

Article 5. Liens Foreclosures

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Sec. 8-5.1 Tax liens--Co owners' rights--Foreclosure, limitation.

- (a) Every tax due upon real property, as defined by Section 8-1.2, shall be a paramount lien upon the property assessed, which lien shall attach as of July 1st in each tax year and shall continue for six years. If proceedings for the enforcement or foreclosure of the lien are brought within the applicable period hereinabove designated, the lien shall continue until the termination of said proceedings or the completion of such sale.
- (b) In case of cotenancy, if one cotenant pays, within the period of the aforesaid government lien, all of the real property taxes, interest, penalties and other additions to the tax, due and delinquent at the time of payment, the cotenant shall have, pro tanto, a lien on the interest of any noncontributing cotenant upon recording in the bureau of conveyances, within 90 days after the payment so made by the cotenant, a sworn notice setting forth the amount claimed, a brief description of the land affected by tax key or otherwise, sufficient to identify it, the tax year or years, and the name of the cotenant upon whose interest such lien is asserted. When a notice of such tax lien is recorded by a cotenant, the registrar shall forthwith cause the same to be indexed in the general indexes of the bureau of conveyances. In case the land affected is registered in the land court, the notice shall also contain a reference to the number of the certificate of title of such land and shall be filed and registered in the office of the assistant registrar of the land court, and the registrar, in the registrar's capacity as assistant registrar of the land court, shall make a notation of the filing thereof on each land court certificate of title so specified.
- (c) The cotenant's lien shall have the same priority as the lien or liens of the government for the taxes paid by the cotenant, and may be enforced by an action in the nature of a suit in equity. The lien shall continue for three years after recording or registering, or until termination of the proceedings for enforcement thereof if such proceedings are begun, and notice of the pendency thereof is recorded or filed and registered as provided by law, within the period.
- (d) The director or the director's subordinate, in case of a government lien, and the creditor cotenant, in a case of a cotenant's lien, shall, at the expense of the debtor, upon payment of the amount of the lien, execute and deliver to the debtor a sworn satisfaction thereof, including a reference to the name of the person assessed or cotenant affected as shown in the original notice, the date of filing of the original notice, a description of the land involved, and the number of the certificate of title of such land if registered in the land court, which, when recorded in the bureau of conveyances or filed and registered in the office of the assistant registrar of the land court, shall, in the case of a cotenant's lien which contains the reference to the book and page of the original lien, be entered in the general indexes of the bureau of conveyances, and if a notation of the original notice was made on any land court certificate of title, the filing of such satisfaction shall also be noted on the certificate.
- (e) This section as to cotenancy shall apply as well, in any case of ownership by more than one assessable person.
- (f) Upon enforcement or foreclosure by the government in any manner whatsoever, of any such real property tax lien, all taxes of whatsoever nature and howsoever accruing, due at the time of the foreclosure sale from the taxpayer against whose property such tax lien is so enforced or foreclosed, shall be satisfied as far as possible out of the proceeds of the sale remaining after payment of (1) the costs and expenses of the enforcement and foreclosure including a title search, if any, (2) the amount of subsisting real property tax liens, and (3) the amount of any recorded liens against the property, in the order of their priority.
- (g) The liens may be enforced by action of the director in the circuit court of the first circuit, and the proceedings had before the circuit court shall be conducted in the same manner and form as ordinary foreclosure proceedings as provided for in HRS Chapter 667. If the owners or claimants of the property against which a lien is sought to be foreclosed, are at the time out of the city or cannot be served within the city, or if the owners are unknown, and the fact shall be made to appear by affidavit to the satisfaction of the court, and it shall in like manner appear prima facie that a cause of action exists against such owners or claimants or against the property described in the complaint, or that such owners or claimants are necessary or proper parties to the action, the director may request the court that service be made in the manner provided by HRS Sections 634-23 through 634-29.
- (h) In any such case, it shall not be necessary to obtain judgment and have execution issued and returned unsatisfied, before proceeding to foreclose the lien for taxes in the manner herein provided.

(Sec. 8-5.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 8-5.2 Tax liens--Foreclosure without suit, notice.

All real property on which a lien for taxes exists may be sold by way of foreclosure without suit by the director, and in case any lien, or any part thereof, has existed thereon for three years, shall be sold by the director at public auction to the highest bidder, for cash, to satisfy the lien, together with all interest, penalties, costs and expenses due or incurred on account of the tax, lien and sale, the surplus, if any, to be rendered to the person thereto entitled. The sale shall be held at any public place proper for sales on execution, after notice published at least once a week for at least four successive weeks immediately prior thereto in any newspaper with a general circulation of at least 60,000 published in the state and any newspaper of general circulation published and distributed in the

county. If the address of the owner is known or can be ascertained by due diligence, including an abstract of title or title search, the director shall send to each owner notice of the proposed sale by registered mail, with request for return receipt. If the address of the owner is unknown, the director shall send a notice to the owner at the owner's last known address as shown on the records of the department of finance. The notice shall be deposited in the mail at least 45 days prior to the date set for the sale. The notice shall also be posted for a like period in at least three conspicuous public places within the city, and if the land is improved, one of the three postings shall be on the land. (Sec. 8-5.2, R.O. 1978 (1983 Ed.))

Sec. 8-5.3 Tax liens--Registered land.

If the land has been registered in the land court, the director shall also send by registered mail a notice of the proposed sale to any person holding a mortgage or other lien registered in the office of the assistant registrar of the land court. The notice shall be sent to any such person at such person's last address as shown by the records in the office of the registrar, and shall be deposited in the mail at least 45 days prior to the date set for the sale. (Sec. 8-5.3, R.O. 1978 (1983 Ed.))

Sec. 8-5.4 Tax liens--Notice--Form.

The notice of sale shall contain the names of the persons assessed, the names of the present owners (so far as shown by the records of the director and the records, if any, in the office of the assistant registrar of the land court) the character and amount of the tax, and the tax year or years, with interest, penalties, costs, expenses and charges accrued or to accrue to the date appointed for the sale, a brief description of the property to be sold, and the time and place of sale, and shall warn the persons assessed, and all persons having or claiming to have any mortgage or other lien thereon or any legal or equitable right, title or other interest in the property, that unless the tax, with all interest, penalties, costs, expenses, and charges accrued to the date of payment, is paid before the time of sale appointed, the property advertised for sale will be sold as advertised. The director may include in one advertisement of notice of sale notice of foreclosure upon more than one parcel of real property, whether or not owned by the same person and whether or not the liens are for the same tax year or years. (Sec. 8-5.4, R.O. 1978 (1983 Ed.))

Sec. 8-5.5 Tax liens--Postponement of sale.

