

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

OFFICE OF  
THE COUNTY CLERK  
COUNTY OF KAUAI

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, August 5, 2020, at 1:30 p.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihu'e, on the following:

Bill No. 2795

A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX (*Mixed Use Tax Exemption*)

This Bill proposes to amend Chapter 5A, Kaua'i County Code 1987, as amended, relating to real property tax. The purpose of this Ordinance is to reduce the inequity of the real property tax code as it applies to mixed use buildings and to ensure that there is some incentive for building owners to convert their upstairs commercial space into residential use.

All interested persons who wish to present their comments may do so at the public hearing. Written testimony prior to the hearing would be appreciated. Written testimony can be submitted to the Office of the County Clerk, Council Services Division by mail, facsimile, or via E-mail to counciltestimony@kauai.gov. Copies of the Bill are available at the Office of the County Clerk, Council Services Division.

(The Council Committee or Council may amend this Bill at their subsequent meetings. Meeting notices are posted at least six (6) days in advance at the County Clerk's Office and the public may also testify at any of these meetings.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2795 was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on July 8, 2020, by the following vote:

AYES:	Chock, Cowden, Evslin, Kagawa, Kaneshiro, Kualii	TOTAL – 6,
NOES:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Brun	TOTAL – 1*,
RECUSED & NOT VOTING:	None	TOTAL – 0.
Lihu'e, Hawai'i		/s/ Jade K. Fountain-Tanigawa
July 9, 2020		County Clerk, County of Kaua'i

\*Beginning with the March 11, 2020 Council Meeting and until further notice, Councilmember Arthur Brun will not be present due to U.S. v. Arthur Brun et al., Cr. No. 20-00024-DKW (United States District Court), and therefore will be noted as excused (i.e., not present).

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF THE COUNTY CLERK, COUNCIL SERVICES DIVISION AT (808) 241-4188 OR COKCOUNCIL@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

(One publication – The Garden Island – July 17, 2020)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A,  
KAUAI COUNTY CODE 1987, AS AMENDED,  
RELATING TO REAL PROPERTY TAX**

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BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Council finds that there is a dire need to increase the number of residential rental units on island, and an even greater need for an increase in the affordable housing inventory. In accordance with the General Plan of the County of Kauai, mixed commercial and residential buildings within our town cores can provide more affordable housing through shared wall construction as well as shorter commute times and less impact on Kauai's infrastructure due to the proximity of jobs and services. However, because residential units in a commercial building are taxed at the higher commercial property tax rate rather than the residential or homestead tax rates that are applied to all other residentially-occupied housing units, property owners have a disincentive to build mixed use buildings or convert commercial space into residential units. The two exemptions provided by this Ordinance ensure that the property tax burden for residential units in commercial buildings are roughly equivalent to the residential property tax rate or, for affordable units, the homestead property tax rate via the County's long-term affordable rental program.

The purpose of this Ordinance is to reduce the inequity of the real property tax code as it applies to mixed use buildings and to ensure that there is some incentive for building owners to convert their upstairs commercial space into residential use.

SECTION 2. Chapter 5A, Kauai County Code 1987, as amended, is hereby amended to read as follows and all other and prior ordinances or parts of ordinances in conflict herewith are hereby repealed.

1. Chapter 5A, Article 11, Section 5A-11.1, Kauai County Code 1987, as amended, is hereby amended to read as follows:

**“Sec. 5A-11.1 Claims for Certain Exemptions.**

(a) None of the exemptions from taxation granted in Secs. 5A-11.4, 5A-11.6 to 5A-11.11, 5A-11.20, 5A-11.24, 5A-11.27, and 5A-11.31 shall be allowed in any case, unless the claimant shall have filed with the Director of Finance, on or before September 30 preceding the tax year for which such exemption is claimed, a claim for exemption in such form as shall be prescribed by the Department.

(b) A claim for exemption once allowed shall have continuing effect until:

(1) The exemption is disallowed;

(2) The Director voids the claim after first giving notice (either to the claimant or to all claimants in the manner provided by either Sec. 5A-2.1 or 5A-1.14, as the case may be) that the claim or claims on file will be voided on a certain date, not less than thirty (30) days after such notice;

(3) The five (5) year period for exemption, as allowed in Sec. 5A-11.11, expires;

(4) The period for exemption, as allowed in Secs. 5A-11.20 and 5A-11.21, expires; or

(5) The claimant makes the report required by Subsection (d) of this Section.

(c) A claimant may file a claim for exemption even though there is on file and in effect a claim covering the same premises, or a claim previously filed and disallowed or otherwise voided. However, no such claim shall be filed if it is identical with one already on file and having continuing effect. The report required by Subsection (d) of this Section may be accompanied by or combined with a new claim.

