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**ORDER REJECTING APPLICATION FOR
WRIT OF CERTIORARI, SUPREME COURT OF
THE STATE OF HAWAII
(MAY 14, 2025)**

SCWC-23-0000011

IN THE SUPREME COURT OF THE
STATE OF HAWAII

IN THE MATTER OF THE TAX APPEAL OF
SCHUYLER E. COLE AND MARILYN J. COLE,

Petitioners/Appellants-Appellants,

v.

CITY AND COUNTY OF HONOLULU,

Respondent/Appellee-Appellee.

Certiorari to the Intermediate Court of Appeals
(CAAP-23-0000011; Case No. 1TX151000243 (Lead
Case) and Consolidated Cases: 1TX161000011,
1TX161000012, 1TX161000015, 1TX161000016,
1TX161000017, 1TX161000018, 1TX161000019,
1TX161000024, 1TX161000026, 1TX161000028,
1TX161000034, 1TX161000268, and 1TX161000269)

Before: RECKTENWALD, C.J., EDDINS, and
GINOZA, JJ., and Circuit Judge KAWAMURA,
MCKENNA, J., and Circuit Judge TONAKI,
DEVENS, J..

**ORDER REJECTING APPLICATION
FOR WRIT OF CERTIORARI**

Petitioners/Appellants-Appellants Schuyler E. Cole, Marilyn J. Cole, Henry J. Matson, and Randolph G. Moore, Trustee under that certain unrecorded revocable living trust agreement dated June 4, 1981's application for writ of certiorari filed on April 4, 2025, is rejected.

DATED: Honolulu, Hawai'i, May 14, 2025.

/s/ Mark E. Recktenwald

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Shirley M. Kawamura

/s/ John M. Tonaki

**JUDGMENT, INTERMEDIATE COURT OF
APPEALS, STATE OF HAWAII
(FEBRUARY 4, 2025)**

No. CAAP-23-0000011

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE MATTER OF THE TAX APPEAL OF
SCHUYLER E. COLE and MARILYN J. COLE
(Case Nos. 1TX151000243, 1TX161000012,
1TX161000017, 1TX161000018, 1TX161000019),

Appellants-Appellants,

AND

IN THE MATTER OF THE TAX APPEAL OF
THOMAS J. O'KEEFE, Trustee of the Thomas J.
O'Keefe Trust created under the Helen Geymann
O'Keefe Revocable Trust established under Declara-
tion of Trust dated May 12, 1996, and THOMAS J.
O'KEEFE, Trustee of the Thomas J. O'Keefe Family
Trust established under Declaration of Trust dated
February 10, 1981, as amended, (Case No.
1TX161000011),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF DEAN
L. CASH and ELIZA L. CASH, Co-Trustees of the
Kalakane Trust dated September 3, 2011,
(Case No. 1TX161000028),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
RANDOLPH G. MOORE, Trustee under that certain
unrecorded Revocable Living Trust Agreement dated
June 4, 1981, (Case No. 1TX161000034),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
NORMAN MARCK and LINDA B. LICHTER,
Trustees of the Lichter Marck Family Trust under
unrecorded Declaration of Trust dated March 15,
1997, (Case No. 1TX161000026),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
HENRY JOSEPH MATSON and PAULETTE
BARRETT-MATSON,
(Case Nos. 1TX161000015 & 1TX161000016),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
MICHAEL DAVID HONG and GERIANN YUN LIN
HONG, (Case No. 1TX161000268),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
MICHAEL DAVID HONG, Trustee of the Michael
David Hong Revocable Living Trust dated April 27,
2011, and GERIANN YUN LIN HONG, Trustee of
the Geriann Yun Lin Hong Revocable Living Trust
dated April 27, 2011, (Case No. 1TX161000269),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
RAYMOND J. SUPPA, Trustee under that certain
unrecorded Trust Agreement dated October 18, 2004,
Designated as the Raymond J. Suppa 2004 Trust,
(Case No. 1TX161000024),

Appellants-Appellants.

Appeals from the Tax Appeal Court
of the State Of Hawai'i

Before: HIRAOKA, Presiding J., and WADSWORTH
and MCCULLEN, JJ..

Pursuant to the Opinion of the Intermediate Court
of Appeals of the State of Hawai'i entered on November
15, 2024, the court affirms the following, entered by
the Tax Appeal Court of the State of Hawai'i on July
17, 2017:

- (1) the “Order: (1) Vacating Order Granting
Motions for Summary Judgment Filed
December 6, 2016; (2) Denying Taxpayer-
Appellants’ Motions for Summary Judgment;
and (3) Granting Summary Judgment To

[the City] Against Taxpayer-Appellants in Consolidated Cases, in Case No. 1TX 16-1-0012”; and

(2) the Final Judgment.

FOR THE COURT:

/s/ Clyde J. Wadsworth
Associate Judge

DATED: Honolulu, Hawai‘i, February 4, 2025.

**OPINION, INTERMEDIATE COURT OF
APPEALS, STATE OF HAWAII
(NOVEMBER 15, 2024)**

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

No. CAAP-23-0000011

IN THE MATTER OF THE TAX APPEAL OF
SCHUYLER E. COLE and MARILYN J. COLE
(Case Nos. 1TX151000243, 1TX161000012,
1TX161000017, 1TX161000018, 1TX161000019),

Appellants-Appellants,

AND

IN THE MATTER OF THE TAX APPEAL OF
THOMAS J. O'KEEFE, Trustee of the Thomas J.
O'Keefe Trust created under the Helen Geymann
O'Keefe Revocable Trust established under Declara-
tion of Trust dated May 12, 1996, and THOMAS J.
O'KEEFE, Trustee of the Thomas J. O'Keefe Family
Trust established under Declaration of Trust dated
February 10, 1981, as amended,
(Case No. 1TX161000011),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF DEAN
L. CASH and ELIZA L. CASH, Co-Trustees of the
Kalakane Trust dated September 3, 2011,
(Case No. 1TX161000028),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
RANDOLPH G. MOORE, Trustee under that certain
unrecorded Revocable Living Trust Agreement dated
June 4, 1981, (Case No. 1TX161000034),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
NORMAN MARCK and LINDA B. LICHTER,
Trustees of the Lichter Marck Family Trust under
unrecorded Declaration of Trust dated March 15,
1997, (Case No. 1TX161000026),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
HENRY JOSEPH MATSON and PAULETTE
BARRETT-MATSON,
(Case Nos. 1TX161000015 & 1TX161000016),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
MICHAEL DAVID HONG and GERIANN YUN LIN
HONG, (Case No. 1TX161000268),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
MICHAEL DAVID HONG, Trustee of the Michael
David Hong Revocable Living Trust dated April 27,
2011, and GERIANN YUN LIN HONG, Trustee of
the Geriann Yun Lin Hong Revocable Living Trust
dated April 27, 2011, (Case No. 1TX161000269),

Appellants-Appellants.

AND

IN THE MATTER OF THE TAX APPEAL OF
RAYMOND J. SUPPA, Trustee under that certain
unrecorded Trust Agreement dated October 18, 2004,
Designated as the Raymond J. Suppa 2004 Trust,
(Case No. 1TX161000024),

Appellants-Appellants.

Appeals from the Tax Appeal Court
of the State Of Hawai'i

Before: HIRAOKA, Presiding J.,
and WADSWORTH and MCCULLEN, JJ..

In 2014, Appellee-Appellee City and County of Honolulu (City) created a new property tax classification under which residential properties that are valued over \$1 million and do not have a home exemption (because they are used for purposes other than an owner's primary residence) are classified as "Residential A" and can be taxed at a higher rate than other residential properties that do not qualify for the new classification. Appellants-Appellants Schuyler E. Cole and Marilyn J. Cole (together, the Coles), as well as other taxpayers, contested the City's classification

of properties they owned as Residential A and appealed their property tax assessments to the Tax Appeal Court. The cases were consolidated, and following briefing and a series of hearings, the Tax Appeal Court entered summary judgment in favor of the City.

The Coles, joined by thirteen self-represented taxpayer appellants¹ (collectively, Appellants), now appeal from the Tax Court's July 17, 2017 dispositive order and judgment, namely:

- (1) the "Order: (1) Vacating Order Granting Motions for Summary Judgment Filed December 6, 2016; (2) Denying Taxpayer-

¹ We refer to these thirteen appellants collectively as the "Self-represented Appellants." They are: (1) Thomas J. O'Keefe, as Trustee of the Thomas J. O'Keefe Trust created under the Helen Geymann O'Keefe Revocable Trust established under Declaration of Trust dated May 12, 1996; (2) Thomas J. O'Keefe, as Trustee of the Thomas J. O'Keefe Family Trust established under the Declaration of Trust dated February 10, 1981, as amended; (3) Dean L. Cash, as Co-Trustee of the Kalakane Trust dated September 3, 2011; (4) Eliza L. Cash, as Co-Trustee of the Kalakane Trust dated September 3, 2011; (5) Randolph G. Moore, as Trustee under that certain unrecorded Revocable Living Trust Agreement dated June 4, 1981; (6) Norman Marck, as Trustee of the Lichter Marck Family Trust under unrecorded Declaration of Trust dated March 15, 1997; (7) Linda B. Lichter, as Trustee of the Lichter Marck Family Trust under unrecorded Declaration of Trust dated March 15, 1997; (8) Henry Joseph Matson; (9) Paulette Barrett-Matson; (10) Geriann Yun Lin Hong; (11) Geriann Yun Lin Hong, as Trustee of the Michael David Hong Revocable Living Trust dated April 27, 2011; (12) Geriann Yun Lin Hong, as Trustee of the Geriann Yun Lin Hong Revocable Living Trust dated April 27, 2011; and (13) Raymond J. Suppa, as Trustee under that certain unrecorded Trust Agreement dated October 18, 2004, Designated as the Raymond J. Suppa 2004 Trust.

Appellants' Motions for Summary Judgment; and (3) Granting Summary Judgment To [the City] Against Taxpayer-Appellants in Consolidated Cases, in Case No. 1TX 16-1-0012" (Order); and

(2) the Final Judgment (Judgment).