If at the time appointed for the sale, the director shall deem it expedient and for the interest of all persons concerned therein to postpone the sale of any property or properties for want of purchasers, or for other sufficient cause, the director may postpone it from time to time, until the sale shall be completed, giving notice of every such adjournment by a public declaration thereof at the time and place last appointed for the sale; provided, that the sale of any property may be abandoned at the time first appointed or any adjourned date, if no proper bid is received sufficient to satisfy the lien, together with all interest, penalties, costs, expenses, and charges. (Sec. 8-5.5, R.O. 1978 (1983 Ed.))

Sec. 8-5.6 Tax liens--Tax deed Redemption.

The director or the director's subordinate shall, on payment of the purchase price, make, execute and deliver all proper conveyances necessary in the premises and the delivery of the conveyances shall vest in the purchaser the title to the property sold; provided, that the deed to the premises shall be recorded within 60 days after the sale; provided, further, that the taxpayer may redeem the property sold by payment to the purchaser at the sale, within one year from the date thereof, or if the deed shall not have been recorded within 60 days after the sale, then within one year from the date of recording of the deed, of the amount paid by the purchaser, together with all costs and expenses which the purchaser was required to pay, including the fee for recording the deed, and in addition thereto, interest on such amount at the rate of 12 percent a year, but in a case of redemption more than one year after the date of sale by reason of extension of the redemption period on account of late recording of the tax deed, interest shall not be added for the extended redemption period. (Sec. 8-5.6, R.O. 1978 (1983 Ed.))

Sec. 8-5.7 Tax liens--Costs.

The director by rules or regulations may prescribe a schedule of costs, expenses and charges and the manner in which they shall be apportioned between the various properties offered for sale and the time at which each cost, expense or charge shall be deemed to accrue; and such costs, expenses and charges shall be added to and become a part of the lien on the property for the last year involved in the sale or proposed sale, the tax for which is delinquent. Such costs, expenses and charges may include provision for the making of and the securing of certificates of searches of any records to furnish information to be used in or in connection with the notice of sale or tax deed, or in any case where the director shall deem such advisable; provided, that the director shall not be required to make such searches or to cause them to be made except as provided by Section 8-5.3 with respect to mortgages or other liens registered in the office of the assistant registrar of the land court. (Sec. 8-5.7, R.O. 1978 (1983 Ed.))

Sec. 8-5.8 Tax deed as evidence.

The tax deed referred to in Section 8-5.6 is prima facie evidence that:

- (a) The property described by the deed was duly assessed for taxes in the years stated in the deed and to the persons therein named.
- (b) The property described by the deed was subject on the date of the sale to a lien or liens for real property taxes, penalties and interest in the amount stated in the deed, for the tax years therein stated, and that the taxes, penalties and interest were due and unpaid on the date of sale.
- (c) Costs, expenses and charges due or incurred on account of the taxes, liens and sale had accrued at the date of the sale in the amount stated in the deed.
- (d) The person who executed the deed was the proper officer.
- (e) At a proper time and place the property was sold at public auction as prescribed by law, and by the proper officer.
- (f) The sale was made upon full compliance with Sections 8-5.2 to 8-5.7 and all laws relating thereto, and after giving notice as required by law.
- (g) The grantee named in the deed was the person entitled to receive the conveyance.

(Sec. 8-5.8, R.O. 1978 (1983 Ed.))

Sec. 8-5.9 Disposition of surplus moneys.

- (a) The director shall pay from the surplus all taxes, including interest and penalties, of whatsoever nature and howsoever accruing, as provided in Section 8-5.1, and further the director may pay from the surplus the cost of a search of any records where such search is deemed advisable by the director to ascertain the person or persons entitled to the surplus; provided, nothing herein contained shall be construed to require the director to make or cause any such search to be made. If the director is in doubt as to the person or persons entitled to the balance of the fund, the director may refuse to distribute the surplus and any claimant may sue the director in the first circuit court. The director may require the claimants to interplead, in which event the director shall state the names of all claimants known to the director, and shall cause them to be made parties to the action. If in the director's opinion there may be other claimants who are unknown, the director may apply for an order or orders joining all persons unknown having or claiming to have any legal or equitable right, title, or interest in the moneys or any part thereof or any lien or other claim with respect thereto.
- (b) Any orders of the court or summons in the matter may be served as provided by law or the rules of court, and all persons having any interest in the moneys who are known, including the guardians of such of them as are under legal age or under any other legal disability (and if any one or more of them is under legal age or under other legal disability and without a guardian, the court shall appoint a guardian ad litem to represent them therein) shall have notice of the action by personal service upon them. All persons having any interest in the moneys whose names are unknown or who if known do not reside within the state or for any reason cannot be served with process within the state shall have notice of the action as provided by HRS Sections 634-23 to 634-29, except that any publication of summons shall be in at least one newspaper of general circulation published in the state and having a general circulation in the city, and the form of notice to be published shall provide a brief description of the property which was sold.
- (c) All expenses incurred by the director shall be met out of the surplus moneys realized from the sale.
(Sec. 8-5-9, R.O. 1978 (1983 Ed.))

Sec. 8-5.10 Tax debt due the county--Lien.

- (a) The director may record in the bureau of conveyances, department of land and natural resources, State of Hawaii, or in the case of a lien on a motor vehicle to file with the city director of finance, a certificate setting forth the amount of taxes due and unpaid, which have been assessed or as to which a notice of proposed assessment has been issued. The certificate shall identify the taxpayer, the taxpayer's last known address, and the tax or taxes involved. The certificate shall include such further information, if any, as may be required by HRS Chapter 501, to procure a lien on registered land. The recording or filing of the certificate creates a lien in favor of the city upon all property and rights to property, whether real or personal, belonging to any person liable for the tax. The lien for the tax, including penalties and interest thereon, arises at the time of filing by the director of the certificate of tax lien. From and after the time the lien arises, it shall be a paramount lien upon the property and rights to property against all parties. The certificate, if recorded or filed with the city director of finance shall be entered of record as provided by law, and if recorded or filed in the bureau of conveyances, department of land and natural resources, State of Hawaii, shall be recorded in the office of the registrar of conveyances. Any cost incurred in the filing of the certificate shall be a part of the lien for the tax therein set forth.
- (b) The lien imposed in subsection (a) of this section shall not be valid as against: (1) a mortgagee or purchaser of real property, or the lien of a judgment creditor upon real property, whose interest arose prior to the recording by the director of the certificate provided for herein; (2) a mortgagee or purchaser of a motor vehicle who becomes the legal owner or owner at a time when the tax lien and encumbrance record provided for by HRS Section 286-46 does not show the lien.
- (c) As to tangible personal property, possession of which is held by a person liable for tax for the purpose of sale to the public in the ordinary course of the person's business, the lien imposed in subsection (a) of this section is extinguished as to any such property sold in the ordinary course of the business by or under the direction of the person to any purchaser for valuable consideration. As to securities, negotiable instruments and money, the lien imposed in subsection (a) of this section is extinguished as to such property upon passage of title to a person without notice or knowledge of the existence of the lien, for an adequate and full consideration in money or money's worth.
- (d) The director may issue a certificate of discharge of any part of the property subject to the lien imposed by this section, upon payment in partial satisfaction of such lien, of an amount not less than the value as determined by the director of the lien on the part to be so discharged, or if the director determines that the lien on the part to be discharged has no value. Any such discharge so issued shall be conclusive evidence of the discharge of the lien as therein provided.
- (e) The lien imposed in this section may be foreclosed in a court proceeding or by distraint under Section 8-5.11.
- (f) Within the meaning of this section:
 - "Mortgagee" and "purchaser" do not mean or include any person to whom property or an interest in property is conveyed (A) as security for or in satisfaction of an antecedent or preexisting debt of a debtor who is insolvent within the meaning of the Bankruptcy Act, or (B) as trustee, assignee or agent for the benefit of one or more creditors, other than mortgage bondholders.
 - "Motor vehicle" means any self propelled vehicle to be operated on the public highways.
 - "Real property" means and includes leasehold or other interest in real property and also any personal property sold or mortgaged with real property if affixed to the real property and described in the instrument of sale or mortgage.

