

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
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KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR DESIGNATE

GARY T. KUROKAWA
DEPUTY DIRECTOR

January 10, 2017

The Honorable Ron Menor
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

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Dear Chair Menor and Councilmembers:

SUBJECT: Bill to Include Condominium Units in the Residential Use Dedication Program

Attached for your consideration for adoption is a Bill to amend Revised Ordinances of Honolulu 1990, Section 8-7.5 Certain property dedicated for residential use and Section 8-7.1 Valuation – Considerations in fixing. The Real Property Assessment Division is currently maintaining and having to monitor records for this specific situation. The current methodology requires the taxpayer to provide burdensome documentation and the real property staff spend numerous man hours processing and screening each submittal for completeness and accuracy. Furthermore, there is currently no consequence for discontinuation of the residential use and lack of notification.

For the 2016 tax year, the Division conducted an audit that affected approximately 4,000 properties. Numerous discrepancies were noted indicating that taxpayers may have been under paying their taxes for a number of years. The changes in tax classification led to taxpayer misunderstandings, a number of deficient filings and large tax increases.

Under the proposal, condominium owners will be required to dedicate their mixed use unit for residential use in order to receive the benefit of the lower residential tax rate. In the absence of a dedication the unit would be classified based on the unit's highest and best use in the same manner as all other property.

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This proposed dedication will be an automatically renewing 5 year dedication for residential use which eliminates the burden of proof for the taxpayer, except in the case of an audit, and allows for a rollback should a violation of the dedication occur.

A hardcopy and CD containing the proposed bill is attached. Please call me at 768-3901 if you have any questions.

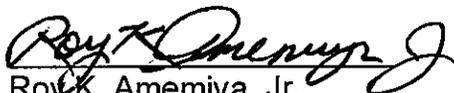
Sincerely,



Nelson H. Koyanagi, Jr., Director Designate
Budget and Fiscal Services

Attachment

APPROVED:



Roy K. Amemiya, Jr.
Managing Director Designate



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. Purpose. The purpose of this ordinance is to include condominium units in the residential use dedication program.

SECTION 2. Section 8-7.1 Revised Ordinances of Honolulu 1990 ("Valuation - Considerations in fixing"), is amended by amending subsection (c) (3) to read as follows:

- (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 real property; and]~~ Shall be deemed a parcel and assessed separately from other units; and
 - (B) Shall be ~~[deemed a parcel and assessed separately from other units.]~~ classified as follows:
 - (i) If the unit has a single, legally permitted, exclusive actual use, it shall be classified upon consideration of the unit's actual use into one of the general classes in the same manner as real property; or
 - (ii) If the unit has multiple, legally permitted uses; it shall be classified:
 - (aa) Upon consideration of the unit's highest and best use into one of the general classes in the same manner as real property; or
 - (bb) Residential, only upon approved dedication as provided in Section 8-7.5 when the unit is legally permitted multiple exclusive uses including residential use; or
 - (iii) If the unit is a condominium parking unit or a condominium storage unit; it shall be classified Residential, only upon approved dedication



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when the unit is used in conjunction with a unit in residential use within the project.

SECTION 3. Section 8-7.5, Revised Ordinances of Honolulu 1990 ("Certain property dedicated for residential use"), 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 is not subdivided into condominium units.

"Condominium unit" is a dwelling or lodging unit that is part of a condominium property regime established pursuant to HRS Chapter 514A and/or 514B

"Condominium parking unit" is a unit that is a part of a condominium property regime established pursuant to HRS Chapter 514A and/or 514B described as a parking stall.

"Condominium storage unit" is a unit that is a part of a condominium property regime established pursuant to HRS Chapter 514A and/or 514B described as a storage space.

"Detached dwelling" is as defined in Section 21-10.1.

"Dwelling unit" is as defined in Section 21-10.1.

"Lodging unit" is as defined in Section 21-10.1.

"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.

"Residential use" means the actual use of a dwelling unit or lodging unit as a residence: (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



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- 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. For purposes of this dedication, residential use shall include the use of the unit as a group living facility, a boarding facility, or as special needs housing for the elderly.
- (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:
- (1) Is within an apartment, apartment mixed use, resort, business, business mixed use, industrial or industrial mixed use district; or if it is in the Waikiki special district, is zoned apartment mixed use subprecinct, resort mixed use precinct, or resort-commercial precinct; or is in a transit-oriented development zone pursuant to Section 21-9.100;
 - (2) Is used exclusively for residential use, except that a portion of the property may be used for nonprofit purposes pursuant to Section 8-10.10; and
 - (3) The parcel is improved with one or more detached dwellings, as defined in Section 21-10.1 or with one or more apartment buildings or with both dwellings and apartment buildings or is a condominium unit that is legally permitted multiple uses including residential use and is actually and exclusively used as a residence, or
 - (4) A condominium parking unit or a condominium storage unit that is used in conjunction with a unit in residential use within the project.
- (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] property 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 only within the 5th year of the date of the dedication, or the latest five-year renewal period.



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Upon sale or transfer of the dedicated property, the dedication shall continue for the remainder of the five year dedication or latest five-year renewal subject to all restrictions and penalties. Upon expiration of the fifth year the dedication will not automatically renew and will be cancelled by the director.

For the purpose of this dedication, there is no change in use if the owner demolishes and constructs or reconstructs one or more detached dwellings or multi-family dwellings, provided that such construction or reconstruction is permitted pursuant to Chapter 21, Revised Ordinances of Honolulu 1990, as amended, the replacement structure or structures are completed no less than 24 months after the building permit is issued, and at least the same number of dwelling or lodging units as those demolished are developed. The five-year dedication will be suspended during this period of demolition and construction or reconstruction, and the parcel and any improvements thereon will continue to be classified and assessed at their value in residential use during the suspension.

- (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~~] dedication retroactive to the tax year preceding the tax year in which the breach of the dedication occurs, 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 tax year preceding the tax year in which the breach of the dedication occurs. Any assessment under Chapter 36, levied upon a special improvement district noted in Appendix 36-A, that would have been due but for the dedication shall also be due and payable along with applicable penalties and interest, retroactive to the tax year preceding the tax year in which the breach of the dedication occurs. 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 observe the restrictions on use or any other breach of the dedication shall be a paramount lien upon the property as provided for by this chapter. Any special assessment under Chapter 36, due and owing as a result of failure to observe the restrictions on use or any other breach of the dedication shall be a lien against the land and improvements of the parcel of land in accordance with ROH Section 36-3.5.



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- (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 as of 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.”

SECTION 4. Ordinance material to be repealed is bracketed and stricken. 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.



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SECTION 5. This ordinance shall take effect upon its approval and shall apply to the tax years beginning July 1, 2018 and thereafter.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20__.

Kirk Caldwell, Mayor
City and County of Honolulu