On appeal, the Coles contend² that the creation of the Residential A property tax classification based on factors other than "use," and the assignment of residentially zoned properties to that classification, resulted in assessments that violate the City's own code, specifically, Revised Ordinances of Honolulu (ROH) § 8-7.1. The Coles also contend that the Residential A property tax classification violates the Equal Protection Clauses of the Hawai'i and U.S. Constitutions.

We hold that the Tax Appeal Court did not err in granting summary judgment in favor of the City on

² The Coles' opening brief was filed on behalf of themselves. We therefore refer to the points of error and arguments presented in that brief as those of the Coles'.

We recognize that the Self-represented Appellants joined the Coles' notice of appeal, which included a stipulated "request" for an order: (i) consolidating Appellants' cases for purposes of appeal; and (ii) "designating Case No. 1TX 15-1-0243 as the lead case on appeal, and holding that all motions, briefs, and other documents filed in this appeal by the Coles, shall thereupon be deemed filed in each and all of the Consolidated Appellate Cases, and any settlement entered by the Coles, or order, disposition, or judgment entered by this Court, shall be binding upon all the Consolidated Appellate Cases." No separate motion was filed pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rules 3(b) and 37. In any event, no order of consolidation is necessary in this appeal, where Appellants filed a joint notice of appeal, creating a single, joint appeal. See HRAP Rule 3(b). This disposition will bind all parties to this appeal.

Appellants' claim that the Residential A real property tax classification violates ROH § 8-7.1 (1990).³ ROH § 8-7.1(c)(1) does not require the City to create real property classifications based solely on use. Similarly, ROH § 8-7.1(c)(2) does not require the City to assign real property parcels to a particular tax classification based solely on use and, in any event, ROH § 8-7.1(c)(1) expressly excepts parcels that qualify as Residential A from being considered based solely on use. There is no conflict between the Residential A classification and the other subsections of ROH § 8-7.1.

We further hold that the Tax Appeal Court did not err in granting summary judgment in favor of the City on Appellants' claim that the Residential A real property tax classification violates the Equal Protection Clauses of the Hawai'i and U.S. Constitutions. The challenged classification involves neither a fundamental right nor a "suspect" classification. Appellants have not shown they are the object of invidious discrimination. Their equal protection challenge is thus subject to rational basis review. On this record, we conclude that the City had legitimate policy purposes rationally related to the creation of the Residential A classification, including encouraging local neighborhood preservation, continuity and stability.

³ On November 18, 2022, the Revised Ordinances of Honolulu 2021 took effect. Ordinance 22-21; see <https://www8.honolulu.gov/ocs/revised-ordinances-of-honolulu>. Unless otherwise noted, the ROH sections quoted and cited in this opinion are from the Revised Ordinances of Honolulu 1990, as amended, which were in effect at the time of the tax assessments that were appealed to the Tax Appeal Court.

We therefore affirm the Tax Appeal Court's summary judgment for the City in the consolidated cases.

I. Background

ROH § 8-7.1. sets forth the real property classifications in the City and County of Honolulu and how real property is classified and valued for real property tax purposes. Effective July 1st of the 2014 tax year, ROH § 8-7.1 was amended to include a Residential A tax class. Specifically, ROH § 8 7.1(c)(1) was amended as follows (deleted material is bracketed; new material is underscored):

[Land] Real property 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) Residential;
- (B) Hotel and resort;
- (C) Commercial;
- (D) Industrial;
- (E) Agricultural;
- (F) Preservation;
- (G) Public service; [and]
- (H) Vacant agricultural[.]; and
- (I) Residential A.

City & Cnty. of Honolulu, Haw., Ordinance No. 13-33 (Sept. 26, 2013).

A new subsection (i) was also added to ROH § 8-7.1. It stated:

“Residential A” shall mean a parcel, or portion thereof, which:

- (1) Is improved with no more than two single family dwelling units; and
 - (A) Has an assessed value of \$1,000,000 or more;
 - (B) Does not have a home exemption; and
 - (C) Is zoned R-3.5, R-5, R-7.5, R-10, or R-20 or is dedicated for residential use;
- (2) Is vacant land zoned R-3.5, R-5, R-7.5, R-10, or R-20 and has an assessed value of \$1,000,000 or more; or
- (3) Is a condominium unit with an assessed valuation of \$1,000,000 or more and does not have a home exemption.

Residential A excludes any parcel, or portion thereof, improved with military housing located on or outside of a military base.

City & Cnty. of Honolulu, Haw., Ordinance Nos. 13-33 and 13-41 (Dec. 20, 2013).

On May 8, 2015, the Coles appealed to the Tax Appeal Court pursuant to Hawaii Revised Statutes (HRS) § 232-17 (Supp. 2014). Their appeal challenged the Residential A classification in the 2015 real property tax assessment of certain real property they owned.

In 2016, the Coles, along with Self-represented Appellant Thomas J. O’Keefe (O’Keefe⁴) and other taxpayers, filed a total of forty tax appeals to challenge the Residential A classification of their properties in the 2016 notices of assessment. Thereafter, the Coles

⁴ O’Keefe, who was represented by counsel in the Tax Appeal Court, filed his appeal in two capacities. *See supra* note 1.

and O’Keefe filed motions for summary judgment (MSJs) in their tax appeal case numbers 1TX161000012 and 1TX161000011, respectively. On July 15, 2016, the Tax Appeal Court issued an order (1) consolidating the Coles’ 2015 appeal with the forty 2016 appeals that similarly challenged the legality and constitutionality of the Residential A classification, and (2) designating the Coles’ 2015 appeal as the lead case. On July 29 and October 3, 2016, respectively, all of the taxpayers in the consolidated cases filed substantive joinders to the MSJs filed in case numbers 1TX16-1000012 and 1TX161000011.

In their MSJs, the Coles and O’Keefe did not dispute that their respective properties were zoned residential, had an assessed value of \$1,000,000 or more, did not have a home exemption, and were classified as Residential A. They contended that the City’s classification of their properties as Residential A violated: (1) the ROH, by “classif[y]ing real property based on value as opposed to use”; (2) the Commerce Clause of the U.S. Constitution; (3) the Equal Protection Clauses of the Hawai`i and U.S. Constitutions; and (4) the Privileges and Immunities Clause of the U.S. Constitution.

The City opposed the MSJs, arguing that the Residential A classification was neither illegal nor unconstitutional.

Following a hearing on October 17, 2016, the Tax Appeal Court orally granted the MSJs. On October 28, 2016, the City filed a motion for a continued hearing to present additional arguments regarding the MSJs. On November 21, 2016, the Tax Appeal Court heard and granted the City’s motion and continued the hearing to December 22, 2016. Nevertheless, on December 6,

2016, the Tax Appeal Court entered a written order granting the MSJs and the substantive joinders.

On December 22 and 23, 2016, the Tax Appeal Court heard additional arguments regarding the MSJs. Following the arguments of counsel at the December 23, 2016 hearing, the court vacated its earlier order granting the MSJs. Although the City had not filed its own motion for summary judgment, the court indicated that it could grant summary judgment to the City without further motions or briefing pursuant to Hawai'i Rules of Civil Procedure Rule 56. Counsel for the Coles and O'Keefe agreed to this procedure, and the court orally entered summary judgment in favor of the City and against the taxpayers.

On July 17, 2017, the Tax Appeal Court entered separate written orders on each of the MSJs, resolving all claims in favor of the City. The Judgment was also entered on July 17, 2017. Thereafter, the Coles filed a timely motion for reconsideration,⁵ the City opposed the motion, and the Coles replied.

On December 9, 2022, the Tax Appeal Court issued an order denying the motion for reconsideration, and Appellants filed this appeal. The Hawai'i Supreme Court granted the City's application for transfer to determine jurisdiction to hear the appeal. On February 12, 2024, the supreme court ruled that this court has jurisdiction over the appeal and remanded it to us for further proceedings. *See In re Cole v. City & Cnty. of Honolulu*, 154 Hawai'i 28, 32, 543 P.3d 460, 464 (2024).

⁵ It appears that counsel for the Coles filed the motion for reconsideration on behalf of the Coles and all of "the taxpayer-appellants remaining in the consolidated Tax Appeal. . . ."

II. Points of Error

The Coles raise four points of error on appeal. In their first three points, they contend that the Tax Appeal Court erred in granting the City summary judgment, “as to the legality of the City’s assignment of the subject real properties to the Residential A general class, because”: (1) “general classes of real property must be classified pursuant to use-based factors to ensure uniformity and equalization of assessments, and the Residential A general class is defined by non-use-based factors, in violation of ROH § 8-7.1(a)”; (2) “assignment of residentially zoned property to the Residential A general class results in assessments that are not uniform or equalized, in violation of ROH § 8-7.1(a)”; and (3) “the non-use-base[d] factors under the definition of Residential A in ROH § 8[-7.1](i) should not be considered in determining the highest and best use of real property for purposes of assigning the same to a general class of real property; to wit, that the value of the real property and the absence of a home exemption thereon are not proper factors for considerations under ROH § 8-7.1(c)(2) in determining the highest and best use of such real property.”

In their fourth point of error, the Coles contend that the Tax Appeal Court “erred in granting the City summary judgment, as to the constitutionality of the Residential A general class, on the premise that the City had a rational basis for such classification . . . , rendering the class unconstitutional under the Equal Protection clause of the Hawaii and federal Constitutions.”

III. Standards of Review

A. Summary Judgment

“This court reviews the grant or denial of summary judgment *de novo*.” *Priceline.com, Inc. v. Dir. of Taxation*, 144 Hawai’i 72, 80, 436 P.3d 1155, 1163 (2019) (citing *Travelocity.com, L.P. v. Dir. of Taxation*, 135 Hawai’i 88, 96-97, 346 P.3d 157, 165-66 (2015)).

“Moreover, it is well settled that, in reviewing the decision and findings of the Tax Appeal Court, a presumption arises favoring its actions which should not be overturned without good and sufficient reason. The appellant has the burden of showing that the decision of the Tax Appeal Court was clearly erroneous. Inasmuch as the facts here are undisputed and the sole question is one of law, we review the decision of the Tax Appeal Court under the right/wrong standard.” *West Maui Resort Partners LP v. Cnty. of Maui*, 154 Hawai’i 121, 131, 547 P.3d 454, 464 (2024) (ellipsis omitted) (quoting *Kamikawa v. Lynden Air Freight, Inc.*, 89 Hawai’i 51, 54, 968 P.2d 653, 656 (1998)).

