a period of 10 years, the land shall be assessed at one percent of its fair market value.

[(C)] (D) For land dedicated for a pasture use [or grazing of animals] for a period of one, five or 10 years, the land shall be assessed at one percent of its fair market value. [Only Ag-1 and P-2 zoned properties may be dedicated for a pasture use or grazing of animals.]

(3) The land dedicated shall be substantially and continuously in a use specified under subdivision (1) for the duration of the dedication period.

(c) Notwithstanding the provisions of subsection (b), in the event the highest per-acre calculation for lands dedicated for five years under subsection [(b)(2)(A)] (b)(2)(B) based on the minimum lot size as designated in Chapter 21 for lands located in agricultural districts exceeds the average agricultural production value per acre for the county for vegetables and melon crops, and fruits excluding pineapple, as determined annually by the director, then the percent of market value for five-year dedications set forth in subsection [(b)(2)(A)] (b)(2)(B) shall be changed so as not to exceed the average agricultural production value per acre for such crops. The percent of market value for one-year dedications set forth in subsection (b)(2)(A) shall also be changed to not exceed the percent of market value for five-year dedications by more than 1.67 times, and the percent of

market value for 10-year dedications set forth in subsection [(b)(2)(B)] (b)(2)(C) shall also be changed to not exceed the percent of market value for five-year dedications by more than 0.33 times.

(d) Lands for which the director has approved a petition for dedication as vacant agricultural land for a period of 10 years shall be classified and assessed for real property tax purposes at 50 percent of the land's fair market value, provided that for the period of the dedication, the land dedicated is not, at the initiation of the owner or with the authorization of the owner, subject to (i) a change in the state land use classification from agricultural to urban or rural district, (ii) a change in the county zoning from agricultural or (iii) a subdivision of the land into parcels of 10 acres or less.

(e) A petition to dedicate land or a portion thereof for a specific agricultural use or as vacant agricultural land shall be filed with the director. An owner of the land may petition for dedication, or with the written authorization of the owner, a lessee, permittee or licensee may petition for dedication of the owner's land. The petition for dedication for a specific agricultural use shall require a declaration that if the petition is approved by the director, the land shall be used for the specific agricultural use for the duration of the dedication period [, unless the owner files with the director a land use change cancellation,] and a petition for dedication as vacant agricultural land shall require a declaration that if the petition is approved by the director, the land shall be maintained as [agricultural] agriculture land for the duration of the dedication period. The petition for a dedication for a specific agricultural use shall be supported by an agricultural plan. The director shall prescribe the form of the petition and of the agricultural plan. The agricultural plan [shall] may include the following:

(1) A description of the specific agricultural use;

(2) A tax map key number of the owner's land;

(3) A description of the total acreage of the land;

(4) A description of the acreage to be utilized for the specific agricultural use or as vacant agricultural land;

(5) A description of the residential homesite area, if any, excluded from the dedication;

(6) A timetable for implementation of the plan; and

(7) A copy of a valid State of Hawaii general excise tax license issued for agricultural purposes.

(f) A parcel, or portion thereof, which has been approved for dedication as vacant agricultural land may have its dedicated use, for all or a portion thereof, changed to a specific agricultural use without the imposition of the rollback tax and penalty upon petition to the director to change the dedication of the parcel or portion thereof to a specific agricultural use, provided that:

(1) When the remaining period of the dedication for vacant agricultural land is more than five years, the dedication for a specific agricultural use shall be for a 10-year period;

(2) When the remaining period of the dedication for vacant agricultural land is less than five years, the dedication for a specific agricultural use shall be for a five- or 10-year period.

The petition for change of the dedication shall be filed by the owner of the land or with the written authorization of the owner, by a lessee, permittee or licensee of the land, as the case may be. The director shall prescribe the form of the petition to change dedication.

(g) Upon receipt of a petition as provided in subsection (e), the director shall make a finding of fact as to whether the land in the petition area is reasonably well suited for the designated specific agricultural use or is classified [vacant] agricultural under Section 8-7.1 and qualifies to be maintained as agricultural land. The finding shall be based upon a study of the ownership, size of operating unit, the present use of surrounding similar lands, the state and county land use restrictions for the land and other criteria as may be appropriate. The director shall also make a finding of fact as to whether the designated specific agricultural use or vacant agricultural land use conforms to the development plan for the area. The director shall also make a finding of fact as to the economic feasibility of the designated specific agricultural use of the land. If all the findings are favorable, the director shall approve the petition and declare the land to be dedicated for the designated specific agricultural use or as vacant agricultural land.