(Added by Ord. 90-19)

Sec. 8-5.11 Enforcement of payment by assumpsit action or by levy and distraint upon all property and rights to property.

- (a) If any tax be unpaid when due, the director may proceed to enforce the payment of the same, with all penalties, as follows:
 - (1) By action in assumpsit, in the director's own name, on behalf of the city for the amount of taxes and costs, or if the tax is delinquent for the amount of taxes, costs, penalties and interest, in any district court of the first circuit, State of Hawaii, irrespective of the amount claimed. Execution may issue upon any judgment rendered in any such action which may be satisfied out of any real or personal property of the defendant.
 - (2) By levy upon all property and rights to property (except such property as is exempt under subsection (b)(5) of this section) belonging to such taxpayer or on which there is a lien, as the director may deem sufficient to satisfy the payment of taxes due, penalties and interest if any, and the costs and expenses of the levy.
- (b) The following rules are applicable to the levy as provided in subsection (a)(2) of this section:

- (1) **Seizure and Sale of Property.** The term "levy" as used in this section includes the power of distraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the director or director's representative may levy upon property or rights to property, they may seize and sell such property or rights to property (whether real or personal, tangible or intangible).
- (2) **Successive Seizures.** Whenever any property or right to property upon which levy has been made is not sufficient to satisfy the claim of the city for which levy is made, the director or director's representative may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from such person, together with all expenses, is fully paid.
- (3) **Surrender of Property Subject to Levy.**
 - (A) **Requirement.** Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the director or director's representative, surrender such property or rights (or discharge such obligation) to the director or director's representative, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.
 - (B) **Extent of Personal Liability.** Any person who fails or refuses to surrender property or rights of property, subject to levy, upon demand by the director or director's representative, shall thereby subject such person individually and such person's estate to liability to the city in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 12 percent a year from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.
 - (C) **Penalty for Violation.** In addition to the personal liability imposed by subparagraph (B) of this paragraph, if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under subparagraph (B) of this paragraph. No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.
 - (D) **Effect of Honoring Levy.** Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the director or director's representative, surrenders such property or rights to property (or discharges such obligation) to the director or to the director's representative shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment.
 - (E) **Person Defined.** The term "person," as used in subparagraph (A) of this paragraph, includes an officer or employee of a corporation or a member or employee of a partnership, or a member or employee of any other type of organization, who as such officer, employee or member is under a duty to surrender the property or rights to property, or to discharge the obligation.
- (4) **Production of Books.** If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the director or director's representative, exhibit such books or records to the director or such representative.
- (5) **Property Exempt from Levy.** Notwithstanding any other law of the city, no property or rights to property shall be exempt from levy other than the following:
 - (A) **Wearing apparel and school books.** Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of the taxpayer's family.
 - (B) **Fuel, provisions, furniture and personal effects.** If the taxpayer is the head of a family, so much of the fuel, provisions, furniture and personal effects in the taxpayer's household and of the arms for personal use, livestock and poultry of the taxpayer, as does not exceed \$500.00 in value.
 - (C) **Books and tools of a trade, business or profession.** So many of the books and tools necessary for the trade, business or profession of the taxpayer as do not exceed in the aggregate \$250.00 in value.
 - (D) **Unemployment benefits.** Any amount payable to an individual with respect to such individual's unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States or the state.
 - (E) **Undelivered mail.** Mail, addressed to any person, which has not been delivered to the addressee.
- (6) **Sale of the Seized Property.**
 - (A) **Notice of Sale.** The director shall take possession and keep the levied property until the sale. After taking possession, the director shall sell the taxpayer's interest in the property at public auction after first giving 20 days' public notice of the time and place of the sale by publication at least once in the newspaper, published in the district, or by posting the notice in at least three public places in the district where the sale is to be held.
 - (B) **Assistance in Seizure and Sale.** The director may require the assistance of any sheriff or authorized police officer of any county to aid in the seizure and sale of the levied property. The director may further retain the services of any person competent and qualified to aid in the sale of the levied property. Any sheriff or the person so retained by the director shall be paid a fair and reasonable fee but in no case shall the fee exceed 10 percent of the gross proceeds of the sale. Any person other than a sheriff so retained by the director to assist the director may be required to furnish bond in an amount to be determined by the director. The fees and the cost of the bond shall constitute a part of the costs and expenses of the levy.

- (C) **Time and Place of Sale.** The sale shall take place within 45 days after seizure; provided, that by public announcement at the sale, or at the time and place previously set for the sale, it may be extended for not more than two weeks. The sale shall, in any event, be completed within 60 days after seizure of the property unless consent of the delinquent taxpayer is obtained for further extension of the sale.
- (D) **Manner and Conditions of Sale.** Sufficient property shall be sold to pay all taxes, penalties, interest, costs and expenses. On payment of the price bid for any property sold, the delivery thereof with a bill of sale from the director shall vest the title of the property in the purchaser. No charge shall be made for the bill of sale. All surplus received upon any sale after the payment of the taxes, penalties, interest, costs and expenses, shall be returned to the owner of the property sold, and until claimed shall be deposited with the department, subject to the order of owner. Any unsold portion of the property seized may be left at the place of sale at the risk of the owner.
- (E) **Redemption of Property.** If the owner of the property seized desires to retain or regain possession thereof, such owner may give a sufficient bond with surety to produce the property at the time and place of sale, or pay all taxes, penalties, interest, costs and expenses.

(Added by Ord. 90-19)

Article 6. Rate--Levy

Sections:

- 8-6.1 Tax base and rate.**
- 8-6.2 Tax year--Time of levy and assessment.**
- 8-6.3 Assessment of property--To whom in general.**
- 8-6.4 Imposition of real property taxes on reclassification.**
- 8-6.5 Assessment of property of corporations or copartnerships.**
- 8-6.6 Fiduciaries--Liability.**
- 8-6.7 Assessment of property of unknown owners.**

Sec. 8-6.1 Tax base and rate.