B. Ordinance Interpretation

“When interpreting a municipal ordinance, we apply the same rules of construction that we apply to statutes.” *Id.* (quoting *Ocean Resort Villas Vacation Owners Ass’n v. Cnty. of Maui*, 147 Hawai’i 544, 553, 465 P.3d 991, 1000 (2020)).

Statutory interpretation is a question of law reviewable *de novo*. This court’s statutory construction is guided by established rules:

First, the fundamental starting point for statutory interpretation is the language of the

statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

Id. (quoting *Ocean Resort Villas*, 147 Hawai'i at 552-53, 465 P.3d at 999-1000).

C. Constitutional Law

“We answer questions of constitutional law by exercising our own independent constitutional judgment based on the facts of the case. Thus, we review questions of constitutional law under the right/wrong standard.” *Id.* (quoting *Gardens at W. Maui Vacation Club v. Cnty. of Maui*, 90 Hawai'i 334, 339, 978 P.2d 772, 777 (1999)).

IV. Discussion

A. The Residential A Classification Does Not Violate ROH § 8-7.1

The Coles' first three points of error overlap. All are based on the contention that for ad valorem tax⁶ purposes, real property must be “classified” and “assigned”

⁶ An ad valorem real property tax is a tax based on the value of the property.

under ROH § 8-7.1(c)(1) and (2), respectively, according to its “highest and best use.” This use-based requirement, according to the Coles, ensures that real property within the county is assessed “uniformly and equally,” pursuant to the language of ROH § 8-7.1(a). The Coles argue in their first two points of error that the creation of the Residential A general class based on “non-use-based factors,” and the assignment of residentially zoned properties to that class, result in assessments that are not “uniform and equalized.” Relatedly, the Coles argue in their third point of error that the “non-use-based factors” that define the Residential A general class, *i.e.*, the value of the property and the absence of a home exemption on the property, are not proper considerations for determining a property’s highest and best use for purposes of assigning the property to a general class under ROH § 8-7.1(c)(2).

The City rejects the Coles’ contention that real property must be classified pursuant to “use-based factors,” describing it as “vastly different from the actual language in ROH § 8-7.1(c)(1) and (2).” The City argues that these ROH subsections “do not mandate ‘use-based factors’ in classifying real property[.]”

ROH § 8-7.1 sets forth the manner by which real property must be valued and classified for real property tax purposes. Specifically, ROH § 8-7.1(a) identifies the appraisal methods by which real property is valued by the City:

- (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 valu-

ation of real property for ad valorem taxation purposes, so selected and applied to obtain, as far as possible, uniform and equalized assessments throughout the county.

In construing the operative language of ROH § 8-7.1, the Hawai'i Supreme Court has stated: "ROH § 8-7.1(a) is clear and unambiguous regarding the approaches to valuation that the City must follow to accomplish its mission of assessing real property on a 'mass valuation' basis." *Weinberg v. City & Cnty. of Honolulu*, 82 Hawai'i 317, 322, 922 P.2d 371, 376 (1996).

ROH § 8-7.1(c) sets forth the manner by which real property is classified into, or assigned to, one of the nine general classes identified in subsection 8-7.1(c)(1). ROH § 8-7.1(c)(1) states in relevant part: "Real property 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[.]" (Emphasis added.)

Contrary to the Coles' argument, the plain language of ROH § 8-7.1(c)(1) does not require the City to create real property classifications based solely on highest and best use – or "use-based factors" more generally. ROH § 8-7.1(c)(1) requires only that the City consider real property use when classifying real property parcels into a particular general class (or classification), and even that requirement is subject to exception where the parcel "qualifies for a different class" as defined in section 8-7.1.⁷ See *West Maui Resort Partners*, 154

⁷ In other words, ROH § 8-7.1(c)(1) says nothing about whether the City must consider use when creating general classes of real property in the first instance. Here, the City properly considered

Hawai'i at 136, 547 P.3d at 469 (2024) (concluding that Maui County Code § 3.48.305, which states, “real property must be classified, upon consideration of its highest and best use, into the following general classes[,]” did not require the County to consider highest and best use when creating classifications); Webster’s Encyclopedic Unabridged Dictionary 2080 (1996 ed.) (defining “unless” to mean “except under the circumstances that”).

“Residential A,” which is defined in ROH § 8-7.1(i), is a “different class” from “Residential.” As relevant here, ROH § 8-7.1(i) defines “Residential A” as a parcel that “[i]s improved with no more than two single family dwelling units; and (A) [h]as an assessed value of \$1,000,000 or more; (B) [d]oes not have a home exemption; and (C) [i]s zoned R-3.5, R-5, R-7.5, R-10, or R20 or is dedicated for residential use[.]” (Formatting altered.) Accordingly, ROH § 8-7.1(c)(1) expressly excepts parcels that qualify as Residential A from being considered based solely on highest and best use. Parcels that meet the Residential A definition in ROH § 8-7.1(i) are classified into the Residential A classification.⁸

several factors in creating the Residential A general class. *See infra* section IV.B.

⁸ Similarly, ROH 8-7.1(c)(5) states a definition of “Vacant agricultural” that differentiates it from the “Agricultural” classification. A parcel “which would otherwise be classified [A]gricultural 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,” is classified as “Vacant agricultural” pursuant to ROH 8-7.1(c)(1) and (5) if the parcel has no residential buildings and is not dedicated for agricultural purposes.

The Coles argue that ROH § 8-7.1(c)(2) “requires the City to specify what general class a specific parcel of real property belongs, based on the highest and best use of such property.” We disagree.

ROH § 8-7.1(c)(2) states:

In assigning real property 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 real property classified as tree farm property under HRS Chapter 186.

(Emphases added.) Like ROH § 8-7.1(c)(1), the plain language of ROH § 8-7.1(c)(2) does not require the City to assign real property parcels to a particular tax classification based solely on use-based factors. In any event, ROH § 8-7.1(c)(1) expressly excepts parcels that qualify as Residential A from being considered based solely on such factors. *See supra*. When read in pari materia with ROH § 8-7.1(c)(1), subsection (c)(2) does not change our analysis.⁹

⁹ Equally unpersuasive is the Coles’ effort to distinguish the meaning of the words “classified” and “assigned” as used in ROH § 8-7.1(c)(1) and (2), respectively. ROH § 8-7.1(c)(1) states that real property must be “classified . . . into the following general classes. . . .” (Emphasis added.) ROH § 8-7.1(c)(3) similarly states that condominium units must be “classified . . . into one of the general classes. . . .” (Emphasis added.) ROH § 8-7.1(c)(2) refers to “assigning real property to one of the general classes[.]”

Accordingly, we reject the Coles' contention that the creation of the Residential A general class based on "non-use-based factors," and the assignment of residentially zoned properties to that class, result in assessments that violate ROH § 8-7.1. We similarly reject the Coles' contention that the factors set forth in ROH § 8-7.1(i) for assigning properties to the Residential A general class violate ROH § 8-7.1(c).

We thus conclude that the Tax Appeal Court did not err in granting summary judgment in favor of the City on Appellants' claim that the Residential A real property tax classification violates ROH § 8-7.1.

B. The Residential A Classification Does Not Violate the Equal Protection Clauses of the Hawai'i and U.S. Constitutions

In their fourth point of error, the Coles contend that the Tax Appeal Court erred in granting summary judgment in favor of the City on their claim that the Residential A real property tax classification violates the Equal Protection Clauses of the Hawai'i and U.S. Constitutions. The Coles argue that "The Residential A general class violates the equal protection clauses . . . because it is palpably arbitrary, on the premise that the differences relied upon to establish the class bear no relation to the purpose of the Residential A tax, which is to benefit all at the expense of a few."

Any difference in meaning of the phrases "classified into" and "assigned to" as used in this context is immaterial for purposes of determining whether the City was required to perform a use-based analysis under ROH § 8-7.1(c)(1) or (2).

The City argues in response that the Coles' equal protection argument fails because "there is a rational basis for the Residential A tax class under the U.S. and Hawai'i Constitutions[,] namely that of local neighborhood preservation, continuity, and stability.

Addressing a similar argument in West Maui Resort Partners, the supreme court reiterated the applicable constitutional standard:

"In analyzing alleged equal protection violations, classifications that are neither suspect nor quasi-suspect are subject to the rational basis test." Del Rio v. Crake, 87 Hawai'i 297, 304, 955 P.2d 90, 97 (1998) (internal quotations omitted).

In analyzing tax classifications under the equal protection clause, this court has stated that "where discrimination is of a 'non-suspect' or 'non-invidious' variety, such discrimination is not unconstitutional if there is any rational basis for such classification. Such discrimination is only a violation of equal protection if it is totally arbitrary or capricious." *In re Pacific Marine & Supply Co., Ltd.*, 55 Haw. 572, 581, 524 P.2d 890, 896 (1974). Under this "rational basis test," it is the court's function "only to seek to adduce any state of facts that can reasonably sustain the classification statute challenged." *Id.* at 582, 524 P.2d at 896. "If the classification statute is arguably tailored to serve the state policy, it is not arbitrary or

capricious, and hence is constitutional under the equal protection clauses.”

Gardens, 90 Hawai’i at 342, 978 P.2d at 780. . . .
154 Hawai’i at 139, 547 P.3d at 472 (original ellipses omitted).

This case, like *West Maui Resort Partners*, involves neither a fundamental constitutional right nor a “suspect” classification. *See id.* at 140, 547 P.3d at 473. Appellants have not shown that they are the object of invidious discrimination. *See id.* (“Appellants offer no evidence of the County’s animus or invidious intent to discriminate against either time share owners or nonresidents.”); *see also Nachtwey v. Doi*, 59 Haw. 430, 434, 583 P.2d 955, 958 (1978) (“a state law invidiously discriminates when it creates a suspect classification or infringes upon a fundamental constitutional right and the state fails to show that the law is necessary to promote a compelling state interest” (footnotes omitted)). We therefore review the challenged tax classification under the rational basis standard. *See West Maui Resort Partners*, 154 Hawai’i at 139-40, 547 P.3d at 472-73 (citing *Gardens*, 90 Hawai’i at 342, 978 P.2d at 780; *Pac. Marine*, 55 Haw. at 580-81, 524 P.2d at 896).