(h) The approval by the director of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of the owner's land to a use other than agricultural for a minimum period of <u>one year,</u> five <u>years,</u> or 10

years, as the case may be, [except in the case of land dedicated for a specific agricultural use where the owner files with the director a land use change cancellation,] or to cease to maintain the land as agricultural land for a minimum of 10 years.

(i) The petition for dedication shall be filed with the director by September 1st of any calendar year [The notice of assessment shall serve as notice of approval or disapproval of the petition for dedication.] and shall be approved or disapproved by October 31st. If approved, the assessment based upon the use requested in the petition for dedication shall be effective on October 1st of the same calendar year.

(j) The owner of any parcel of land dedicated under this section shall annually submit a report to the director no later than September 1st following each tax year of the dedication. The report may be rejected by the director in the event the report is incomplete or contains erroneous or incorrect information. The report shall be accepted or rejected by the director by [December 15th] October 31st of the year in which it is submitted. The director shall prescribe the form of the report. The report may include but is not limited to:

(1) An updated description of the agricultural use of the land during the immediately preceding and current tax years;

(2) A copy of all state general excise tax returns for the immediately preceding tax year concerning activities conducted on the parcel of land dedicated for a specific agricultural use;

(3) A description of the acreage and percentage of the area of the parcel of land utilized for the specified agricultural use during the immediately preceding and current tax years; and

(4) A declaration, if applicable, that the owner will keep the land in substantial and continuous agricultural use, or will maintain the land as agricultural land through the remaining period of the dedication.

Any part of the report containing confidential commercial or financial information, including income statements or tax statements, shall be clearly labeled by the owner as such and shall not be open to inspection by the public.

(k) If land dedicated for agricultural use undergoes a change in classification which is not at the initiation of the owner or with the authorization of the owner, such that there is (i) a change in the state land use classification from agriculture to urban or rural district, (ii) a change in the county zoning from agriculture, preservation or country district, the dedication shall continue unless the owner files a written notice of cancellation with the director within 60 days of the change. Such cancellation shall be effective on the next July 1st which is at least nine months after the filing.

(l) In the event that a dedication is canceled or expires, the director shall execute an expiration or cancellation of the dedication.

(m) In the event the director, upon inspection, finds that dedicated agricultural land is not in substantial and continuous agricultural use, that the land has not been maintained as agricultural land, that the property owner failed to file the required report in a timely manner, or that the required report must be rejected, the owner shall be notified of the finding and the owner shall have 60 days to address the finding. In the event the owner fails to satisfactorily address the finding, the dedication shall be canceled and the property owner shall be subject to a rollback tax and penalty. The rollback tax shall be the difference between the taxes owed for the land at 100 percent of the land's assessed value at fair market value and the taxes actually imposed on the land, retroactive from June 30th of the tax year in which the dedication was canceled to July 1st of the initial year of the dedication at the tax rate applicable for the respective tax years, except as provided in paragraphs (1) and (2) below. The penalty shall be 10 percent for each year of the rollback tax. The rollback tax and penalty shall be a paramount lien upon the property.

(1) For lands dedicated for five years and subject to a cancellation after the third tax year of the dedication period, the period of the rollback tax shall be in accordance with the following schedule:

(A) For two tax years for a cancellation in the fourth tax year of the dedication period, retroactive from June 30th of the fourth tax year to July 1st of the third tax year of the dedication period;

(B) For one tax year for a cancellation in the fifth tax year of the dedication period, retroactive from June 30th of the fifth tax year to July 1st of the fifth tax year of the dedication period.

(2) For lands dedicated for 10 years and subject to a cancellation after the fifth year of the dedication period, the period of the rollback tax shall be in accordance with the following schedule:

(A) For five tax years for a cancellation in the sixth tax year of the dedication period, retroactive from June 30th of the sixth tax year to July 1st of the second tax year of the dedication period;

(B) For four tax years for a cancellation in the seventh tax year of the dedication period, retroactive from June 30th of the seventh tax year to July 1st of the fourth tax year of the dedication period;

(C) For three tax years for a cancellation in the eighth tax year of the dedication period, retroactive from June 30th of the eighth tax year to July 1st of the sixth tax year of the dedication period;

(D) For two tax years for a cancellation in the ninth tax year of the dedication period, retroactive from June 30th of the ninth tax year to July 1st of the eighth tax year of the dedication period;

(E) For one tax year for a cancellation in the tenth tax year of the dedication period, retroactive from June 30th of the tenth tax year to July 1st of the tenth tax year of the dedication period;

(n) The owner may appeal any disapproved petition for dedication, rejection of the annual report, cancellation of the dedication, or imposition of a rollback tax and penalty in the same manner as an appeal from an assessment.