Except as exempted by ordinance, or as otherwise provided for, all real property shall be subject to a tax upon 100 percent of its fair market value determined in the manner provided by ordinance, at such rate as shall be determined in the manner provided in Section 8-11.1. No taxpayer shall be deemed aggrieved by an assessment, nor shall an assessment be lowered, except as the result of a decision on an appeal as provided by law. For the purpose of this section, an exemption listed and recognized under Section 8-10.23 shall be deemed an exemption granted by ordinance. (Sec. 8-6.1, R.O. 1978 (1983 Ed.); Am. Ord. 92-38, 00-64, 00-65)

Sec. 8-6.2 Tax year--Time of levy and assessment.

For real property tax purposes, "tax year" means the fiscal year beginning July 1st of each calendar year and ending June 30th of the following calendar year. Real property shall be assessed as of October 1st preceding each tax year and taxes shall be levied thereon in the manner and at the time provided in this chapter. (Sec. 8-6.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 96-15)

Sec. 8-6.3 Assessment of property--To whom in general.

- (a) Real property shall be assessed in its entirety to the owner thereof, provided that where improved residential land has been leased for a term of 15 years or more, the real property shall be assessed in its entirety to the lessee or the lessee's successor in interest holding the land for such term under such lease and the lessee or successor in interest shall be deemed the owner of the real property in its entirety for the purpose of this chapter; provided, however, that the lease and any extension, renewal, assignment or agreement to assign the lease (1) shall have been duly entered into and recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court prior to October 1st preceding the tax year for which the assessment is made, and (2) shall provide that the lessee shall pay all taxes levied on the property during the term of the lease.
- (b) "Improved residential land" as used herein means land improved with a single family dwelling on it.
- (c) For the purposes of this chapter, life tenants, personal representatives, trustees, guardians or other fiduciaries may be, and persons holding government property under an agreement for the conveyance of the same to such persons shall be considered as owners during the time any real property is held or controlled by them as such. Lessees holding under any government lease shall be considered as owners during the time any real property is held or controlled by them as such, as more fully provided in Section 8-10.17 and further, notwithstanding any provisions to the contrary in this chapter, any tenant occupying government land, whether such occupancy has continued for a period of one year or more, as more fully provided in Section 8-10.17. Persons holding any real property under an agreement to purchase the same, shall be considered as owners during the time the real property is held or controlled by them as such; provided the agreement to purchase (1) shall have been recorded in the bureau of conveyances, and (2) shall provide that the purchasers shall pay the real property taxes levied on the property. Persons holding any real property under a lease for a term to last during the lifetime of the lessee, shall be considered as owners during the time the real property is held or controlled by them as such; provided, that the lease (1) shall have been duly entered into and recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court prior to October 1st preceding the tax year for which the assessment is made, and (2) shall provide that the lessee shall pay all taxes levied on the property during the term of the lease.

(Sec. 8-6.3, R.O. 1978 (1983 Ed.); Am. Ord. 96-15)

Sec. 8-6.4 Imposition of real property taxes on reclassification.

- (a) A portion of real property taxes shall be imposed upon and paid by the owner or owners thereof when:

- (1) The property of the owner has been leased for a term of 15 years or more;
 - (2) The classification of the property has been changed to a classification of a higher use during the life of the lease; and
 - (3) The classification to a higher use has occurred without the lessee, who occupies the property, petitioning for such higher classification.
- (b) Taxes which are imposed upon the owners of property under this section shall be paid by the owner of such property without being transferred to the lessee who occupies the property and such tax shall be the difference between the assessed valuation of the property after the classification change times the applicable tax rate less the assessed valuation of the property as it existed prior to the classification change times the applicable tax rate.
- (Sec. 8-6.4, R.O. 1978 (1983 Ed.))

Sec. 8-6.5 Assessment of property of corporations or copartnerships.

Property of a corporation or copartnership shall be assessed to it under its corporate or firm name. (Sec. 8-6.5, R.O. 1978 (1983 Ed.))

Sec. 8-6.6 Fiduciaries--Liability.

Every personal representative, trustee, guardian or other fiduciary shall be answerable as such for the performance of all such acts, matters or things as are required to be done by this chapter in respect to the assessment of the real property such person represents in such person's fiduciary capacity, and such person shall be liable as such fiduciary for the payment of taxes thereon up to the amount of the available property held by such person in such capacity, but such person shall not be personally liable. Such person may retain, out of the money or other property which such person may hold or which may come to such person in such person's fiduciary capacity, so much as may be necessary to pay the taxes or to recoup oneself for the payment thereof, or such person may recover the amount thereof paid by such person from the beneficiary to whom the property shall have been distributed. (Sec. 8-6.6, R.O. 1978 (1983 Ed.))

Sec. 8-6.7 Assessment of property of unknown owners.

The taxable property of persons unknown, or some of whom are unknown, shall be assessed to "unknown owners," or to named persons and "unknown owners," as the case may be. The taxable property of persons not having record title thereto on October 1st, preceding the tax year for which the assessment is made, may be assessed to "unknown owners," or to named persons and "unknown owners," as the case may be. Such property may be levied upon for unpaid taxes. (Sec. 8-6.7, R.O. 1978 (1983 Ed.); Am. Ord. 96-15)

Article 7. Valuations

Sections:

- 8-7.1 Valuation--Considerations in fixing.**
- 8-7.2 Water tanks.**
- (8-7.3 Dedication of lands for agricultural use. Repealed by Ord. 04-34.)**
- 8-7.3 Dedication of lands for agricultural use.**
- 8-7.4 Lands dedicated for golf course use.**
- 8-7.5 Certain property dedicated for residential use.**
- 8-7.6 Property dedicated for low-income rental housing.**

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) 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;
 - (H) Vacant agricultural; and
 - (I) Residential A.
- (2) 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.
- (3) When real property is subdivided into condominium units, each unit and its appertaining common interest:
 - (A) Shall be classified upon consideration of the unit's actual use into one of the general classes in the same manner as real property; and

- (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 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 nonfossil 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 competition, 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, signalling, 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:
- (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.

(Sec. 8-7.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 91-84, 92-63, 94-08, 94-79, 00-66, 02-39, 02-45, 02-57, 04-34, 04-35, 07-4, 07-10, 09-32, 10-31, 13-33, 13-41)

Sec. 8-7.2 Water tanks.

Any provision to the contrary notwithstanding, any tank or other storage receptacle required by any government agency to be constructed or installed on any taxable real property before water for home and farm use is supplied, and any other water tank, owned and used by a real property taxpayer for storing water solely for the taxpayer's own domestic use, shall be exempted in determining and assessing the value of such taxable real property. (Sec. 8-7.2, R.O. 1978 (1983 Ed.))