In *West Maui Resort Partners*, the supreme court emphasized the deferential nature of rational basis review in analyzing tax classifications. *See* 154 Hawai’i at 140-41, 547 P.3d at 473-74. Here, the City considered several legitimate policy purposes that were reasonably related to the creation of the Residential A tax classification. The rationale for the creation of the classification is stated in the September 10, 2013 written testimony by the Department of Budget and Fiscal

Services (DBFS), the author of the bill, before Ordinance 13-33 was enacted:

The City has a legitimate interest in local neighborhood preservation, continuity and stability. Creating this new residential A class will inhibit displacement of lower income families or aging-in-place families or established, older neighborhoods by the forces of gentrification, such as by proliferation of expensive vacation homes for the use by our visitor population or by others who are not owner-occupants. The creation of the residential A class is financially helpful to owners who have a long-term commitment to live in their communities and provides an incentive for them to stay.

Long-time owner occupants have certain expectations warranting protection against higher taxes, which owners of second homes or vacation homes do not have. A family that buys a residence and intends to occupy it for a length of time, does so based on certain expectations related to that family's income and lifestyle. Over time, as the neighborhood values increase as a result of the purchase of neighboring properties by new owners who often tear down and rebuild million dollar second homes or vacation homes, the established family is unable to pay for the increased financial responsibilities of property ownership, including increased real property taxes resulting from the increase in property values. The owners of high-end homes, who have purchased or built properties based on

their own income expectations and lifestyle, have financial expectations that have accounted for the higher property values, as reflected by their purchase price. After the initial passage of Bill 42, all taxpayers will be able to make more certain and accurate predictions of their future tax liability.

In addition to preserving older neighborhoods and protecting homeowners who have made a long-term commitment to the neighborhood, the residential A class is also designed to not harm the typical renter. Often, tax schemes that pit homeowners with home exemptions against homeowners without home exemptions end up hurting renters economically. Setting the threshold for residential A properties at \$1,000,000 allows the owners of typical rental properties without a home exemption to keep the rent at affordable levels instead of passing tax increases on to their tenants. Renters of homes valued at \$1,000,000 or greater would appear to have the financial wherewithal to absorb any tax increase applied to their rental payments.

DBFS's testimony plainly states a legitimate policy purpose in local neighborhood preservation, continuity and stability, and ties that purpose to the creation of the Residential A tax classification. The City further argues that the classification is reasonably related to the City's policy purpose, as follows:

The Residential A definition in ROH § 8-7.1(i) clearly expresses the City's interest in keeping families in their homes by favoring owner-occupied properties over investment

properties. The home exemption criteria delineates between owner-occupied and non-owner-occupied residential for Residential and Residential A classifications, respectively, to further the City's interest of inhibiting the displacement of families from their homes. Assigning residential properties without a home exemption but valued less than \$1 million to the Residential general tax class aligns with the City's interest in keeping rentals affordable at the lower Residential tax rate, which reduces the risk of increased rents to lower income and aging families from pass-through taxes at the Residential A tax rate by their landlords.

The Coles respond that the City's Residential A classification is arbitrary – that “[i]ncreasing the tax charged to owners of non-owner occupied properties does nothing to assist owners of owner-occupied properties in preserving their homes and thereby the continuity and stability of the community.” The Coles essentially challenge the closeness of the fit between the City's legitimate interests and its chosen means of achieving them. “Under rational basis review, it is our duty ‘only to seek to adduce any state of facts that can reasonably sustain the classification statute . . . challenged.’” *West Maui Resort Partners*, 154 Hawai'i at 142, 547 P.3d at 475; see *Tax Found. of Hawai'i v. State*, 144 Hawai'i 175, 205, 439 P.3d 127, 157 (2019) (“[T]he rational basis standard ‘is especially deferential in the context of classifications made by complex tax laws. In structuring internal taxation schemes the States have large leeway in making classifications and drawing lines which in their judgment produce

reasonable systems of taxation.” (original brackets omitted) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992))).¹⁰ On this record, we cannot say that the City’s legitimate policy purposes bear no reasonable relation to its creation of the Residential A tax classification.

Accordingly, we conclude that the Tax Appeal Court did not err in granting summary judgment in favor of the City on Appellants’ claim that the Residential A real property tax classification violates the Equal Protection Clauses of the Hawai’i and U.S. Constitutions.

V. Conclusion

For the reasons discussed above, we affirm the following, entered by the Tax Appeal Court on July 17, 2017: (1) the “Order:

- (1) Vacating Order Granting Motions for Summary Judgment Filed December 6, 2016;
- (2) Denying Taxpayer-Appellants’ Motions for Summary Judgment; and (3) Granting Summary Judgment To [the City] Against Taxpayer-Appellants in Consolidated Cases, in Case No. 1TX 16-1-0012”; and
- (2) the Final Judgment. On the briefs:

¹⁰ Contrary to these authorities, the Coles also argue that the City must explain what it plans to do with “the additional tax revenue generated by the Residential A general class increased tax rate over the Residential general class tax rate[,]” citing *Hasegawa v. Maui Pineapple Co.*, 52 Haw. 327, 475 P.2d 679 (1970). *Hasegawa*, which did not involve a tax classification or complex tax scheme, does not support the Coles’ argument.

App.31a

/s/ Keith K. Hiraoka

Presiding Judge

/s/ Clyde J. Wadsworth

Associate Judge

/s/ Sonja M.P. McCullen

Associate Judge

**FINAL JUDGMENT,
TAX APPEAL COURT
OF THE STATE OF HAWAII
(JULY 17, 2017)**

IN THE TAX APPEAL COURT
OF THE STATE OF HAWAII

IN THE MATTER OF THE TAX APPEAL OF
SCHUYLER E. COLE and MARILYN J. COLE

Taxpayers-Appellants.

Case No. 1 T.X. 15-1-0243

(and Consolidated Cases 16-1-0011 to 0012,
16-1-0014 to 0036, 16-1-0230 to 0231, 16-1-0235 to
0239, 16-1-0246 to 0251, 16-1-0268 to 0269)

TMK Nos: 5-7-005-006-0001, 5-5-003-202-0002,
5-7-005-006-0002, 3-1-033-009-0006, 5-7-001-013-0031,
5-7-003-038-0000, 5-7-005-007-0001, 5-7-005-006-0001,
5-7-005-007-0002, 4-4-018-077-0000, 5-9-020-026-0000,
5-7-003-057-0000, 3-1-032-010-0130, 3-5-008-041-0000,
6-1-004-067-0000, 5-7-003-056-0000, 5-9-002-034-0000,
3-5-058-007-0000, 4-5-110-019-0000, 3-5-059-001-0000,
2-4-031-002-0034, 8-7-026-136-0000, 5-6-001-084-0000,
5-9-002-011-0000, 4-3-007-043-0000, 2-1-009-011-0329,
5-9-020-013-0000, 4-4-006-014-0000, 2-9-034-024-0000,
4-3-004-100-0000, 4-3-007-042-0000, 5-9-003-033-0000,
5-6-001-080-0000, 4-4-014-047-0000, 6-1-008-005-0000,
6-1-004-070-0000, 4-3-006-090-0000, 5-9-003-003-0000,
3-9-032-087-0000, 3-5-016-016-0079, 2-3-006-014-0362

Before: Honorable Gary W.B. CHANG, Judge.

FINAL JUDGMENT

Pursuant to the ORDER: (1) VACATING ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT FILED DECEMBER 6, 2016; (2) DENYING TAX-PAYER-APPELLANTS' MOTIONS FOR SUMMARY JUDGMENT; AND (3) GRANTING SUMMARY JUDGMENT TO APPELLEE CITY AND COUNTY OF HONOLULU AGAINST TAXPAYER-APPELLANTS IN CONSOLIDATED CASES, entered in Case No. 1TX16-1- 0012, and an identical order by the same name entered in Case No. 1TX16-1-0011, and pursuant to Rule 58 of the Hawai'i Rules of Civil Procedure,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Final Judgment is entered against Taxpayer-Appellants and in favor of Appellee City and County of Honolulu in these Consolidated Cases.

There are no remaining parties, claims, or issues. Any and all remaining claims, if any, are hereby dismissed with prejudice.

Dated: Honolulu, Hawai'i, July 17 2017

/s/ Gary W. B. Chang

Judge of the
Above-Entitled Court

**ORDER VACTING & GRANTING SUMMARY
JUDGEMENT, TAX APPEAL COURT,
STATE OF HAWAII
(JULY 17, 2017)**

IN THE TAX APPEAL COURT
OF THE STATE OF HAWAII

IN THE MATTER OF THE TAX APPEAL OF
SCHUYLER E. COLE and MARILYN J. COLE

Taxpayers-Appellants.

Case No. 1 T.X. 15-1-0243

(and Consolidated Cases 16-1-0011 to 0012,
16-1-0014 to 0036, 16-1-0230 to 0231, 16-1-0235
to 0239, 16-1-0246 to 0251, 16-1-0268 to 0269)

TMK Nos: 5-7-005-006-0001, 5-5-003-202-0002,
5-7-005-006-0002, 3-1-033-009-0006, 5-7-001-013-0031,
5-7-003-038-0000, 5-7-005-007-0001, 5-7-005-006-0001,
5-7-005-007-0002, 4-4-018-077-0000, 5-9-020-026-0000,
5-7-003-057-0000, 3-1-032-010-0130, 3-5-008-041-0000,
6-1-004-067-0000, 5-7-003-056-0000, 5-9-002-034-0000,
3-5-058-007-0000, 4-5-110-019-0000, 3-5-059-001-0000,
2-4-031-002-0034, 8-7-026-136-0000, 5-6-001-084-0000,
5-9-002-011-0000, 4-3-007-043-0000, 2-1-009-011-0329,
5-9-020-013-0000, 4-4-006-014-0000, 2-9-034-024-0000,
4-3-004-100-0000, 4-3-007-042-0000, 5-9-003-033-0000,
5-6-001-080-0000, 4-4-014-047-0000, 6-1-008-005-0000,
6-1-004-070-0000, 4-3-006-090-0000, 5-9-003-003-0000,
3-9-032-087-0000, 3-5-016-016-0079, 2-3-006-014-0362

Before: Honorable Gary W.B. CHANG, Judge.

