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OFFICE OF
COUNTY CLERK
COUNTY OF KAUAI

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, September 23, 2020, at 1:30 p.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihue, on the following:

Bill No. 2803

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

This Bill proposes to amend Chapter 5A, Kaua'i County Code 1987, as amended, by establishing stricter requirements to qualify for the homeowner's exemption such as: (1) increase the number of days that a homeowner must occupy their primary residence from one hundred eighty-one (181) calendar days to two hundred seventy (270) calendar days; (2) require an applicant to file a State of Hawai'i income tax return with a reported address on Kaua'i; and (3) require an applicant to have a valid Hawai'i driver's license, Hawai'i state identification; or resident aliens possessing a valid resident alien card must claim residency only in Hawai'i with an address on Kaua'i; or is stationed in the County under military orders of the United States.

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 Bills 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.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2803 was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on August 19, 2020, by the following vote:

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

Lihue, Hawai'i
August 20, 2020

/s/ Jade K. Fountain-Tanigawa
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 – September 4, 2020)

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

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Findings and Purpose. In order for a taxpayer to claim real property as a principal residence and qualify for a home tax exemption at that tax rate, the taxpayers in counties of the State of Hawai'i may occupy the real property for differing numbers of days during the calendar year. The County of Kaua'i requires fewer days of occupancy than all of the other counties, for example:

County of Maui: 271 days (see Maui County Code Sec. 3.48.450 Homes – Standards for valuation);

City and County of Honolulu: 271 days (see Revised Ordinances of Honolulu Sec. 8-10.4 Homes);

County of Hawai'i: 201 days (see Hawai'i County Code Sec. 19-71 Homes); and

County of Kaua'i: 181 days (see Kaua'i County Code Sec. 5A-11.4 Homes, and Kaua'i County Home and Exemption Administrative Rule RP-10.4 Criteria for determination of "principal" home or residence).

The purpose of this Ordinance is to enforce stricter requirements to qualify for the homestead exemption in order to reserve this generous tax break for true *kama'aina* residents as was originally intended.

SECTION 2. Chapter 5A, Section 5A-11.4, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 5A-11.4 Homes.

[(a) Real property owned and occupied only as the taxpayer's principal home, as of the date of assessment by any individual or individuals, shall be exempt only to the following extent from property taxes:]

(a) Real property owned and occupied only as the taxpayer's principal home. Upon proper application, a taxpayer shall be entitled to a home exemption, provided the taxpayer:

- (1) Occupies the home in the County for which the exemption is being filed for more than two hundred seventy calendar days of a calendar year; and

(2) Files an income tax return as a resident of the State of Hawai'i with a reported address in the County the year prior to the effective date of the exemption. Non-resident and part-year resident State of Hawai'i income tax returns do not qualify for the home exemption; and

(3) Possesses a: (i) Valid Hawai'i driver's license; (ii) Hawai'i state identification; or (iii) Resident aliens possessing a valid resident alien card ("green card") must claim residency only in Hawai'i with an address on Kaua'i; or

(4) Is stationed in the County under military orders of the United States.

(b) No applicant will qualify for an exemption under this section, if on the date of application the applicant is delinquent on payment of real property taxes. Notwithstanding the foregoing, an applicant may enter into a payment agreement with the Director of Finance, for the repayment of delinquent taxes, and as long as the applicant remains current with the payment agreement, then the applicant may apply for, and qualify for, exemptions under this Section.

(c) As of the date of assessment on October 1, upon application by any individual or individuals, the principal home shall be exempt only to the following extent from property assessment:

(1) Totally exempt where the value of the property is not in excess of one hundred sixty thousand dollars (\$160,000.00);

(2) Where the value of such property is in excess of one hundred sixty thousand dollars (\$160,000.00), the exemption shall be the amount of one hundred sixty thousand dollars (\$160,000.00).

Provided:

(A) That no such exemption shall be allowed to any corporation, copartnership, or company;

(B) That the exemption shall not be allowed on more than one (1) home for any one (1) taxpayer;

(C) That where the taxpayer has acquired the taxpayer's home by a deed, the deed shall have been recorded on or before September 30th immediately preceding the year for which the exemption is claimed;

(D) That a husband and wife shall not be permitted exemption of separate homes owned by each of them, unless they are living separate and apart, pursuant to a court issued

separation order in which case they shall be entitled to one-half (1/2) of one (1) exemption, [to be apportioned between each of their respective homes in proportion to the value thereof] for a maximum period of two (2) years;

(E) That a person living on-premises, a portion of which is used for commercial purposes, shall be placed in the commercialized home use class.

