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## A BILL FOR AN ORDINANCE

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RELATING TO THE TRANSPORTATION SURCHARGE.

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

SECTION 1. Council Findings and Purpose. The purpose of this ordinance is to amend the ordinances pertaining to the county surcharge on general excise and use taxes.

Pursuant to Section 2 of Act 247, Session Laws of Hawaii, Regular Session of 2005, codified as HRS Section 46-16.8, Ordinance 05-27 established a one-half percent general excise and use tax surcharge to fund the operating and capital costs of the locally preferred alternative for the City's mass transit project and related improvements to comply with the Americans with Disabilities Act (ADA), which ordinance became effective on January 1, 2007, and was to be repealed on December 31, 2022.

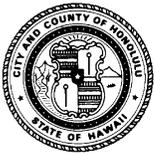
Among other things, Section 3 of Act 240, Session Laws of Hawaii, Regular Session of 2015, amended HRS Section 46-16.8 to provide for a five-year extension of the general excise and use tax surcharge beyond December 31, 2022, to December 31, 2027, for any county that established a tax surcharge prior to the effective date of Act 240 on July 14, 2015, and that enacted an ordinance to implement the extension.

On February 1, 2016, Ordinance 16-1 was enacted. Among other things, it implemented the five-year extension of the general excise and use tax surcharge to December 31, 2027, and imposed a maximum amount of \$4.815 billion as the amount that may be expended on the minimum operable segment of the locally preferred alternative for the City's mass transit project.

Since the enactment of Ordinance 16-1, it has become clear that the general excise and use tax surcharge, even with the five-year extension, will not be enough to build the minimum operable segment.

On November 16, 2016, the Council passed Resolution 16-248, CD1, reaffirming the Council's support of extending the surcharge on the general excise tax in order to complete the minimum operable segment of the Honolulu Rail Project to Ala Moana Shopping Center.

On December 1, 2016, the Honolulu Authority for Rapid Transportation submitted an Update of the Financial Plan for the Full Funding Grant Agreement. The Financial Plan Update indicates that the projected total capital cost of the project is \$8.2 billion, based on current construction estimates, with additional funding for financing required to complete the minimum operable segment.



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The \$4.815 billion cap imposed by Ordinance 16-1 is incompatible with the projected total capital cost of the project of \$8.2 billion and associated financing costs.

Therefore, this ordinance is intended to amend Ordinance 16-1: (1) to remove the \$4.815 billion cap, and (2) to make Chapter 6, Article 60 (Revolving Special Funds, Housing Mortgage Loans and Fees; Transportation Surcharge—Use of Funds), consistent with the Revised Charter of the City and County of Honolulu 1973 (2000 ed.), as amended, and with State law.

SECTION 2. Chapter 6, Article 60, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**“Article 60. Transportation Surcharge—Use of Funds**

**Sec. 6-60.1 Establishment of surcharge—Conditions.**

Pursuant to Section 2 of Act 247, Session Laws of Hawaii, Regular Session of 2005, codified as Section 46-16.8 of the Hawaii Revised Statutes, there is hereby established a one-half percent general excise and use tax surcharge to be used for purposes of funding the ~~[operating and]~~ capital costs of public transportation within the City and County of Honolulu as specified herein. The excise and use tax surcharge will be levied beginning January 1, 2007.

**Sec. 6-60.2 Use of funds.**

(a) As required by HRS Section 248-2.6(d), moneys received from the state derived from the imposition of the surcharge established under this article will be a general fund realization. Beginning July 1, 2015, moneys received from the surcharge may be expended for the following purposes authorized by state law:

- (1) Capital costs of a locally preferred alternative for a mass transit project; and
- (2) Expenses in complying with the Americans with Disabilities Act of 1990 with respect to subdivision (1).