**ORDER: (1) VACATING ORDER GRANTING
MOTIONS FOR SUMMARY JUDGMENT FILED
DECEMBER 6, 2016; (2) DENYING TAXPAYER-
APPELLANTS' MOTIONS FOR SUMMARY
JUDGMENT; AND (3) GRANTING SUMMARY
JUDGMENT TO APPELLEE CITY AND COUNTY
OF HONOLULU AGAINST TAXPAYER-
APPELLANTS IN CONSOLIDATED CASES,
IN CASE NO. 1TX 16-1-0012**

On May 20, 2016, Taxpayer-Appellants Schuyler E. Cole and Marilyn J. Cole filed a motion for summary judgment in Case No. 1TX16-1-0012. On the same date, Taxpayer-Appellants Thomas J. O'Keefe, *et al.*, filed a motion for summary judgment in Case No. 1TX16-1-0011.

On July 15, 2016, a stipulation and order consolidating all of the above-captioned cases was filed. The Taxpayer-Appellants in the above-captioned consolidated cases are referred to collectively herein as "Consolidated Taxpayer-Appellants."

On July 29, 2016, all of the Consolidated Taxpayer-Appellants filed a substantive joinder in the motion for summary judgment in Case No. 1TX16-1-0012. On October 3, 2016, all of the Consolidated Taxpayer-Appellants filed a substantive joinder in the motion for summary judgment in Case No. 1TX16-1-0011.

The above-mentioned two motions for summary judgment and two joinders are henceforth referred to collectively as the "Consolidated Taxpayer-Appellants' MSJ." Said motion stated four bases for granting the motion:

- (1) illegality,
- (2) violation of the Commerce Clause of the United States Constitution,
- (3) violation of the Equal Protection Clauses of the United States and Hawaii State Constitutions, and
- (4) violation of the Privileges and Immunities Clause of the United States Constitution.

On October 17, 2016, at 3:00 p.m., the Consolidated Taxpayer-Appellants' MSJ was heard by the Honorable Gary W. B. Chang. Ray K. Kamikawa and Nathaniel A. Higa appeared for Taxpayers-Appellants, and Robert M. Kohn and Susan A. Bender appeared for the Appellee City and County of Honolulu ("City"). At the conclusion of the hearing, the Court orally granted Consolidated Taxpayer-Appellants' MSJ.

On October 28, 2016, the City filed a Motion for Continued Hearing to Allow Corporation Counsel Donna Y. L. Leong to Appear to Present Arguments on Behalf of Appellee City and County of Honolulu Regarding Taxpayer-Appellants' Motion for Summary Judgment. Said motion was heard on November 21, 2016. Corporation Counsel Donna Y. L. Leong, Robert M. Kohn, and Lee M. Aagsalud appeared for the City, and Ray K. Kamikawa and Nathaniel A. Higa appeared for Taxpayers-Appellants. At the hearing the Court orally granted the motion and scheduled the continued hearing for December 22, 2016, at 10:00 a.m.

On December 6, 2016, the Court entered a written order granting the Consolidated Taxpayer-Appellants' MSJ.

On December 22, 2016, at 10:00 a.m. and 2:00 p.m., the Court heard additional arguments regarding the Consolidated Taxpayer-Appellants' MSJ. Corporation Counsel Donna Y. L. Leong, Robert M. Kohn, and Lee M. Agsalud appeared for the City, and

Ray K. Kamikawa appeared for Taxpayers-Appellants. The Court heard further arguments from the same counsel on December 23, 2016, at 10:00 a.m. At the conclusion of the hearing on December 23, 2016, the Court issued the following ruling.

The Court, having reviewed the Consolidated Taxpayer-Appellants' MSJ, legal memoranda, declarations, and exhibits in support thereof and in opposition thereto, the authorities cited and the arguments made orally at the hearing, being fully advised in the premises, and good cause appearing therefor based on the records and files herein, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

- (1) there are no genuine issues of material fact and the City is entitled to summary judgment as a matter of law;
- (2) the Court's December 6, 2016, written order granting Consolidated Taxpayer-Appellants' MSJ is VACATED and SUPERSEDED by this ORDER;
- (3) Consolidated Taxpayer-Appellants' MSJ is DENIED; and
- (4) SUMMARY JUDGMENT IS ENTERED in favor of the City and against all Consolidated Taxpayers-Appellants on all four bases presented in the Consolidated Taxpayer-Appellants' MSJ, and said summary judgment

supersedes the Court's December 6, 2016,
written order granting Consolidated Taxpayer-
Appellants' MSJ.

Any and all remaining claims, if any, are
dismissed with prejudice.

Dated: Honolulu, Hawai'i, July 17 2017

/s/ Gary W. B. Chang
Judge of the
Above-Entitled Court

**HONOLULU ORDINANCE 13-41
(OCTOBER 2, 2013)**

CITY COUNCIL
CITY AND COUNTY OF HONOLULU, HAWAII

ORDINANCE 13-41
BILL 63 (2013), FD1, 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. Purpose. The purpose of this ordinance is to amend the definition of the “Residential A” real property tax classification.

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

“(i) “Residential A” shall mean a parcel, or portion thereof, which [either]:

(1) Is improved with no more than two single family dwelling units; and

(A) Has an assessed value of \$1,000,000 or more;

(B) Does not have a home exemption; and

(C) Is zoned R-3.5, R-5, R-7.5, R-10 or R-20 or is dedicated for residential use;

(2) Is vacant land zoned R-3.5, R-5, R-7.5, R-10 or R-20[;] and has an assessed value of \$1,000,000 or more; or

(3) Is a condominium unit with an assessed valuation of \$1,000,000 or more and does not have a home exemption.

Residential A excludes any parcel, or [a] portion thereof, improved with military housing located on or outside of a military base.”

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 affect upon its approval and shall apply to the tax years beginning July 1, 2014.

INTRODUCED BY:

Ernest Martin (BR)

DATE OF INTRODUCTION:

October 2, 2013
Honolulu, Hawaii

APPROVED AS TO FORM AND LEGALITY:

/s/ _____
Deputy Corporation Counsel

APPROVED this 20th day pf December, 2013.

/s/ Kirk Caldwell _____
Mayor City and County of Honolulu

**HONOLULU ORDINANCE 13-33
(SEPTEMBER 26, 2013)**

CITY COUNCIL
CITY AND COUNTY OF HONOLULU, HAWAII

ORDINANCE 13-33
BILL 42 (2013), CD2, FD1

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: 1) add “Residential A” as new general real property class and provide language defining such properties, 2) change the property to be classified from “land” to “real property,” and 3) make other housekeeping 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 ad valorem 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] Real property 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) Residential;
- (B) Hotel and resort;
- (C) Commercial;
- (D) Industrial;
- (E) Agricultural;
- (F) Preservation;
- (G) Public service; [and]
- (H) Vacant agricultural [.]; and (I)
- (I) Residential A.

(2) In assigning [land] real property 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] real property 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] real property; 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 "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] real property 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 non-fossil 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 competi-

tion, 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, signaling, 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 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 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) "Residential A" shall mean a parcel, or portion thereof, which either:

- (1) Is improved with no more than two single family dwelling units; and
 - (A) Has an assessed value of \$1,000,000 or more;
 - (B) Does not have a home exemption; and
 - (C) Is zoned R-3.5, R-5, R-7.5, R-10 or R-20 or is dedicated for residential use;
- (2) Is vacant land zoned R-3.5, R-5, R-7.5, R-10 or R-20; or
- (3) Is a condominium unit with an assessed valuation of \$1,000,000 or more and does not have a home exemption.

Residential A excludes any parcel or a portion thereof, improved with military housing located on or outside of a military base.”

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 affect upon its approval and shall apply to the tax years beginning July 1, 2014 and thereafter.

INTRODUCED BY:

Ernest Martin (BR)

DATE OF INTRODUCTION:

July 3, 2013

Honolulu, Hawaii

APPROVED AS TO FORM AND LEGALITY:

/s/ Susan A. Bender
Deputy Corporation Counsel

APPROVED this 26th day of September, 2013.

/s/ Kirk Caldwell
Mayor City and County of Honolulu

**HONOLULU CITY COUNCIL
COMMITTEE ON BUDGET
MINUTES,
(JULY 17, 2013)**

**CITY COUNCIL
CITY AND COUNTY OF HONOLULU, HAWAII**

Voting Members:

Ann H. Kobayashi, Chair
Stanley Chang, Vice Chair
Carol Fukunaga
Breene Harimoto
Joey Manahan
Kymberly Marcos Pine

MINUTES

**REGULAR MEETING
WEDNESDAY, JULY 17, 2013
COUNCIL COMMITTEE MEETING ROOM
2ND FLOOR, HONOLULU HALE
HONOLULU, HAWAII 96813**

Note: The video of the full proceedings of this meeting can be viewed at <http://honolulucountyhi.iqm2.com> or a copy of the video may be requested by calling the City Clerk's Office at 768-5822.

Call to Order

The regular meeting of the Committee on Budget was called to order by Committee Chair Ann H. Kobayashi at 9:03 a.m. Voting Members Chang, Fukunaga, Harimoto, Manahan and Pine were present at the meeting. Nonvoting Members, Council Chair

Martin, and Councilmembers Anderson and Menor also attended the meeting.

(Note: Communication CC-127 — Committee assignment effective July 12, 2013)

Staff Present

Michele Sansone, Senior Advisor to Committee Chair Kobayashi

Catherine Pligavko, Analyst, Office of Council Services

Lloyd Yoshioka, Attorney, Office of Council Services

Amy Kondo, Deputy, Department of the Corporation Counsel, assigned to the Committee

Cynthia Nakazaki, Council Committee Aide, Office of the City Clerk

Order of Business

Approval of Minutes

The minutes of the Committee on Budget meeting held on June 26, 2013 were approved as circulated.

AYES: HARIMOTO, MANAHAN, PINE,
KOBAYASHI —4.

NOES: None.

EXCUSED: CHANG, FUKUNAGA -2.

Sunshine Item

At this juncture, Committee Chair Kobayashi moved to add to the agenda Resolution 13-163 relating to a real property tax compromise regarding Queen's Medical Center West Oahu parcels, pursuant to HRS, Section 92-7, the Sunshine Law.