(F) That a property transferred for the purpose of conveying real property for the following shall be exempt so long as the real property is owned and occupied as the same owner's principal home:

(1) Grantor to the grantor's revocable living trust;

(2) Grantor's revocable living trust to grantor;

(3) Taxpayer and spouse;

(4) Surviving spouse who maintains portion of ownership and resides on property, but deceased spouse's interest is transferred to another party;

(5) Life Estate; or

(6) Any other method of property transfer for the purpose of conveying real property which the Director of Finance finds to be similar in nature to those listed in this Section.

[(b)] (d) Where two (2) or more individuals jointly, by the entirety, or in common, own or lease land on which their homes are located, each home, if otherwise qualified for the exemption granted by this Section, shall receive the exemption. If a portion of land held jointly, by the entirety, or in common by two (2) or more individuals, is not qualified to receive an exemption, such disqualification shall not affect the eligibility for an exemption or exemptions of the remaining portion.

[(c)] (e) For a taxpayer who is at least sixty (60) years of age, but not yet seventy (70) years of age, the amount of one hundred eighty thousand dollars (\$180,000.00) shall replace the exemption amount referenced in Subsection (a). For a taxpayer who is seventy (70) years of age or over, the amount of two hundred thousand dollars (\$200,000.00) shall replace the exemption amount referenced in Subsection (a).

For the purpose of this Subsection, a husband and wife who own property jointly, by their entirety, or in common, on which a home exemption

under the provisions of Subsection (a) of this Section has been granted, shall be entitled to the home exemption set forth above when at least one (1) of the spouses reaches the applicable age.

[(d)] (f) Real property which has a homeowner's exemption under this Section shall be entitled to an additional exemption not to exceed one hundred twenty thousand dollars (\$120,000.00), provided that the annual income of the owner-occupant does not exceed eighty percent (80%) of the Kaua'i median household income as set forth in the Kaua'i County Housing Agency Affordable Rental Housing Guideline for the calendar year preceding the year in which the application is filed. The eighty percent (80%) shall be rounded up to the nearest hundred.

(1) For the purposes of this Subsection, the following definitions shall apply:

"Income" shall mean the Federal gross income as defined in the Internal Revenue Code of the United States of 1954, as amended, including all nontaxable income, including, but not limited to[,];

[(1)] (A) [tax-exempt] Tax-exempt interest received from the Federal government or any of its instrumentalities;

[(2)] (B) [the] The gross amount of any IRA distribution, pension or annuity benefits received (including Railroad Retirement Act benefits and veterans disability pensions), excluding rollovers;

[(3)] (C) [all] All payments received under the Federal Social Security and State unemployment insurance laws;

[(4)] (D) [nontaxable] Nontaxable contributions to public or private pension, annuity and/or deferred compensation plans; and

[(5)] (E) Federal cost of living allowances.

"Income" shall include gross rental income and gross capital gains. All income set forth in the tax return filed by the owner-occupant, whether the tax return is a joint tax return or an individual tax return, shall be considered the owner-occupant's income. "Income" does not include nonmonetary gifts from private sources, or surplus foods or other relief in kind provided by public or private agencies.

“Owner-occupant” shall mean all persons living in the dwelling to be exempted under this Section who are owners of that dwelling as defined in Section 5A-7.1, provided that in cases where husband and wife both occupy the dwelling but only one (1) spouse is an owner, the income of both spouses shall be considered in determining eligibility under this Section.

(2) Income from the calendar year preceding the year in which the application is filed shall be the basis for qualification under this Subsection.

(3) The additional home exemption shall be valid for one (1) tax year and it shall be the responsibility of the owner-occupant to annually file an application for the additional home-exemption on or before September 30th immediately preceding the year for which the exemption is claimed.