(Sec. 8-7.3 Dedication of lands for agricultural use. Repealed by Ord. 04-34.)

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

(a) As used in this section:
"Agricultural products" include such products as floricultural, horticultural, viticultural, aquacultural, forestry, nut, coffee, dairy, livestock, poultry, bee, animal, tree farm, animals raised by grazing and pasturing, and any other farm, agronomic, or plantation products.

"Agricultural use of land" means the active use of the land or the production of agricultural products.

"Land use change" means, for land dedicated for a specific agricultural use, either:

- (1) a change in the state land use classification from agricultural to urban or rural district;
- (2) a change in the county zoning from agricultural, preservation or country district; or
- (3) a subdivision of the land dedicated for a specific agricultural use into parcels of five acres or less, which change or subdivision is initiated or authorized by the owner.

"Land use change cancellation" means a written notice of cancellation, filed by the owner with the director, due to a land use change whereby the land dedicated for a specific agricultural use or a portion thereof is no longer being maintained as agricultural land. The notice shall specify the nature of the land use change, the acreage and location of the land removed from the dedication, and the acreage and location of the dedicated land remaining, if any. Upon receipt of the notice, the dedication shall be canceled or amended, as the case may be, and the land affected by the land use change shall be subject to rollback tax and penalty as calculated in subsection (m)(1) or (2) herein. Such cancellation shall be effective on the next July 1st which is at least nine months after the filing.

"Maintain as agricultural land" means that the land dedicated for a specific agricultural use shall remain in substantial and continuous agricultural use throughout the dedication period, unless the owner files with the director a land use change cancellation.

"Owner" or "property owner" means the fee simple owner of the real property provided that for government-owned real property, "owner" or "property owner" means a lessee of the land where:

- (1) the lease allows the specific agricultural use; and
- (2) the lease term extends through the period of the dedication.

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

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

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

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

- (b) Lands for which the director has approved a petition for dedication for a specific agricultural use for a period of five or 10 years shall be classified and assessed for real property tax purposes at a percentage of the land’s fair market value as established in subdivision (2) and shall be subject to the following:
- (1) The land dedicated must be substantially and continuously used for the business of raising and producing agricultural products in their natural state.
 - (2) Dedicated land shall be assessed as follows:
 - (A) Except as provided in paragraph (C), land dedicated for a period of five years, the land shall be assessed at three percent of its fair market value.
 - (B) For land dedicated for a period of 10 years, the land shall be assessed at one percent of its fair market value.
 - (C) For land dedicated for a pasture use for a period of five or 10 years, the land shall be assessed at one percent of its fair market value.
 - (3) The land dedicated shall be substantially and continuously in a use specified under subdivision (1) for the duration of the dedication period.
- (c) Notwithstanding the provisions of subsection (b), in the event the highest per-acre calculation for lands dedicated for five years under subsection (b)(2)(A) based on the minimum lot size as designated in Chapter 21 for lands located in agricultural districts exceeds the average agricultural production value per acre for the county for vegetables and melon crops, and fruits excluding pineapple, as determined annually by the director, then the percent of market value for five-year dedications set forth in subsection (b)(2)(A) shall be changed so as not to exceed the average agricultural production value per acre for such crops. The percent of market value for 10-year dedications set forth in subsection (b)(2)(B) shall be changed to not exceed the percent of market value for five-year dedications by more than 0.33 times.
- (d) Lands for which the director has approved a petition for dedication as vacant agricultural land for a period of 10 years shall be classified and assessed for real property tax purposes at 50 percent of the land’s fair market value, provided that for the period of the dedication, the land dedicated is not, at the initiation of the owner or with the authorization of the owner, subject to:
- (1) a change in the state land use classification from agricultural to urban or rural district;
 - (2) a change in the county zoning from agricultural; or
 - (3) a subdivision of the land into parcels of 10 acres or less.
- (e) A petition to dedicate land or a portion thereof for a specific agricultural use or as vacant agricultural land shall be filed with the director. An owner of the land may petition for dedication, or with the written authorization of the owner, a lessee, permittee or licensee may petition for dedication of the owner’s land. The petition for dedication for a specific agricultural use shall require a declaration that if the petition is approved by the director, the land shall be used for the specific agricultural use for the duration of the dedication period, unless the owner files with the director a land use change cancellation, and a petition for dedication as vacant agricultural land shall require a declaration that if the petition is approved by the director, the land shall be maintained as agricultural land for the duration of the dedication period. The petition for a dedication for a specific agricultural use shall be supported by an agricultural plan. The director shall prescribe the form of the petition and of the agricultural plan. The agricultural plan shall include the following:
- (1) A description of the specific agricultural use;
 - (2) A tax map key number of the owner’s land;
 - (3) A description of the total acreage of the land;
 - (4) A description of the acreage to be utilized for the specific agricultural use or as vacant agricultural land;
 - (5) A description of the residential homesite area, if any, excluded from the dedication;
 - (6) A timetable for implementation of the plan; and
 - (7) A copy of a valid State of Hawaii general excise tax license issued for agricultural purposes.
- (f) A parcel, or portion thereof, which has been approved for dedication as vacant agricultural land may have its dedicated use, for all or a portion thereof, changed to a specific agricultural use without the imposition of the rollback tax and penalty upon petition to the director to change the dedication of the parcel or portion thereof to a specific agricultural use, provided that:
- (1) When the remaining period of the dedication for vacant agricultural land is more than five years, the dedication for a specific agricultural use shall be for a 10-year period; or
 - (2) When the remaining period of the dedication for vacant agricultural land is less than five years, the dedication for a specific agricultural use shall be for a five- or 10-year period.
- The petition for a change of the dedication shall be filed by the owner of the land or with the written authorization of the owner, by a lessee, permittee or licensee of the land, as the case may be. The director shall prescribe the form of the petition to change the dedication.
- (g) Upon receipt of a petition as provided in subsection (e), the director shall make a finding of fact as to whether the land in the petition area is reasonably well suited for the designated specific agricultural use or is classified vacant agricultural under Section 8-7.1 and qualifies to be maintained as agricultural land. The finding shall be based upon a study of the ownership, size of operating unit, the present use of surrounding similar lands, the state and county land use restrictions for the land and other criteria as may be appropriate. The director shall also make a finding of fact as to whether the designated specific agricultural use or vacant agricultural land use conforms to the development plan for the area. The director shall also make a finding of fact as to the economic feasibility of the designated specific agricultural use of the land. If all the findings are favorable, the director shall approve the petition and declare the land to be dedicated for the designated specific agricultural use or as vacant agricultural land.
- (h) The approval by the director of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of the owner’s land to a use other than agricultural for a minimum period of five or 10 years, as the case