With no objections from the four members present, Resolution 13-163, was added to the agenda to be considered after Item No. 1.

AYES: HARIMOTO, MANAHAN, PINE,
KOBAYASHI —4.

NOES: None.

EXCUSED: CHANG, FUKUNAGA - 2.

For Action

1. Resolution 13-162 — Committee Report 227

RELATING TO REAL PROPERTY TAX COMPROMISE. Urging the Director of Budget and Fiscal Services to submit to the Council a request to grant a one-time compromise for the real property taxes owed by the Hoaloha Kai Montessori School.

Administration/Others

Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services (BFS)

Director Koyanagi stated that the BFS did not object to the Resolution and would submit a request for a compromise.

The following individual testified:

Miniver Wales, Director, Hoaloha Kai Montessori School Resolution 13-162 reported out for adoption.

AYES: CHANG, HARIMOTO, MANAHAN,
PINE, KOBAYASHI -5.

NOES: None.

EXCUSED: FUKUNAGA - 1.

Sunshine Item:

Resolution 13-163 — Committee Report 228

RELATING TO REAL PROPERTY TAX COMPROMISE. Urging the Director of Budget and Fiscal Services to submit to the Council a request to grant a compromise of the real property taxes owed for the tax year beginning July 1, 2013 such that the amount owed for the Queen's Medical Center —West Oahu parcels is limited to the amount that would be imposed if the property tax exemption was not removed.

Administration/Others

Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services (BFS)

Paula Yoshioka, Senior Vice President, The Queen's Health Systems

Director Koyanagi stated that because the parcels were vacant, they were removed from the exemption list but that the BFS would review the request for a tax compromise,

Ms. Yoshioka provided background information, as detailed in Communication M-1783.

The following individuals testified:

1. Holly Huber (comments)
2. Natalie Iwasa (comments)

Committee Member Pine spoke in support of Committee Chair Kobayashi's recommendation to report the Resolution out for adoption and expressed gratitude to Queen's Medical System for taking over the Hawaii Medical Center West.

Council Chair Martin spoke in support of the recommendation and urged the Committee Members to vote in favor of the recommendation.

Resolution 13-163 reported out for adoption.

AYES: CHANG, FUKUNAGA, HARIMOTO,
MANAHAN, PINE, KOBAYASHI -6.

NOES: None.

Related communication:

M-1783 Paula Yoshioka, Senior Vice President, The Queen's Health Systems, providing background information on the request for approval for the tax compromise.

2. Resolution 13-161 — Committee Report 226

COLLECTIVE BARGAINING COST ITEMS FOR BARGAINING UNIT 12. Approving collective bargaining cost items for the included and excluded employees of the City and County of Honolulu in Bargaining Unit 12 (State of Hawaii Organization of Police Officers).

Administration/Others

Carolee C. Kubo, Director, Department of Human Services (DHR)

Robin Chun-Carmichael, Labor Relations and Training Division Chief, DHR

Director Kubo stated that the DHR supported the funding for the arbitrated decision.

In response to Committee Member Menor, representatives of the DHR provided the following information on the standard of conduct cost item and the ammunition allowance:

- Police Officers are: a) held to a much higher standard of conduct than any other public employee, 24 hours a day; and b) subject to

disciplinary action or other codes of conduct when they are off duty.

- The ammunition allowance has been in the contract for many years and the increase was slight.

The following individuals testified:

1. Tenari R. Ma'afala, State of Hawaii Organization of Police Officers (SHOPO) (support)

In response to Councilmember Menor, Mr. Ma'afala provided the following information:

- Police Officers often respond during their off duty hours.
- Other jurisdictions also have the standard of conduct cost item in their contracts.
- The standard of conduct cost item is an incentive to retain officers.
- Police officers now have to purchase their own ammunition to perfect and maintain their shooting skills because the Department does not.

2. Bryson Ponce, Sergeant, Kauai Police Department, Secretary for SHOPO (support)

Committee Member Chang spoke in support of Committee Chair Kobayashi's recommendation to report the Resolution out for adoption. The HPD receives the most demanding requests, are placed in demanding situations, and are asked to be extremely proactive therefore it is important to fund public safety to the fullest level possible.

Council Chair Martin requested the committee member's full support of the Resolution.

Councilmember Menor expressed appreciation for the clarification of the related cost items which would help in responding to his constituents.

Councilmember Anderson also voiced his support of the recommendation and of his intention to vote in favor of the Resolution at the full council meeting.

Committee Chair Kobayashi thanked the HPD for their continued community work at the Neighborhood Board meetings.

Resolution 13-161 reported out for adoption.

AYES: CHANG, FUKUNAGA, HARIMOTO,
MANAHAN, PINE, KOBAYASHI -6.

NOES: None.

Related communication:

MM-104 Kirk Caldwell, Mayor, transmitting draft Resolution.

3. Bill 33 (2013) — Committee Report 216

ISLAND-WIDE FARE STRUCTURE. Amending the island-wide fare structure.

Administration/Others

Michael D. Formby, Director, Department of Transportation Services (DTS)

Director Formby reported that the DTS stood by their written testimony previously submitted to the committee which stated that the increase of \$10 in the Visitor Pass would generate an additional \$200,000 in

revenue; but may affect demand resulting in a slight loss in the additional revenue projected.

In response to Committee Member Manahan, the Director stated that the Visitor Pass could be obtained at the ABC Stores with an out-of-state license.

The following individual testified:

Barbra Armentrout (comments)

Bill 33 (2013) reported out for passage on third reading.

AYES: CHANG, FUKUNAGA, HARIMOTO,
MANAHAN, PINE, KOBAYASH I -6.

NOES: None.

At this juncture, Committee Chair Kobayashi stated that she filed a Disclosure of Interest Statement on Bills 34 through 43 (Communication CC-126).

4. Bill 34 (2013) — Committee Report 217

RELATING TO CERTAIN REAL PROPERTY EXEMPTIONS. Amending the exemption for charitable purposes.

The following amendment was posted on the agenda:

PROPOSED CD1 TO BILL 34 (2013) — The proposed CD1 (OCS/070913/04:00/YL) corrects formatting and ramseyer errors.

Administration/Others

Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services (BFS)

Gary Kurokawa, Deputy Director, BFS

Director Koyanagi explained that the Bill defines and clarifies charitable organizations as a 501(c)(3) organization. Currently the ordinance is broad and difficult to administer.

The Director noted that the Real Property Tax (RPT) Advisory Commission felt that the RPT pays for services that are provided by the City and that every taxpayer has an obligation to pay for these services. Organizations such as charitable nonprofits that provide a service to the community would be exempt from taxation and would be paying only a minimal tax.

In response to Committee Members Manahan and Fukunaga, the representatives from BFS provided the following information:

- Bill 34 (2013) is not revenue generating but an equity measure where every organization or taxpayer that receives services from the city should pay a fee.
- Currently there are approximately 1600 exemptions in the charitable nonprofit category. Approximately 33 might be excluded because they are not 501(c)(3) charitable organizations.
- Approximately 46 Unions and Credit Union leagues would not be 100% exempt and a certain percentage would be assessed for these parcels.
- Certain organizations such as public schools, private schools, and churches continue to be exempt.

The BFS was requested to provide a list of organizations that would be affected. The following individuals testified:

1. Natalie Iwasa (support/comments)
2. Holly J. Huber (support/comments) (M-1785)

Committee Member Manahan stated that he would be filing a Disclosure of Interest Statement. (Communication CC-132)

Bill 34 (2013) amended to the posted CD1 (OCS/070913/04:00NL) and reported out for passage on second reading and scheduling of a public hearing.

AYES: CHANG, FUKUNAGA, HARIMOTO, MANAHAN, PINE, KOBAYASHI -6.

NOES: None.

Related communications:

CC-126 Councilmember Kobayashi, filing a Disclosure of Interest Statement

CC-132 Councilmember Manahan, filing a Disclosure of Interest Statement

CC-134 Councilmember Harimoto, filing a Disclosure of Interest Statement (received after the meeting)

D-498 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, transmitting draft Bill.

D-521 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, submitting testimony on Bill 34 (2013).

M-1784 Nikki Love, Public Policy Director, Hawaii Alliance of Nonprofit Organizations (HANO)

M-1785Holly J. Huber (support/comments)

5. Bill 35 (2013) — Committee Report 218

RELATING TO REAL PROPERTY TAX EXEMPTIONS. Initiating the cancellation of the real property tax exemptions for historic commercial real property dedicated for preservation.

The following amendment was posted on the agenda:

PROPOSED CD1 TO BILL 35 (2013) — The proposed CD1 (OCS/071013/03:54/YL) makes the following changes:

- (1) Amends the deadline for petitions to dedicate from September 1, 2013 to September 30, 2013.
- (2) Specifies that existing dedications shall end at the end of the term of the dedication.
- (3) Corrects formatting errors.

Administration/Others

Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services (BFS)

Gary Kurokawa, Deputy Director, BFS

Director Koyanagi reported that the Bill eliminates the exemption to historical commercial properties and is not a revenue generating Bill.

In response to Committee Members, Deputy Director Kurokawa stated that there were seven historic commercial properties that receive a 50% reduction in the assessment to help in the maintenance of the properties.

The following individuals testified:1

1. Kiersten Faulkner, Kiersten Faulkner, Executive Director, Historic Hawaii Foundation (oppose) (M-1786)
2. Natalie Iwasa (support)
3. Holly Huber (oppose/comments) (M-1787)

Committee Member Manahan stated that he would be filing a Disclosure of Interest Statement. (Communication CC-132)

Bill 35(2013) amended to the posted CD1 (OCS/071013/03:54/YL) and reported out for passage on second reading and scheduling of a public hearing.

AYES: CHANG, FUKUNAGA, HARIMOTO, MANAHAN, PINE, KOBAYASHI -6.

NOES: None.

Related communications:

CC-126 Councilmember Kobayashi, filing a Disclosure of Interest Statement

CC-132 Councilmember Manahan, filing a Disclosure of Interest Statement

D-498 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, transmitting draft Bill.

D-522 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, submitting testimony on Bill 35 (2013).