(d) Any person who has been allowed an exemption under Sec. 5A-11.4, 5A-11.5 to 5A-11.11, 5A-11.20, [or] 5A-11.24, or 5A-11.32 has a duty to report to the Assessor within thirty (30) days after he or she ceases to qualify for such an exemption for one (1) of, but not limited to, the following reasons:

(1) He or she ceases to be the owner, lessee, or purchaser of the exempt premises;

(2) A change in the facts previously reported has occurred concerning the occupation, use, or renting of the premises, buildings or other improvements thereon; or

(3) Some other change in status has occurred which affects his or her exemption.

Such report shall have the effect of voiding the claim for exemption previously filed, as provided in Subsection (b)(5) of this Section. The report shall be sufficient if it identifies the property involved, states the change in facts or status, and requests that the claim for exemption previously filed be voided.

In the event the property comes into the hands of a fiduciary who is answerable as provided for by this Chapter, the fiduciary shall make the report required by this Subsection within thirty (30) days after his or her assumption of his or her fiduciary duties or within the time otherwise required, whichever is later.

Any person who has a duty of making a report as required by this Subsection, who, within the time required, fails to make a report, shall be liable for a civil penalty. The amount of the penalty shall be the lesser of: (A) two hundred dollars (\$200.00) for each year that the change in facts remain unreported; or (B) the amount of the taxes due for the property computed without the claim for exemption as of October 1st of the year in which the report was due. In addition to this penalty, the taxes due on the property plus any additional penalties and interest thereon shall be collected as property taxes and shall be a lien on the property as provided for by this Chapter.

(e) If the Director is of the view that, for any year the exemption should not be allowed, in whole or in part, the Director may, for the current year and up to two (2) prior years, disallow the exemption, in whole or in part, and may add to the assessment list the amount of value involved, in the manner provided by Sec. 5A-3A for the assessment of omitted property; provided, that if an assessment or addition under this Subsection is made after December 31st preceding the tax year, the taxes on the amount of value involved in the assessment or addition so made shall be made a lien as provided for by ordinance by recording a certificate setting forth the amount of tax involved, penalties, and interest.

(f) In any case of recordation of a certificate for the amount of the civil penalty under Subsection (d) of this Section, or for the amount of tax, penalties, and interest assessed or added under Subsection (e) of this Section, a person shall be deemed to have an interest arising before the recordation of the certificate only if and to the extent that he or she acquired his or her interest in good faith and for a valuable consideration without notice of a violation of the requirements of Subsection (d) having occurred.”

2. Chapter 5A, Article 11, Section 5A-11, Kaua‘i County Code 1987, as amended, is hereby amended to add a new Section 5A-11.32 to read as follows:

**“Sec. 5A-11.32 Exemption for Residential Units in a Mixed Use Building.**

(a) If a parcel has a mixture of both residential and commercial use within the same building, it may be entitled to the following exemptions: 1) A one hundred thousand dollar (\$100,000) exemption for each residential unit in a mixed use building; and 2) A one hundred fifty thousand dollar (\$150,000) exemption for each residential unit in a mixed use building that meets the lease and rent requirements of a long-term affordable rental pursuant to Section 5A-11A.1(a). For all qualifying residential units, the exemptions apply to the total assessed value with a maximum reduction to the assessment of 25% for residential units or 35% if more than 50% of the units meet the lease

and rent requirements of a long-term affordable rental. The underlying tax class is to remain Commercial. The maximum reduction amount is based on the difference between the Residential tax rate or the Commercialized Home Use tax rate and the Commercial tax rate.

(b) A claim that has been filed and approved by the Director of Finance for an exemption for a residential unit in a mixed use building pursuant to paragraph (a) of this Section, shall be required to file annually.

(c) Any owner claiming the beneficial tax rate for long-term affordable rentals in a mixed use building pursuant to Section 5A-11A.1, shall not be eligible to claim an exemption pursuant to paragraph (a) of this Section.”

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 4. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This Ordinance shall take effect upon its approval.

Introduced by:



LUKE A. EVSLIN



MASON K. CHOCK

DATE OF INTRODUCTION:

July 8, 2020

Līhu'e, Kaua'i, Hawai'i

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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2795, which on first reading was ordered to print by the Council of the County of Kaua'i at its meeting held on July 8, 2020, by the following vote:

FOR PASSAGE:	Chock, Cowden, Evslin, Kagawa, Kualii, Kaneshiro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Brun	TOTAL – 1*,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i  
July 9, 2020



Jade K. Fountain-Tanigawa  
County Clerk, County of Kaua'i

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