- may be, except in the case of land dedicated for a specific agricultural use where the owner files with the director a land use change cancellation, or to cease to maintain the land as vacant agricultural land for a minimum of 10 years.
- (i) The petition for dedication shall be filed with the director by September 1st of any calendar year. The notice of assessment shall serve as notice of approval or disapproval of the petition for dedication. If approved, the assessment based upon the use requested in the petition for dedication shall be effective on October 1st of the same calendar year.
- (j) The owner of any parcel of land dedicated under this section shall annually submit a report to the director no later than September 1st following each tax year of the dedication. The report may be rejected by the director in the event the report is incomplete or contains erroneous or incorrect information. The report shall be accepted or rejected by the director by December 15th of the year in which it is submitted. The director shall prescribe the form of the report. The report may include but is not limited to:
- (1) An updated description of the agricultural use of the land during the immediately preceding and current tax years;
 - (2) A copy of all state general excise tax returns for the immediately preceding tax year concerning activities conducted on the parcel of land dedicated for a specific agricultural use;
 - (3) A description of the acreage and percentage of the area of the parcel of land utilized for the specified agricultural use during the immediately preceding and current tax years; and
 - (4) A declaration, if applicable, that the owner will keep the land in substantial and continuous agricultural use, or will maintain the land as agricultural land through the remaining period of the dedication.
- Any part of the report containing confidential commercial or financial information, including income statements or tax statements, shall be clearly labeled by the owner as such and shall not be open to inspection by the public.
- (k) If land dedicated for agricultural use undergoes a change in classification which is not at the initiation of the owner or with the authorization of the owner, such that there is:
- (1) a change in the state land use classification from agriculture to urban or rural district; or
 - (2) a change in the county zoning from agriculture, preservation or country district, the dedication shall continue unless the owner files a written notice of cancellation with the director within 60 days of the change. Such cancellation shall be effective on the next July 1st which is at least nine months after the filing.
- (l) In the event that a dedication is canceled or expires, the director shall execute an expiration or cancellation of the dedication.
- (m) In the event the director, upon inspection, finds that dedicated agricultural land is not in substantial and continuous agricultural use, that the land has not been maintained as agricultural land, that the property owner failed to file the required report in a timely manner, or that the required report must be rejected, the owner shall be notified of the finding and the owner shall have 60 days to address the finding. In the event the owner fails to satisfactorily address the finding, the dedication shall be canceled and the property owner shall be subject to a rollback tax and penalty. The rollback tax shall be the difference between the taxes owed for the land at 100 percent of the land's assessed value at fair market value and the taxes actually imposed on the land, retroactive from June 30th of the tax year in which the dedication was canceled to July 1st of the initial year of the dedication at the tax rate applicable for the respective tax years, except as provided in subdivisions (1) and (2). The penalty shall be 10 percent for each year of the rollback tax. The rollback tax and penalty shall be a paramount lien upon the property.
- (1) For lands dedicated for five years and subject to a cancellation after the third tax year of the dedication period, the period of the rollback tax shall be in accordance with the following schedule:
 - (A) For two tax years for a cancellation in the fourth tax year of the dedication period, retroactive from June 30th of the fourth tax year to July 1st of the third tax year of the dedication period; or
 - (B) For one tax year for a cancellation in the fifth tax year of the dedication period, retroactive from June 30th of the fifth tax year to July 1st of the fifth tax year of the dedication period.
 - (2) For lands dedicated for 10 years and subject to a cancellation after the fifth year of the dedication period, the period of the rollback tax shall be in accordance with the following schedule:
 - (A) For five tax years for a cancellation in the sixth tax year of the dedication period, retroactive from June 30th of the sixth tax year to July 1st of the second tax year of the dedication period;
 - (B) For four tax years for a cancellation in the seventh tax year of the dedication period, retroactive from June 30th of the seventh tax year to July 1st of the fourth tax year of the dedication period;
 - (C) For three tax years for a cancellation in the eighth tax year of the dedication period, retroactive from June 30th of the eighth tax year to July 1st of the sixth tax year of the dedication period;
 - (D) For two tax years for a cancellation in the ninth tax year of the dedication period, retroactive from June 30th of the ninth tax year to July 1st of the eighth tax year of the dedication period; or
 - (E) For one tax year for a cancellation in the tenth tax year of the dedication period, retroactive from June 30th of the tenth tax year to July 1st of the tenth tax year of the dedication period.
- (n) The owner may appeal any disapproved petition for dedication, rejection of the annual report, cancellation of the dedication, or imposition of a rollback tax and penalty in the same manner as an appeal from an assessment.
- (o) Notwithstanding any provision in this section to the contrary, the occurrence of any of the following events shall cause the dedication to be canceled without the imposition of any rollback taxes or penalties whatsoever:
- (1) The death of any owner;
 - (2) Events beyond the owner's control that make it unfeasible to continue the agricultural use of the dedicated property, including, but not limited to:
 - (A) A serious or debilitating long-term illness or injury suffered by the owner;
 - (B) A natural disaster such as a windstorm, flood, disease, or infestation that destroys the crop or livestock on the dedicated parcel; or
 - (C) The taking of the dedicated parcel or any portion thereof by a governmental entity, provided that where only a portion of the parcel is taken, the cancellation shall be effective only as to the portion taken; or

- (3) The change of a dedication of vacant agricultural lands to a dedication for a specific agricultural use under subsection (f).
- (p) Notwithstanding any provisions in this section to the contrary, for five- and 10-year dedications of land for a specific agricultural use, the director may grant an owner a grace period, subject to the following conditions:
 - (1) A grace period may be granted only if one of the following events occurs:
 - (A) A bank or other lending institution acquires possession of a property as a result of a default of a mortgage on the property; or
 - (B) The agricultural use of a dedicated parcel is terminated because a lessee has abandoned or terminated a lease prior to the end of the term of the lease, the owner of the parcel has not found another lessee, and the lease has a term of five years or longer.
 - (2) During the grace period, the owner is not required to use the land for the business of raising and producing agricultural products.
 - (3) At the end of the grace period, the owner shall use the land for the business of raising and producing agricultural products for the entire remaining period of the owner's dedication. The grace period shall not be counted in determining the owner's compliance with the dedication.
 - (4) The grace period shall not exceed two years.
 - (5) During the grace period, the land shall be assessed at 100 percent of market value.
 - (6) No grace period shall be granted for a parcel of land within five years following the expiration of a previous grace period.

(Added by Ord. 04-34; Am. Ord. 07-4, 11-26, 12-16, 15-32)

Sec. 8-7.4 Lands dedicated for golf course use.