~~[(b) No surcharge moneys may be expended on portions of the locally preferred alternative for mass transit project beyond the minimum operable segment established under resolution 08-261, and a maximum amount of \$4.815 billion of surcharge moneys levied from January 1, 2007 to December 31, 2022 may be expended on the minimum operable segment and associated debt financing costs.]~~



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~~(c) Notwithstanding the restrictions detailed in subsection (b) above, any surcharge moneys collected in excess of the \$4.815 billion may be expended in the following order of priority:~~

~~(1) Contingency and other reserves as recommended by the Federal Transit Administration and as detailed in the Updated Final Financial Plan for the Full Funding Grant Agreement;~~

~~(2) ADA accessibility improvements to the minimum operable segment of the locally preferred alternative for the mass transit project;~~

~~(3) Planning and design costs for route expansion; and~~

~~(4) Infrastructure improvements to rail station areas to support affordable housing, as permitted by State and Federal law,~~

~~provided that these additional surcharge expenditures may be expended only after the Honolulu Authority for Rapid Transportation provides for council review an update on the expenditures to date on the mass transit project and the anticipated use and amount of the additional surcharge expenditures above the \$4.815 billion limit.~~

~~(d) No surcharge moneys may be expended for any purpose if the expenditure of such moneys will result in the project ending cash balance falling below the amount set forth in the Updated Final Financial Plan for the Full Funding Grant Agreement.~~

~~(e) The Honolulu Authority for Rapid Transportation shall submit to the council no later than January 1, 2017, any and all costs associated with: 1) contingency and other reserves as recommended by the Federal Transit Administration and as detailed in the Updated Final Financial Plan for the Full Funding Grant Agreement; 2) ADA accessibility improvements to the minimum operable segment of the locally preferred alternative for the mass transit project; 3) planning and design costs for route expansion; and 4) infrastructure improvements to rail station areas to support affordable housing, as permitted by State and Federal law.~~

~~(f)] (b) No moneys received from the surcharge may be used to build or repair public roads or highways or bicycle paths, or to support public transportation systems already in existence prior to July 12, 2005.~~

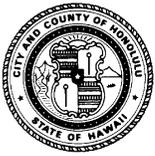


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- ~~[(g) Prior to and as a prerequisite for any transfer of moneys received from the surcharge, the Honolulu Authority for Rapid Transportation shall submit to the council a quarterly updated cash balance summary that contains all revenues and expenditures, including both capital expenditures and operating and maintenance expenditures.~~
- ~~(h) At the close of each quarter, the Honolulu Authority for Rapid Transportation shall submit to the council:~~
- ~~(1) A capital improvement program status report in substantially the same form as that submitted by the director of budget and fiscal services for the city's executive capital improvement program.~~
- ~~(2) A statement of cash balances for each revenue source and each category of project cost showing the cash balance at the start of the accounting period and the cash balance at the end of the period.~~
- ~~(i) Within 30 days following the end of each fiscal year, the Honolulu Authority for Rapid Transportation shall submit to the council a report detailing all amounts invoiced by and paid to general contractors for the fiscal year just ended. The report must be organized by general contractor, separately reflect amounts billed by the general contractor for work done by its subcontractors, and include the following information:~~
- ~~(1) The names of general contractors and their respective subcontractors;~~
- ~~(2) The type of services provided by each general contractor and subcontractor;~~
- ~~(3) A detailed description and justification for the work done by each general contractor and subcontractor; and~~
- ~~(4) The amount invoiced by and paid to each general contractor, and the amount invoiced by each subcontractor to the general contractor for the described work.]~~
- (c) The annual report of the Board of Directors of the Honolulu Authority for Rapid Transportation required by the Revised Charter of the City and County of Honolulu, must include:
- (1) Any and all costs associated with:



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- (A) Contingency and other reserves as recommended by the Federal Transit Administration and as detailed in the Updated Final Financial Plan for the Full Funding Grant Agreement;
  - (B) ADA accessibility improvements to the minimum operable segment of the locally preferred alternative for the mass transit project;
  - (C) Planning and design costs for route expansion within the limits of the locally preferred alternative adopted by Ordinance 07-001; and
  - (D) Infrastructure improvements to rail station areas to support affordable housing, as permitted by State and Federal law.
- (2) An updated cash balance summary that contains all revenues and expenditures. The summary will include cash balances for each revenue source and each category of project cost showing the cash balance at the start of the accounting period and the cash balance at the end of the period;
- (3) A capital improvement program status report in substantially the same form as that submitted by the director of budget and fiscal services for the city's executive capital improvement program; and
- (4) All amounts invoiced by and paid to general contractors for the fiscal year just ended. The amounts must be organized by general contractor, separately reflect amounts billed by the general contractor for work done by its subcontractors, and include the following information:
- (A) The names of general contractors and their respective subcontractors;
  - (B) The type of services provided by each general contractor and subcontractor;
  - (C) A detailed description and justification for the work done by each general contractor and subcontractor; and
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~~(f)~~ (d) For purposes of this article, "capital costs" means the same as defined in HRS Section 46-16.8, as it may be amended, for a county with a population greater than 500,000.

**Sec. 6-60.3 Repeal of surcharge.**

Pursuant to Section 9 of Act 247, Session Laws of Hawaii, Regular Session of 2005, [~~Section 6-60.1~~] this article will be repealed on December 31, 2022."

SECTION 3. Chapter 6, Article 60, Revised Ordinances of Honolulu 1990, is repealed.

~~["Article 60. Transportation Surcharge—Use of Funds~~

~~**Sec. 6-60.1 Establishment of surcharge—Conditions.**~~

~~Pursuant to Section 2 of Act 247, Session Laws of Hawaii, Regular Session of 2005, codified as Section 46-16.8 of the Hawaii Revised Statutes, there is hereby established a one-half percent general excise and use tax surcharge to be used for purposes of funding the capital costs of public transportation within the City and County of Honolulu as specified herein. The excise and use tax surcharge will be levied beginning January 1, 2007.~~

~~**Sec. 6-60.2 Use of funds.**~~

~~(a) As required by HRS Section 248-2.6(d), moneys received from the state derived from the imposition of the surcharge established under this article will be a general fund realization. Beginning July 1, 2015, moneys received from the surcharge may be expended for the following purposes authorized by state law:~~

- ~~(1) Capital costs of a locally preferred alternative for a mass transit project; and~~
- ~~(2) Expenses in complying with the Americans with Disabilities Act of 1990 with respect to subdivision (1).~~

~~(b) No moneys received from the surcharge may be used to build or repair public roads or highways or bicycle paths, or to support public transportation systems already in existence prior to July 12, 2005.~~



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- ~~(c) — The annual report of the Board of Directors of the Honolulu Authority for Rapid Transportation required by the Revised Charter of the City and County of Honolulu, must include:~~
- ~~(1) — Any and all costs associated with:~~
- ~~(A) — Contingency and other reserves as recommended by the Federal Transit Administration and as detailed in the Updated Final Financial Plan for the Full Funding Grant Agreement;~~
  - ~~(B) — ADA accessibility improvements to the minimum operable segment of the locally preferred alternative for the mass transit project;~~
  - ~~(C) — Planning and design costs for route expansion within the limits of the locally preferred alternative adopted by Ordinance 07-001; and~~
  - ~~(D) — Infrastructure improvements to rail station areas to support affordable housing, as permitted by State and Federal law;~~
- ~~(2) — An updated cash balance summary that contains all revenues and expenditures. The summary will include cash balances for each revenue source and each category of project cost showing the cash balance at the start of the accounting period and the cash balance at the end of the period;~~
- ~~(3) — A capital improvement program status report in substantially the same form as that submitted by the director of budget and fiscal services for the city's executive capital improvement program; and~~
- ~~(4) — All amounts invoiced by and paid to general contractors for the fiscal year just ended. The amounts must be organized by general contractor, separately reflect amounts billed by the general contractor for work done by its subcontractors, and include the following information:~~
- ~~(A) — The names of general contractors and their respective subcontractors;~~
  - ~~(B) — The type of services provided by each general contractor and subcontractor;~~
  - ~~(C) — A detailed description and justification for the work done by each general contractor and subcontractor; and~~



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~~(D) The amount invoiced by and paid to each general contractor, and the amount invoiced by each subcontractor to the general contractor for the described work.~~

~~(d) For purposes of this article, "capital costs" means the same as defined in HRS Section 46-16.8, as it may be amended, for a county with a population greater than 500,000.~~

**~~Sec. 6-60.3 Repeal of surcharge.~~**

~~Pursuant to Section 9 of Act 247, Session Laws of Hawaii, Regular Session of 2005, this article will be repealed on December 31, 2022:"]~~

SECTION 4. Ordinance 16-1 is amended by repealing SECTION 3.