M-1786 Kiersten Faulkner, Executive Director, Historic Hawai'i Foundation (oppose/comments)

M-1787 Holly J. Huber (oppose)

6. Bill 36 (2013) — Committee Report 219

RELATING TO REAL PROPERTY TAX EXEMPTIONS. Adjusting the amount of certain real property tax exemptions.

The following amendment was posted on the agenda:

PROPOSED CD1 TO BILL 36 (2013) — The proposed CD1 (OCS/071013/03:55/YL) corrects formatting and reference errors.

Administration/Others

Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services

Director Koyanagi reported that the Real Property Tax Advisory Commission recommended a full repeal of the exemption for Credit Unions. However there would be a certain percentage assessed for the parcels.

The following individuals testified:

1. Dennis Tanimoto, President, Hawaii Credit Union League (oppose) (M-1788)
2. Natalie Iwasa (support) (M-1789)
3. Holly Huber (support) (M-1790)

Committee Member Manahan stated that he filed a Disclosure of Interest Statement for Bills 34 through 43. (Communication CC-132)

Bill 36 (2013) amended to the posted CD1 (OCS/071013/03:55/YL) and reported out for passage on second reading and scheduling of a public hearing.

AYES: FUKUNAGA, HARIMOTO,
MANAHAN, PINE, KOBAYASHI -5.

NOES: None.

EXCUSED: CHANG - 1.

Related communications:

CC-126 Councilmember Kobayashi, filing a Disclosure of Interest Statement

CC-132 Councilmember Manahan, filing a Disclosure of Interest Statement

D-498 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, transmitting draft Bill.

D-523 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, submitting testimony on Bill 36 (2013).

M-1788 Dennis K. Tanimoto, President, Hawaii Credit Union League (oppose/comments)

M-1789 Natalie Iwasa, CPA (support/comments)

M-1790 Holly J. Huber (support)

7. Bill 37 (2013)

RELATING TO REAL PROPERTY TAXATION.
Changing the “hotel and resort” real property class to “hotel, resort and transient” and providing language defining such properties; classifying all real property used as transient vacation units, bed and breakfast units, time share units and fractional ownership units as “hotel, resort, and transient” changing the property to be classified from “land” to “real property;” and making other housekeeping amendments.

The following amendment was posted on the agenda:

PROPOSED CD1 TO BILL 37 (2013)— The proposed CD1 (OCS/071113/11:29NL) makes the following changes:

- (1) Restores existing subsection 8-7.1(c)(4);
- (2) Amends the definition of fractional ownership to read:
 - (B) “Fractional ownership” shall mean a parcel, or portion thereof, which:
 - (i) at least two parties hold title to the property; and
 - (ii) entitles at least one owner user to a specified interval of no less than 60 days in any year for the owner user’s exclusive use.
- (3) Corrects formatting and ramseyer errors.

Administration/Others

Gary Kurokawa, Deputy Director, Department of Budget and Fiscal Services (BFS)

Deputy Director Kurokawa stated that the Bill would lump together properties with similar uses, such as timeshares, transient vacation units, and bed and breakfasts, within the general class of “hotel, resort and transient.”

In response to Committee Member Fukunaga’s query, the Deputy Director stated that the purpose of the Bill was not to regulate or address the illegal use that currently exists, but to create a class for all similar short term uses of properties.

Committee Member Fukunaga expressed concern that legal short term rentals would be paying additional taxes while there would be an increase in illegal rentals.

Council Chair Martin stated that his office is working on introducing new bills to address the concerns expressed by Committee Member Fukunaga and recommended deferring the Bill.

The following individuals testified:

1. Norris Sandvold (oppose/comments) (M-1721 and M-1729)
2. Linda Martin (oppose/comments)
3. William Page, (oppose/comments) (M-1800)
4. Tonic Bille, President, Bed and Breakfast Association (oppose)

Committee Chair Kobayashi recommended amending the Bill to the posted CD1 and further recommended deferring action on the Bill.

Committee Member Manahan voiced support of the recommendation to defer and noted that the Bill would be unfair to the legal short term rentals.

Councilmember Anderson stated that he objected to the intent of the Bill and supported the recommendation to defer. He suggested addressing the issue of short term rental as a whole, rather than through piecemeal legislation.

Councilmember Menor stated for the record of his support for the recommendation to defer because the Bill could negatively impact a segment of the visitor market.

Committee Chair Kobayashi also expressed concern with the unfairness to those who are legal and paying more versus those who are illegal and are not paying.

Bill 37 (2013) amended to the posted CD1 (008/071113/11:29/YL) and action on Bill 37 (2013) deferred.

AYES: CHANG, FUKUNAGA, HARIMOTO,
MANAHAN, PINE, KOBAYASHI -6.

NOES: None.

Related communications:

CC-126 Councilmember Kobayashi, filing a Disclosure of Interest Statement

CC-132 Councilmember Manahan, filing a Disclosure of Interest Statement

D-498 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, transmitting draft Bill.

D-524 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, submitting testimony on Bill 37 (2013).

M-1711 David Bleckley (oppose)

M-1712 Patricia Y. O'Malley (oppose)

M-1713 Angela Reed (oppose)

M-1714 Patricia Dunlap (oppose)

M-1715 Greg O'Malley (oppose)

M-1717 Brad and Wendy Kreller, Kauai Vacation Rentals (oppose)

M-1719 Janice Nielsen (oppose)

M-1720 Dianne Higgins (oppose)

M-1721 Norris SandvoId (oppose)

M-1722 Joel and Mary Anne Cavasso (oppose)

- M-1723 Elizabeth O'Malley (oppose)
- M-1724 Keohen Smith (oppose)
- M-1725 Super Concerned Taxpayer (Ocean View Bungalow) (oppose)
- M-1726 Allen and Donna Shewey (oppose)
- M-1727 Abe Aiona (oppose)
- M-1729 Norris Sandvold (oppose/comments)
- M-1791 Allison Shadday (oppose)
- M-1792 Dixon Smith (oppose)
- M-1793 Charles A. Prentiss, Ph.D., Kailua (support)
- M-1794 Lois Crozer (oppose)
- M-1795 Kathleen M. Pahinui on behalf of Save our North Shore Neighborhoods (support)
- M-1796 Michael Green (oppose/comments)
- M-1797 Doug Miller (oppose)
- M-1798 John Lindelow (oppose/comments)
- M-1799 Roger Fonseca (oppose)
- M-1800 William Page, President, Page Marketing, Inc. (oppose/comments) (Comments also submitted on Bills 34, 35, 36, 38, 39, 40, 41, 42 and 43)
- M-1819 Keep It Kailua (comments)

8. Bill 38 (2013) — Committee Report 220

RELATING TO REAL PROPERTY TAX EXEMPTIONS. Initiating the cancellation of the real property tax exemptions for dedicated lands in urban districts.

The following amendment was posted on the agenda:

PROPOSED CD1 TO BILL 38 (2013) — The proposed CD1 (OCS/071013/03:56/YL) makes the following changes:

- (1) Amends the deadline for dedication petitions from September 1, 2013 to September 30, 2013.
- (2) Adds a new SECTION 3 specifying that ROH Section 8-10.13 shall be repealed on January 1, 2019.
- (3) Corrects formatting errors.

Administration/Others

Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services

Director Koyanagi stated that the Bill eliminates the exemption for certain dedicated lands in urban areas.

The following individuals testified:

1. Natalie Iwasa (comments)
2. Holly Huber (support/comments)

Bill 38(2013) amended to the posted CD1 (OCS/071013/03:56/YL) and reported out for passage on second reading and scheduling of a public hearing.

AYES: CHANG, FU KU NAGA, HARI MOTO, MANAHAN, PINE, KOBAYASHI -6.

NOES: None.

Related communications:

CC-126 Councilmember Kobayashi, filing a Disclosure of Interest Statement

CC-132 Councilmember Manahan, filing a Disclosure of Interest Statement

D-498 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, transmitting draft Bill.

D-525 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, submitting testimony on Bill 38 (2013).

9. Bill 39 (2013) – Committee Report 221

RELATING TO REAL PROPERTY TAX EXEMPTIONS. Adjusting the amount of certain real property tax exemptions.

The following amendment was circulated at the meeting:

PROPOSED CD1 TO BILL 39 (2013) – The CD1 (OCS/071213/03:341YL) makes the following changes:

(1)Amends language in Section 2 to read as follows:

“Sec. 8-10.9 Exemption—Nonprofit medical, hospital indemnity association.

The exemption from real property taxes for [Every] every [association or society] mutual benefit society organized and operating under HRS Chapter 432, solely as a nonprofit medical indemnity or hospital service association or society or both shall be [from time of such organization, exempt from real property taxes] percent of the assessed value on all real property owned by it[.] actually and exclusively used for medical indemnity or hospital services purposes.”

(2) Corrects formatting errors.

Administration/Others

Nelson H. Koyanagi, Jr., Director, Department of
Budget and Fiscal Services (BFS)

Gary Kurokawa, Deputy Director, BFS

Director Koyanagi stated the Bill tries to achieve the Real Property Tax Advisory Commission's recommendation that services provided by the City should be paid for by taxpayers and organizations that have the means to pay.

The following individuals testified:

1. Mark Oto, Director, Government Relations,
Hawaii Medical Services Association (HMSA) (oppose)
(M-1801)

2. Natalie Iwasa (comments)

3. Holly Huber (support)

4. Choon James (comments)

Bill 39 (2013) amended to the handcarried CD1
(OCS OCS/071213/03:34/YL) and reported out for
passage on second reading and scheduling of a public
hearing.

AYES: CHANG, FUKUNAGA, HARIMOTO,
MANAHAN, PINE, KOBAYASHI -6.

NOES: None.

Related communications:

CC-126 Councilmember Kobayashi, filing a Disclosure
of Interest Statement

CC-132 Councilmember Manahan, filing a Disclosure
of Interest Statement

D-498 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, transmitting draft Bill.

D-526 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, submitting testimony on Bill 39 (2013).

M-1801 Mark K. Oto, Director, Government Relations, Hawaii Medical Service Association (oppose /comments)

10. Bill 40 (2013) — Committee Report 222

RELATING TO CERTAIN REAL PROPERTY TAX EXEMPTIONS. Repealing the in lieu of home exemption.

The following amendment was posted on the agenda:

PROPOSED CD1 TO BILL 40 (2013) — The proposed CD1 (OCS/071013/03:57/CT) corrects formatting and ramseyer errors.