- (a) The following definitions shall apply for purposes of this section.
 - “Cost of development” means the actual or estimated costs to improve the land into an operating golf course.
 - “Golf course” means property that has been developed for the sport of golf, including its related and incidental activities.
 - “Golf course use” means the actual use of property for the sport of golf and its related and incidental activities.
 - “Owner” means a fee owner or any lessee of real property whose lease term extends at least 10 years effective from the date of the petition. Such lease must be duly entered into and recorded at the bureau of conveyances or filed in the office of the assistant registrar of the land court, on or before the date of the petition.
 - “Rental income” means land rent based on golf course use.
 - “Rollback tax” means the difference between the amount of taxes that a dedicated golf course owner paid and the higher amount of taxes, if any, that would have been due from the owner if the golf course had not been dedicated under this section.
 - “Sale price” means the sale price of a property operated and used as a golf course and land acquired for golf course use.
- (b) In order to qualify in having land valued and assessed as a golf course, the owner of any parcel of land desiring to use or presently using such person's land for a golf course shall as a condition precedent qualify as follows:
 - (1) Dedication of Land.
 - (A) The owner of any parcel of land for a golf course shall petition the director and declare in the owner's petition that the owner will dedicate the owner's parcel of land for golf course use.
 - (B) The approval by the director of the petition to dedicate the land shall constitute a forfeiture on the part of the owner of any right to change the use of the land for a minimum period of 10 years, automatically renewable indefinitely, subject to cancellation by either the owner or the director upon five years' notice at any time.
 - (C) The failure of the owner to observe the restrictions on the use of the land as a golf course shall cancel the land assessment based on golf course use retroactive to the date of the dedication, but not more than 10 years prior to the tax year in which the dedication is canceled; and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a six percent a year penalty from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over 12 consecutive months to use the land in that manner requested in the petition as a golf course by the overt act of changing the use for any period. Nothing in this paragraph shall preclude the county from pursuing any other remedy to enforce the covenant on the use of that land as a golf course.
 - (D) The director shall prescribe the form of the petition. The petition shall be filed by September 1st of any calendar year and shall be approved or disapproved by October 31st of such year. If approved, the assessment based upon the use requested in the dedication shall be effective on October 1st of the same calendar year.
 - (E) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.
 - (F) When the owner has failed to observe the dedication restriction on golf course use, and at which time the dedication is canceled, the amount of additional taxes due and owing shall attach to the property as a paramount lien in favor of the county.
- (c) Dedicated property operated and used as a golf course shall be valued and assessed for property tax purposes on the following basis:
 - (1) The value to be assessed by the director shall be on the basis of its actual use as a golf course rather than on the valuation based on the highest and best use of the land.
 - (2) In determining the value of actual use, the factors to be considered shall include, among others, rental income, cost of development, and sale price.

- (d) Covenant Not to Engage in Discrimination. The owner shall covenant in the owner's petition with the director that the owner will not discriminate against any individual in the use of the golf course facilities because of the individual's race, sex, religion, color or ancestry.

(Sec. 8-7.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 96-15, 00-64)

Sec. 8-7.5 Certain property dedicated for residential use.

- (a) As used in this section:

"Apartment building" means a multi-family dwelling that is situated on a single parcel, which parcel is not subdivided into condominium units.

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

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

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

"Multi-family dwelling" means a building containing three or more dwelling or lodging units, as defined in Section 21-10.1, which is not a hotel.

"Owner" means a person who is the fee simple owner of real property, or who is the lessee of real property whose lease term extends at least five years from the date of the petition.

"Residential use" means the actual use of a dwelling unit or lodging unit as a residence: (1) by occupants for compensation for periods of 30 or more consecutive days; (2) by the unit owner personally or (3) by the unit owner's guest(s) without compensation. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services or labor of employees. Residential use specifically excludes the use of the unit as a transient vacation unit or for time sharing. For purposes of this dedication, residential use shall include the use of the unit as a group living facility, a boarding facility, or as special needs housing for the elderly.

- (b) The owner of a parcel may dedicate the parcel for residential use and have the property classified as residential and assessed at its value in residential use, provided that the property:
- (1) Is within an apartment, apartment mixed use, resort, business, business mixed use, industrial or industrial mixed use district; or if it is in the Waikiki special district, is zoned apartment mixed use subprecinct, resort mixed use precinct, or resort-commercial precinct; or is in a transit-oriented development zone pursuant to Section 21-9.100;
 - (2) Is used exclusively for residential use, except that a portion of the property may be used for nonprofit purposes pursuant to Section 8-10.10; and
 - (3) The parcel is improved with one or more detached dwellings, as defined in Section 21-10.1 or with one or more apartment buildings or with both dwellings and apartment buildings.
- (c) The owner of real property who wishes to dedicate such property for residential use and have the property assessed at its value in residential use according to subsection (b) shall petition the director and declare in such petition that if the petition is approved, the owner shall meet the applicable requirements of subsection (b) pertaining to the property.
- (d) The approval of the petition by the director to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of such person's land for a minimum period of five years, automatically renewable thereafter for additional periods of five years subject to cancellation by either the owner or the director. Cancellation of the dedication by the owner must be in writing and submitted to the director by September 1st only within the 5th year of the date of the dedication, or the latest five-year renewal period.
- For the purpose of this dedication, there is no change in use if the owner demolishes and constructs or reconstructs one or more detached dwellings or multi-family dwellings, provided that such construction or reconstruction is permitted pursuant to Chapter 21, Revised Ordinances of Honolulu 1990, as amended, the replacement structure or structures are completed no less than 24 months after the building permit is issued, and at least the same number of dwelling or lodging units as those demolished are developed. The five-year dedication will be suspended during this period of demolition and construction or reconstruction, and the parcel and any improvements thereon will continue to be classified and assessed at their value in residential use during the suspension.
- (e) (1) Failure of the owner to observe the restrictions on the use of such person's property or the sale of the property shall cancel the special tax assessment privilege retroactive to the tax year preceding the tax year in which the breach of the dedication occurs, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a 10 percent per year penalty retroactive to the tax year preceding the tax year in which the breach of the dedication occurs. Failure to observe the restrictions on the use means failure for a period of over 12 consecutive months to use the property in the manner requested in the petition or the overt act of changing the use for any period, or the sale of the real property. Nothing in this subsection shall preclude the county from pursuing any other remedy to enforce the covenant on the use of the property.
- (2) The additional taxes and penalties, due and owing as a result of failure to use or any other breach of the dedication shall be a paramount lien upon the property as provided for by this chapter.
- (f) The director shall prescribe the form of the petition. The petition shall be filed with the director by September 1st of any calendar year. The notice of assessment shall serve as notification of approval or disapproval of the petition for dedication. If the petition is approved, the assessment based upon the use requested in the dedication shall be effective as of October 1st of the same calendar year.
- (g) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.

(Sec. 8-7.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 96-15, 09-32, 10-14, 10-30, 10-31, 12-14)

Sec. 8-7.6 Property dedicated for low-income rental housing.

- (a) For the purposes of this section, "low-income rental housing" means housing rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 50 percent of the city's area median income for the applicable household size, or less.