SECTION 5. Chapter 6, Article 60, Revised Ordinances of Honolulu 1990 ("Revolving Special Funds, Housing Mortgage Loans and Fees"), as enacted in Section 4 of Ordinance 16-1, is amended to read as follows:

**"Article 60. Transportation Surcharge—Use of Funds**

**Sec. 6-60.1 Establishment of surcharge—Conditions.**

Pursuant to Section 2 of Act 247, Session Laws of Hawaii, Regular Session of 2005, codified as Section 46-16.8 of the Hawaii Revised Statutes, there is hereby established a one-half percent general excise and use tax surcharge to be used for purposes of funding the ~~[operating and]~~ capital costs of public transportation within the City and County of Honolulu as specified herein. The excise and use tax surcharge will be levied beginning January 1, 2007.

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(2) Expenses in complying with the Americans with Disabilities Act of 1990 with respect to subdivision (1).

~~[(b) No surcharge moneys may be expended on portions of the locally preferred alternative for mass transit project beyond the minimum operable segment established under resolution 08-261, and a maximum amount of \$4.815 billion of surcharge moneys levied from January 1, 2007 to December 31, 2027 may be expended on the minimum operable segment and associated debt financing costs.~~

~~(c) Notwithstanding the restrictions detailed in subsection (b) above, any surcharge moneys collected in excess of the \$4.815 billion may be expended in the following order of priority:~~

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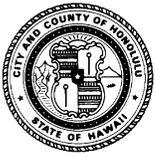
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~~(4) The amount invoiced by and paid to each general contractor, and the amount invoiced by each subcontractor to the general contractor for the described work.]~~

(c) The annual report of the Board of Directors of the Honolulu Authority for Rapid Transportation required by the Revised Charter of the City and County of Honolulu, must include:

(1) Any and all costs associated with:

(A) Contingency and other reserves as recommended by the Federal Transit Administration and as detailed in the Updated Final Financial Plan for the Full Funding Grant Agreement;

(B) ADA accessibility improvements to the minimum operable segment of the locally preferred alternative for the mass transit project;

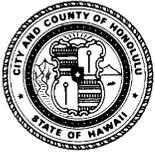
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(D) Infrastructure improvements to rail station areas to support affordable housing, as permitted by State and Federal law;

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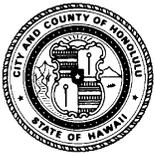
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- (C) A detailed description and justification for the work done by each general contractor and subcontractor; and
- (D) The amount invoiced by and paid to each general contractor, and the amount invoiced by each subcontractor to the general contractor for the described work.

[~~(f)~~] (d) For purposes of this article, "capital costs" means nonrecurring costs required to construct a transit facility or system, including debt service, costs of land acquisition and development, acquiring of rights-of-way, planning, design, and construction, including equipping and furnishing the facility or system. "Capital costs" also include nonrecurring personal services and other overhead costs that are not intended to continue after completion of construction of the minimum operable segment of the locally preferred alternative for a mass transit project.

**Sec. 6-60.3 Repeal of surcharge.**

Pursuant to Section 7 of Act 240, Session Laws of Hawaii, Regular Session of 2015, [~~Section 6-60.4~~] this article will be repealed on December 31, 2027."

SECTION 6. Ordinance material to be repealed is bracketed and stricken. New ordinance 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 material that has been bracketed and stricken, or the underscoring.



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SECTION 7. The repeal in SECTION 3 of this ordinance takes effect on December 31, 2022. SECTION 5 of this ordinance takes effect on January 1, 2023. The other Sections of this ordinance take effect upon approval.

INTRODUCED BY:

Joey Manahan

Ikaika Anderson

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DATE OF INTRODUCTION:

January 4, 2017  
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