(4) The Director shall prescribe appropriate forms for applications and require proof of income which shall include, but is not limited to, the following:

(A) A copy of the State personal income tax returns or records for all owner-occupants which set forth their State gross income, and

(B) A copy of the Federal personal income tax returns for all owner-occupants which set forth their Federal gross income.

In the event that any of the owner-occupants were not required to file an income tax return pursuant to the Internal Revenue Code of the United States of 1954, as amended, or Hawai'i Revised Statutes, Chapter 235, as amended, the owner-occupant shall sign an affidavit stating the reason he or she was not required to file, and attesting to the amount of income received. The applicant may refuse to provide such proof or any additional information requested by the Director, but upon such refusal, the Director may deny the application and there shall be no appeal from such a denial.

The application form, which shall be signed by the owner-occupant(s), shall contain authorization to the State Department of Taxation and the Internal Revenue Service for release to the County Finance Director, a certified copy of the income tax records showing gross income. The Director may charge the owner-occupant the applicable fee necessary to obtain said certified copies.

(5) The Director shall determine eligibility for the additional home exemption upon review and verification of each application. The Director shall notify each applicant whose application has been denied

of such denial and the reasons for ineligibility on or before December 1st preceding the tax year.

[(e)] (g) Low Income Tax Credit.

(1) When used in this Section, the following words and phrases shall have the following meaning unless it shall be apparent from the context that a different meaning was intended:

“Homeowner” means a person who filed and was granted a home exemption claim under Section 5A-11.4.

“Homeowner property” means the property with regard to which a homeowner filed and was granted a home exemption claim under Section 5A-11.4.

“Household income” means the total gross income of all titleholders for the preceding tax year.

“Income” means the sum of Federal gross income as defined by the Internal Revenue Code of 1986, as amended, or the sum of Hawai'i gross income, as defined in Chapter 235 of Hawai'i Revised Statutes, as amended, whichever is greater.

“Titleholder” means the property owner and any other entity listed on the deed or any other legal instrument establishing the entity's ownership right in the property.

(2) Upon proper application, a homeowner whose household income does not exceed fifty percent (50%) of the Kaua'i median household income as set forth in the Kaua'i County Housing Agency Affordable Rental Housing Guideline for the calendar year preceding the year in which the application is filed, shall be entitled to a credit in the amount that the real property tax assessed on the homeowner property for the current year exceeds three percent of the household income. In no event shall the real property tax due after the application of the credit be less than the minimum tax pursuant to Sec. 5A-6.3(g).

The credit shall be applied in equal pro rata amounts against each payment due for the next tax year following the year in which an application for credit is submitted and granted. No credit shall be applied if taxes on the property are delinquent.

(3) No credit shall be granted pursuant to this section unless an application for credit and proof of income is filed with the Department of Finance. [Applications shall be submitted in a form prescribed by the Director of Finance and include a U.S. Internal Revenue Service Form 4506-T. For the 2015 tax year only, applications shall be filed by January 15, 2015. For all subsequent tax years, all] All applications

should be annually submitted by September 30 of the current year to be effective for the next fiscal year beginning on July 1.

(4) Credits granted pursuant to this section shall not be transferable to other persons or properties.

[5] (h) The [director] Director of Finance may adopt rules and prescribe forms to implement this [section.] Section, and the Director may adopt by rule the indicia, criteria, or factors and methods of proof to establish whether the applicant's actual occupancy of the real property qualifies for the purposes or exemptions of this Section.

(f) (i) In addition to any penalty provision set forth in Article 11, any person who files a fraudulent application or attests to any false statement, with intent to defraud or to evade the payment of taxes or any part thereof, or who in any manner intentionally deceives or attempts to deceive the Department of Finance, shall be fined one thousand dollars (\$1,000.00) or imprisoned for not more than one (1) year or both.

(j) For the purposes of this Section, and counting the days of occupancy, the commencement of the calendar year shall begin on the date of assessment, October 1, and end on September 30 of the following year."

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 applications 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. Material to be deleted is bracketed. New 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 need not be included.

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

Introduced by: /s/ LUKE A. EVSLIN
(By Request)

DATE OF INTRODUCTION:

August 19, 2020

Lihu'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. 2803, which on first reading was ordered to print by the Council of the County of Kaua'i at its meeting held on August 19, 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
August 20, 2020



Jade K. Fountain-Tanigawa
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).