- (b) An owner of real property classified as Residential A used as low-income rental housing may make a five-year dedication of the property for low-income rental housing use and have the property classified as Residential provided that:
 - (1) The property was purchased by the owner for less than \$1,000,000;
 - (2) The property is exclusively used during the dedication period as a rental home or apartment unit with a lease period of at least one year; and
 - (3) The rental home or apartment unit is rented at a rate that meets the requirements of low-income rental housing as defined in subsection (a).
- (c) Any owner desiring to dedicate the owner's property for low-income rental housing shall petition the director, describing the property to be dedicated, providing evidence that the property is currently used exclusively for affordable rental housing, and declaring that such use will continue in the dedicated tax years and the owner shall meet the applicable requirements of subsection (b) pertaining to the property.
- (d) The director shall prescribe the form of the petition. The petition for the following tax year must be filed with the director by September 1st of any calendar year. The notice of assessment will serve as notification of approval or disapproval of the petition for dedication. If the petition is approved, the assessment based upon the use requested in the dedication will be effective on October 1st of the same calendar year and apply to the following tax year.
- (e) The director shall make a finding whether the property is and will be maintained and used for the sole purpose of providing low-income rental housing. That finding will be based on the rental agreement or agreements and such other evidence required of and provided by the owner as the director may deem pertinent.
- (f) The approval of the petition by the director shall constitute a forfeiture on the part of the owner of any right to change the use of the owner's real property for low-income rental housing for the dedication period. The dedication period may be renewed in the same manner as the initial petition.
- (g) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.
- (h)
 - (1) Failure of the owner to observe the restrictions on the use of such person's real property will cancel the exemption retroactive to the date of the initial dedication, and all differences between the amount of taxes that were paid and the amount that would have been due from assessment without the dedication will be payable with a 10 percent per year penalty from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means any failure of 45 consecutive days or more during the tax year of the exemption to use the real property in the manner certified in the petition or the overt act of changing the use for any period. Nothing in this subsection precludes the city from pursuing any other remedy to enforce the covenant on the use of the real property.
 - (2) The additional taxes and penalties, due and owing as a result of failure to use or any other breach of the dedication will be a paramount lien upon the property as provided for by this chapter.
- (i) Prior to September 1st in each of the five years of the dedication, the owner shall submit to the director a copy of the rental agreement to be in force in the upcoming tax year.
- (j) The director shall make and adopt necessary rules and regulations to administer this section.

(Added by Ord. 15-6; Am. Ord. 16-8)

Article 8. Wasteland Development

Sections:

- 8-8.1 Definitions.**
- 8-8.2 Eligibility.**
- 8-8.3 Application.**
- 8-8.4 Classification.**
- 8-8.5 Development and maintenance of wasteland development property.**
- 8-8.6 Special tax assessment.**
- 8-8.7 Declassification.**
- 8-8.8 Appeals.**

Sec. 8-8.1 Definitions.

When used in this article:

"Department" means the department of finance.

"Director" means the director of the department of finance.

The term "owner" includes any person leasing the real property of another under a lease having a stated term of not less than 30 years.

"Wasteland" means land which is classified as such by the director of the department of finance. (Sec. 8-8.1, R.O. 1978 (1983 Ed.))

Sec. 8-8.2 Eligibility.

Any property of not less than 25 acres in area is eligible for classification as wasteland development property if it meets the classification requirements of wasteland property as established by the director of finance. No real property under a lease having an unexpired term of less than 30 years shall be eligible for classification as wasteland development property. (Sec. 8-8.2, R.O. 1978 (1983 Ed.))

Sec. 8-8.3 Application.

The owner of any property may apply to the director of finance for classification of the owner's land as wasteland development property. The application shall include a description of the property, the manner in which the property will be developed, and such additional information as may be required by the director. The application shall state that all persons having any interest in or

holding any encumbrance upon the property have joined in making the application and that all of them will comply with the laws and regulations relating to the use, building requirements, and development of real property. (Sec. 8-8.3, R.O. 1978 (1983 Ed.))

Sec. 8-8.4 Classification.

- (a) Within four months after the filing of the application with the director of finance, the director shall make a finding of fact as to the eligibility of such land for classification as wasteland development property, whether it can be developed in the manner specified by the owner, whether the development will add to the development of the economy of the state, and whether the development will broaden the tax base of the state. The determination shall be based upon all available information on soils, climate, land use trends, watershed values, present use of surrounding similar lands, and other criteria as may be appropriate.
- (b) Upon the finding by the director that the property is eligible for classification as wasteland development property, that it can be developed in the manner specified by the owner, that the development will add to the economy of the state, and that it will broaden the tax base of the state, the property shall be classified as wasteland development property. If the director finds it otherwise for any one of the above criteria, the application shall be disapproved.
- (c) The applicant may appeal any disapproved application as in the case of an appeal from an assessment.
- (d) Land classified as wasteland development property shall be administered by the department of finance and the department may from time to time make rules and regulations for their administration pursuant to HRS Chapter 91.

(Sec. 8-8.4, R.O. 1978 (1983 Ed.))

Sec. 8-8.5 Development and maintenance of wasteland development property.

Within one year following the approval of the application, the owner shall develop that portion of the owner's land as specified in the owner's application and as approved by the director of finance. Additional areas shall be developed each year as prescribed by the director. (Sec. 8-8.5, R.O. 1978 (1983 Ed.))

Sec. 8-8.6 Special tax assessment.

Any property classified as wasteland development property by the director of finance shall be, for a period of five years, assessed for real property tax purposes at its value as wasteland. The five year period shall commence from July 1st of the tax year following the approval of the application. (Sec. 8-8.6, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 8-8.7 Declassification.

Thirty days after notification to the owner by the department of finance for noncompliance of any law, ordinance, rule or regulation, the director of finance may declassify any land classified as wasteland development property. The department shall notify the owner of the declassification and in that event, the director shall cancel the special tax assessment provided in Section 8-8.6 retroactive to the date that the property qualified for special tax assessment and the difference between the real property taxes that would have become due and payable but for such classification for all the years the land was classified as wasteland development property and the real property taxes paid by the owner during such period shall become immediately due and payable together with a five percent a year penalty from the respective dates that such additional tax would otherwise have been due. (Sec. 8-8.7, R.O. 1978 (1983 Ed.))

Sec. 8-8.8 Appeals.

Any person aggrieved by the additional assessment for any year may appeal from such assessment in the manner provided in the case of real property tax appeals. (Sec. 8-8.8, R.O. 1978 (1983 Ed.))

Article 9. Nontaxable Property Assessment

Sections:

8-9.1 Nontaxable property.

Sec. 8-9.1 Nontaxable property.

- (a) For purposes of accountability, the director of budget and fiscal services shall prepare a notice of property assessment for each parcel of nontaxable real property within the city.
- (b) The notice shall contain the valuation of the real property and an exemption in the full amount of the valuation.

(Sec. 8-9.1, R.O. 1978 (1983 Ed.); Am. Ord. 92-124, 02-45)