Administration/Others

Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services (BFS)

Gary Kurokawa, Deputy Director, BFS

Director Koyanagi explained that the Department recommended repealing the in lieu of home exemption because it duplicates a current tax credit that addresses the lower income taxpayer.

Discussion ensued regarding the differences between the in lieu of home exemption and the tax credit. Deputy Director Kurokawa stated that the tax credit would be the better and fairer program.

Councilmember Menor expressed concern that the elderly who are currently eligible for the in lieu of exemption would be able to qualify for the tax credit.

Committee Member Fukunaga requested that the BFS provide an estimate of the fiscal impact should the exemption be removed.

In response to Committee Chair Kobayashi, the Deputy Director stated the Department would look at measures to notify people of the tax credit program and at other alternatives to assist them.

The following individuals testified:

1. Natalie Iwasa (support)
2. Tonic Bille (oppose)
3. Choon James (comments)

Committee Chair Kobayashi recommended that the Bill be amended to the posted CD1 and be reported out for adoption.

Committee Member Pine expressed concern with the elderly falling though the cracks and looked forward to more information from the Department.

Committee Member Harimoto spoke in support of the recommendation noting that repealing the in lieu of exemption would eliminate the current confusion with applying for the in lieu of exemption and the tax credit. He noted that the tax credit would be a fairer and a better benefit than the exemption.

Bill 40 (2013) amended to CD1 (OCS/071013/03:57/CT) and reported out for passage on second reading and scheduling of a public hearing.

AYES: CHANG, FUKUNAGA, HARIMOTO,
MANAHAN, PINE*, KOBAYASHI -6.

NOES: None.

*Committee Member Pine voted ayes with reservations. Related communications:

CC-126 Councilmember Kobayashi, filing a Disclosure of Interest Statement

CC-132 Councilmember Manahan, filing a Disclosure of Interest Statement

D-498 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, transmitting draft Bill.

D-527 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, submitting testimony on Bill 40 (2013).

11. Bill 41(2013) — Committee Report 223

RELATING TO REAL PROPERTY TAXATION.
Adding “residential-multifamily” as a new general real property class and providing language defining such properties; changing the property to be classified from “land” to “real property;” and making other housekeeping amendments.

The following amendment was posted on the agenda:

PROPOSED CD1 TO BILL 41 (2013) —The proposed CD1 (OCS/071113/11:14/CT) makes the following amendments:

1. Changes subsection (i) on page 9 of the bill to read as follows:

- (i) “Residential-multifamily” shall mean a parcel, or a portion thereof, which is improved with a multifamily dwelling or multiple dwelling units.

2. Corrects formatting and ramseyer errors.

Administration/Others

Gary Kurokawa, Deputy Director, Department of Budget and Fiscal Services Deputy Director Kurokawa explained that the Bill would create a classification for apartment type of residential-multifamily properties which has two dwellings or more on a property.

Committee Member Pine expressed concern that classifying multifamily units with apartments would hurt efforts to provide affordable housing for extended families.

The Deputy Director expressed willingness to work with Committee Member Pine on proposals she may have.

The following individuals testified:

1. Natalie Iwasa (oppose)
2. Barbara Armentrout (comments)
3. Choon James (comments)
4. Holly Huber (oppose)

Committee Chair Kobayashi recommended that the Bill be amended to the posted CD1.

Committee Member Manahan spoke in support of the recommendation and expressed concern with the properties that may be affected.

Committee Member Pine expressed her support of continued discussion on the Bill and would work with the BFS on her proposals.

Bill 41(2013) amended to CD1 (OCS/071113 /11:14/CT) and reported out for passage on second reading and scheduling of a public hearing.

AYES: CHANG, FUKUNAGA, HARI MOTO, MANAHAN, PINE, KOBAYASHI -6.

NOES: None.

Related communications:

CC-126 Councilmember Kobayashi, filing a Disclosure of Interest Statement

CC-132 Councilmember Manahan, filing a Disclosure of Interest Statement

D-498 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, transmitting draft Bill.

D-528 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, submitting testimony on Bill 41 (2013).

12. Bill 42 (2013) — Committee Report 224

RELATING TO REAL PROPERTY TAXATION.
Adding “Residential A” as new general real property class and providing language defining such properties; changing the property to be classified from “land” to “real property,” and making other housekeeping amendments.

The following amendment was posted on the agenda:

PROPOSED CD1 TO BILL 42 (2013)—The proposed CD1 (OCS/071113/11:15/CT) makes the following amendments:

1. Amends subsection 8-7.1(i) in section 2 of the bill to read as follows:

- (i) “Residential A” shall mean a parcel, or portion thereof, which either:
 - (1) Is improved with no more than two single family dwelling units; and
 - (A) Has an assessed value in excess of \$1,000,000;
 - (B) Does not qualify for the home exemption; and
 - (C) Is zoned R-3.5, R-5, R-7.5, R-10 or R-20 or is dedicated for residential use;
 - (2) Is vacant land zoned R-3.5, R-5, R-7.5, R-10 or R-20; or
 - (3) Is a condominium unit located in a multifamily dwelling with an assessed valuation in excess of \$1,000,000 and does not qualify for a home exemption.

Residential A excludes any parcel, or a portion thereof improved with military housing located on or outside of a military base.

2. Corrects formatting and ramseyer errors.

Administration/Others

Gary Kurokawa, Deputy Director, Department of Budget and Fiscal Services Deputy Director Kurokawa stated that the Bill creates a classification which

places properties without homeowner exemptions that are valued over \$1 million into a Residential A class. The Bill would not affect homeowners with exemptions.

The following individuals testified:

1. Natalie Iwasa (oppose/comments)
2. Tonic Bille (comments)
3. Holly Huber (oppose)
4. Choon James (comments)

In response to Committee Members, the Deputy Director provided the following information:

- The threshold of \$1 million was based on the median value of single family homes.
- There are about 7000 properties valued over \$1 million without homeowner exemptions.

Bill 42 (2013) amended to the posted CD1 (008/071113/11:15/CT) and reported out for passage on second reading and scheduling of a public hearing.

AYES: CHANG, FUKUNAGA, HARIMOTO,
MANAHAN, PINE, KOBAYASHI -6.

NOES: None.

Related communications:

CC-126 Councilmember Kobayashi, filing a Disclosure of Interest Statement

CC-132 Councilmember Manahan, filing a Disclosure of Interest Statement

D-498 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, transmitting draft Bill.

D-529 Nelson H. Koyanagi, Jr., Director, Department of Budget and Fiscal Services, submitting testimony on Bill 42 (2013).

13.Bill 43 (2013) — Committee Report 225

RELATING TO REAL PROPERTY TAXATION.
Adding “time share” as a new general real property class and provide language defining such properties; classifying all condominiums units used as time share units as “time share;” changing the property to be classified from “land” to “real property;” and making other housekeeping amendments.

The following amendment was posted on the agenda:

PROPOSED CD1 TO BILL 43 (2013) —The proposed CD1 (OCS/071113/11:28/CT) makes the following amendments:

1. Restores the existing subsection 8-7.1(c)(4) and renumbers it to 8-7.1 (c)(5).
2. Amends the definition of “Fractional ownership” on page 2 to read as follows:
 - (B) “Fractional ownership” shall mean a parcel, or portion thereof, which:
 - (i) at least two parties hold title to the property; and
 - (ii) entitles at least one owner user to a specified interval of no less than 60 days in any year for the owner user’s exclusive use.
3. Corrects formatting and ramseyer errors.

Administration/Others

Gary Kurokawa, Deputy Director, Department of Budget and Fiscal Services Deputy Director Kurokawa explained that the proposed Bill would create a separate classification for timeshares which are currently part of the hotel resort classification.

The following individuals testified:

1. Henry Perez, American Resort Development Association (ARDA Hawaii) (oppose) (M-1806)

In response to Committee Members, Mr. Perez provided the following information:

- Timeshares are provided the same services as hotels.
 - Persons using timeshares pay the Transient Accommodation Tax (TAT) based on a formula that is calculated on the maintenance fee of the unit.
2. Natalie Iwasa (comments)
 3. Barbra Armentrout (comments)
 4. Daniel Dinell, Vice President, Regional Marketing & Development Hilton Grand Vacations (oppose)
 5. Todd Apo, Director of Public Affairs, Aulani — A Disney Resort and Spa (oppose)
 6. Choon James (comments)
 7. Holly Huber (comments)

Bill 43 (2013) amended to the posted CD1 (OCS/071113/11:28/CT) and reported out for passage on second reading and scheduling of a public hearing.

AYES: CHANG, FUKUNAGA, HARIMOTO,
MANAHAN, PINE, KOBAYASHI -6.

NOES: None.

Related communications:

CC-126 Councilmember Kobayashi, filing a Disclosure
of Interest Statement

CC-132 Councilmember Manahan, filing a Disclosure
of Interest Statement

D-498 Nelson H. Koyanagi, Jr., Director, Department of
Budget and Fiscal Services, transmitting draft Bill.

D-530 Nelson H. Koyanagi, Jr., Director, Department of
Budget and Fiscal Services, submitting testimony
on Bill 43 (2013).

M-1802 Herbert J. Almeida (oppose)

M-1803 Mitchell A. Imanaka, Managing Principal,
Imanaka Asato, LLC (oppose)

M-1804 Gary M. Slovin / Mihoko E. Ito, submitting
testimony on behalf of Wyndham Vacation
Ownership (oppose)

M-1805 Daniel Dinell, Vice President, Regional
Marketing & Development, Hilton Grand Vacations
(oppose)

M-1806 Henry Perez, American Resort Development
Association (ARDA) (oppose)

M-1807 Robin Suarez, Vice President & Associate
General Counsel for Starwood Vacation Ownership
(oppose)

M-1808 John McGowan, Vice President & Assistant
General Counsel, Marriott Vacations Worldwide
(oppose)

Committee Chair Kobayashi requested that the Department of Budget and Fiscal Service provide the Committee with the information requested before the August 7, 2013 Council meeting.

Adjournment

There being no further business, the meeting was adjourned at 12:32 p.m.

Respectfully submitted,

/s/ Bernice K.N. Mau

City Clerk

cn

DATE APPROVED

August 21, 2013