(o) Notwithstanding any provision in this section to the contrary, the occurrence of any of the following events shall cause the dedication to be canceled without the imposition of any rollback taxes or penalties whatsoever.

(1) The death of any owner; or

(2) Events beyond the owner's control make it unfeasible to continue the agricultural use of the dedicated property, including, but not limited to:

(A) A serious or debilitating long-term illness or injury suffered by the owner;

(B) A natural disaster such as a windstorm, flood, disease, or infestation that destroys the crop or livestock on the dedicated parcel; or

(C) The taking of the dedicated parcel or any portion thereof by a governmental entity, provided that where only a portion of the parcel is taken, the cancellation shall be effective only as to the portion taken.

(3) The change of a dedication of vacant agricultural lands to a dedication for a specific agricultural use under subsection (f).

(p) Notwithstanding any provisions in this section to the contrary, for five- and 10-year dedications of land for a specific agricultural use, the director may grant an owner a grace period which may be granted subject to the following conditions:

(1) A grace period may be granted only if one of the following events occurs:

(A) A bank or other lending institution acquires possession of a property as a result of a default of a mortgage on the property; or

(B) The agricultural use of a dedicated parcel is terminated because a lessee has abandoned or terminated a lease prior to the end of the term of the lease [and], the owner of the parcel has not found another lessee, and the lease has a term of five years or longer.

(2) During the grace period, the owner is not required to use the land for the business of raising and producing agricultural products.

(3) At the end of the grace period, the owner shall use the land for the business of raising and producing agricultural products for the entire remaining period of the owner's dedication. The grace period shall not be counted in determining the owner's compliance with the dedication.

(4) The grace period shall not exceed two years.

(5) During the grace period, the land shall be assessed at 100 percent of market value.

(6) No grace period shall be granted for a parcel of land within five years following the expiration of a previous grace period."

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SECTION 3. 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.

SECTION 4. This ordinance shall take effect upon its approval and shall apply to the tax years beginning July 1, 2013 and thereafter.

INTRODUCED BY:

Ikaika Anderson

DATE OF INTRODUCTION:

March 15, 2012
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this 25th day of May, 2012.

PETER B. CARLISLE, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE 12-16 **BILL 30 (2012), CD1, FD1**

Introduced: 03/15/12 By: IKAIKA ANDERSON Committee: BUDGET

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

Links: BILL 30 (2012)
BILL 30 (2012), CD1, FD1
CR-121
CR-165

Voting Legend: Y= Aye, Y* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

COUNCIL	03/21/12	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON BUDGET.									
ANDERSON	Y	BERG	Y	CACHOLA	Y	CHANG	Y	GABBARD	Y		
GARCIA	Y	HARIMOTO	A	KOBAYASHI	Y	MARTIN	Y				
BUDGET	04/04/12	CR-121 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AS AMENDED IN CD1 FORM AND SCHEDULING OF A PUBLIC HEARING.									
PUBLISH	04/14/12	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.									
COUNCIL/PUBLIC HEARING	04/25/12	BILL AMENDED TO CD1, FD1.									
ANDERSON	Y	BERG	Y	CACHOLA	Y	CHANG	A	GABBARD	Y		
GARCIA	Y	HARIMOTO	Y	KOBAYASHI	Y	MARTIN	Y				
		CR-121 ADOPTED. BILL PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON BUDGET.									
ANDERSON	Y	BERG	Y	CACHOLA	Y	CHANG	A	GABBARD	Y		
GARCIA	Y	HARIMOTO	Y	KOBAYASHI	Y	MARTIN	Y				
BUDGET	05/02/12	CR-165 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.									
PUBLISH	05/03/12	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.									
COUNCIL	05/09/12	CR-165 ADOPTED AND BILL 30 (2012), CD1, FD1 PASSED THIRD READING.									
ANDERSON	Y	BERG	Y	CACHOLA	Y	CHANG	Y	GABBARD	Y		
GARCIA	Y	HARIMOTO	Y	KOBAYASHI	Y	MARTIN	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

ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER