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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, June 15, 2022, at 8:30 a.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihu'e, on the following:

Bill No. 2861

A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTIONS 5A-3.4, 5A-6.1, 5A-6.4, 5A-12.1, 5A-12.3, 5A-12.7, AND 5A-12.8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES

This Bill proposes to amend Chapter 5A, Sections 5A-3.4, 5A-6.1, 5A-6.4, 5A-12.1, 5A-12.3, 5A-12.7, and 5A-12.8, Kaua'i County Code 1987, as amended, by requiring appellants to file with the County Board of Review before appealing to the Tax Appeal Court. Appeals heard at the Board of Review are less costly and require far less time from Real Property Assessment staff and the Office of the County Attorney. The Tax Appeal Court has historically experienced delays in scheduling hearings causing assessment years to be compiled into one case, tying up potential General Fund proceeds in escrow accounts throughout the process. This Bill also proposes to list all grounds for appeal in one place and clarifies the basis of appeal for dedications. Further, this Bill proposes to clarify that anyone desiring to appeal an amended notice of assessment has the same 30-day provision.

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 this 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. 2861 was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on May 18, 2022, by the following vote:

AYES:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kaneshiro	TOTAL – 6,
NOES:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i  
May 19, 2022

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

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 – May 26, 2022)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A,  
SECTIONS 5A-3.4, 5A-6.1, 5A-6.4, 5A-12.1, 5A-12.3, 5A-12.7, AND 5A-12.8,  
KAUAI COUNTY CODE 1987, AS AMENDED,  
RELATING TO REAL PROPERTY TAXES**

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

SECTION 1. Chapter 5A, Article 3, Section 5A-3.4, Kauai County Code 1987, as amended, is hereby amended to read as follows:

**“Sec. 5A-3.4 Assessment of Omitted Property; Review; Penalty.**

(a) If any real property, including, but not limited to, parcels, lots, subdivisions, condominiums, or improvements has been omitted from the assessment lists, the Director shall add to the lists the omitted property for the current year and up to two (2) prior years. Notice of the action shall be given to the owner, if known, within ten (10) days after the assessment or addition, by mailing the same addressed to him or her at his or her last known place of residence. Any owner desiring a review of the corrected assessment or the corrected addition may appeal to the Board of Review by filing with the Director a written notice thereof in the manner prescribed in Sec. 5A-12.9 at any time within thirty (30) days after the date of mailing [such notice, or may appeal to the Tax Appeal Court by filing written notice of appeal with, and paying the necessary costs to, such court within the period and in the manner prescribed in Sec. 5A-12.8.] the notice of the corrected assessment or the corrected addition.

(b) For the purpose of determining the date of delinquency of taxes pursuant to assessments under this Section, such taxes shall be deemed delinquent if not paid within thirty (30) days after the date of mailing of the notice of assessment, or if assessed for the current assessment year, within thirty (30) days after the date of mailing the notice or on or before the next installment payment date, if any, for such taxes, whichever is later; provided that if taxes are assessed for the current tax year and if the assessment is mailed by the Department at least thirty (30) days prior to the due date of the first installment, referenced to in Sec. 5A-3.2, the taxpayer may elect to pay fifty percent (50%) of the taxes due for the current tax year on or by the first installment due date and the remaining fifty percent (50%) on or by the second installment due date. Said taxes will be deemed delinquent after each respective due date referred to in Sec. 5A-3.2.

(c) There shall be added to the amount of delinquent taxes, a penalty of up to ten percent (10%) of such delinquent taxes as determined by the Director, which penalty shall be and become a part of the tax and be collected as a part thereof.

(d) All delinquent taxes and penalties shall bear interest at the rate of one percent (1%) for each month or fraction thereof until paid, beginning with the first calendar month following the calendar month designated for payment. The interest shall be and become a part of the tax and be collected as a part hereof.

(e) No taxpayer shall be exempt from delinquent penalties by reason of having made an appeal on his or her assessment, but the tax paid, covered by an appeal duly taken, shall be held in a trust account as provided in Section 5A-12.12.”

SECTION 2. Chapter 5A, Article 6, Section 5A-6.1, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

**“Sec. 5A-6.1 Rate and Levy.**

Except as exempted or otherwise taxed, all real property shall be subject to a tax upon one hundred percent (100%) of its fair market value determined in the manner provided by ordinance at such rate as shall be determined in the manner provided in Sec. 5A-6.3. No taxpayer shall be deemed aggrieved by an assessment, nor shall an assessment be lowered, exemption or dedication allowed, or tax rate classification changed, except as the result of a decision on an appeal as provided by law.”

SECTION 3. Chapter 5A, Article 6, Section 5A-6.4, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

**“Sec. 5A-6.4 Real Property Tax Rate Classifications.**

(a) For purposes of tax rates, real property shall be classified into one (1) of the following general classes according to the property’s actual use unless otherwise provided in this Chapter:

- (1) Residential.
- (2) Vacation Rental.
- (3) Commercial.
- (4) Industrial.
- (5) Agricultural.
- (6) Conservation.
- (7) Hotel and Resort.
- (8) Homestead.
- (9) Residential Investor.
- (10) Commercialized Home Use.

Vacant property shall be classified as zoned until actual use is established. For the tax year 2014, any owner shall be allowed to submit a new "Use Survey Form" to the Department of Finance, Real Property Tax Assessment Division by December 31, 2014. Should the Director determine that a property was designated an incorrect tax rate classification for tax year 2014, a tax credit of the difference shall be applied to the owner's 2015 tax year bill and all penalties and interest for delinquent payment shall be waived.

(b) When property is divided into condominium units, each unit shall be (1) classified upon consideration of its actual use into one (1) of the general classes in the same manner as other property, and (2) deemed a parcel and assessed separately.

(c) Parcels which are used for no other purpose than as the owner's principal residence shall be classified as "homestead" provided that the owner has applied for and has been granted a home exemption according to Sec. 5A-11.4. The homestead class shall also include parcels used as the owner's principal residence which are being assessed according to their agricultural use as provided in Sec. 5A-9.1; provided that the owner has been granted a home exemption and that no portion of the parcel be used for a purpose other than the owner's principal residence and agriculture. The agricultural use shall be limited to the cultivation of crops, pasturing of animals, and cultivation of aquaculture products, and uses which directly support the agricultural activity such as windbreaks, access roads, irrigation ditches and sheltering of farm machinery. Uses which are primarily commercial or industrial in nature, such as importing, selling, refining or distributing agricultural products, shall not qualify for the homestead class. The residentially-used portions of agricultural land shall be assessed according to their value in residential use. The homestead class shall also include parcels used as day care centers by licensed day care providers; provided that the owner has been granted a home exemption or is renting a Long-Term Affordable Rental in accordance with Section 5A-11A.1, no portion of the parcel is used for any other commercial activity, and that owner has provided a current copy of their day care provider license or their tenant's day care provider license to the Director on or before September 30th prior to the applicable tax year. The homestead class shall also include parcels that have applied for and have been deemed a long term affordable rental pursuant to Sec. 5A-11A.1. "Homestead" shall mean properties which are used exclusively as the owner's principal residence, except as otherwise provided in this Section. Uses which shall not qualify as "homestead" include, but are not limited to, the following: (1) real property which is used for commercial, income producing purposes, except for the agricultural, licensed day care, and long term affordable rental uses provided above; and (2) real property which is used for residential rental purposes, whether for long term or short term, except as provided above and otherwise in this Chapter.

(d) For the purposes of this Article, the tax rate classification for Residential Investor shall be applied to properties that do not qualify for the home exemption, are improved with a dwelling unit(s), and not vacant land, and have an assessed value of one million three hundred thousand dollars (\$1,300,000.00) or more.

(e) If a property has multiple actual uses, it shall be classified as the use with the highest tax rate, unless it satisfies the criteria for classification as “commercialized home use” set forth in subsection (f).

(f) Parcels which are utilized for multiple purposes, one of which is use as the taxpayer’s principal residence as of the date of assessment, shall be classified as “commercialized home use” provided that the taxpayer has received a home use exemption on the property pursuant to Sec. 5A-11.4.

(g) The owner may appeal the property’s tax rate classification [as in the case of an appeal from an assessment.] to the Board of Review as provided in Article 12.”

SECTION 4. Chapter 5A, Article 12, Section 5A-12.1, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

**“Sec. 5A-12.1 Appeals.**

[Any owner who may deem him or herself aggrieved by an assessment made by the Director or by the Director’s refusal to allow any exemption, may appeal from the assessment or from such refusal to the Board or the Tax Appeal Court, on or before December 31st preceding the tax year, as provided in this Article.] In the case of a real property tax appeal, any owner shall first appeal to the Board of Review pursuant to Section 232-16, H.R.S. Appeals to the Board of Review shall be on grounds as provided in Sec. 5A-12.3. With the exception of appeals of corrected assessments, appeals to the Board of Review shall be filed on or before December 31<sup>st</sup> preceding the tax year, as provided in this Article. With respect to appeals of corrected assessments, whether corrected for omitted property pursuant to Sec. 5A-3.4(a) or corrected for any other reason, appeals to the Board of Review shall be filed within thirty (30) days after the date of mailing the notice of corrected assessment. Where such an appeal is based upon the [ground] grounds that the assessed value of the real property for tax purposes is excessive, the valuation claimed by the owner in the appeal shall be admissible in evidence, in any subsequent condemnation action involving the property, as an admission that the fair market value of the real property as of the date of assessment is no more than the value arrived at when the assessed value from which the owner appealed is adjusted to one hundred percent (100%) fair market value; provided, that such evidence shall not in any way affect the right of the owner to any severance damages to which he or she may be entitled.”

SECTION 5. Chapter 5A, Article 12, Section 5A-12.3, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

**“Sec. 5A-12.3 Grounds of Appeal, Real Property Taxes.**

No owner shall be deemed aggrieved by an assessment, nor shall an assessment be lowered, [or an] exemption or dedication allowed, or tax rate classification changed, unless there is shown:

(a) Assessment of the property exceeds by more than fifteen percent (15%) the assessment of market value used by the Director as the real property tax base, or

(b) Lack of uniformity or inequality, brought about by illegality of the methods used or error in the application of the methods to the property involved, or

(c) Denial of an exemption or dedication to which the owner is entitled and for which he or she has qualified, or

(d) Illegality, on any ground arising under the Constitution or laws of the United States or the laws of the State or the ordinances of the County (in addition to the ground of illegality of the methods used, mentioned in Subsection (b) of this Section)[.], or

(e) The tax rate classification is incorrect according to Sec. 5A-6.4 or the Real Property Tax Classification Rules."

SECTION 6. Chapter 5A, Article 12, Section 5A-12.7, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

**"Sec. 5A-12.7 Board of Review; Duties, Powers, Procedure Before.**

(a) The Board of Review shall hear informally all disputes between the Assessor and any owner in all cases in which appeals have been duly taken and the fact that a notice of appeal has been duly filed by the owner shall be conclusive evidence of the existence of a dispute.

(b) The Board shall hold public meetings at some central location in the County commencing not later than January 15th of each year and shall hear, as speedily as possible, all appeals presented for each year. The Board shall have the power and authority to decide all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the owner or the County in the notice of appeal; provided, that the Board shall not have power to determine or declare an assessment illegal or void. Without prejudice to the generality of the foregoing, [each board] the Board shall have power to allow or disallow exemptions or dedications pursuant to law whether or not previously allowed or disallowed by the Director and to increase or lower any assessments. The Board shall have the power to change a property's tax rate classification where the preponderance of the evidence proves the tax rate classification is incorrect according to Sec. 5A-6.4 or the Real Property Tax Classification Rules.

(c) The Board shall base its decision on the evidence before it, and, as provided in Sec. 5A-1.17, the assessment made by the Assessor shall be deemed prima facie correct. Assessments for the same year upon other similar property situated in the County shall be received in evidence upon the hearing. In increasing or lowering any real property assessment, the Board shall be governed by this Chapter. The Board shall file with the Assessor concerned its decision in writing on each appeal decided by it, and a certified copy thereof shall be furnished by the Assessor forthwith to the owner concerned by delivery thereof to him or her, or by mailing the copy addressed to his or her last known place of residence or business.

(d) Upon completion of its review of the property tax appeals for the current year, the Board shall compile and submit to the Mayor and shall file with the Assessor for the use of the public, a copy of a report covering such features of its work as, in the opinion of the Board, will be useful in attaining the objectives set forth in this Chapter. In this report the Board shall additionally note instances in which, in the opinion of the Board, the Assessor, in the application of the methods selected by him or her, erred as to a particular property or particular properties not brought before the Board by any appeal, whether the error is deemed to have been by way of underassessment or overassessment. Before commencing this phase of its work, the Board shall publish, during the first week of September, a notice specifying a period of at least ten (10) days within which complaints may be filed by any owner. Each complaint shall be in writing, shall identify the particular property involved, shall state the valuation claimed by the owner and the grounds of objection to the assessment, and shall be filed with the Assessor who shall transmit the same to the Board. Not earlier than one (1) week after the close of the period allowed for filing complaints, the Board shall hear the same, after first giving reasonable notice of the hearing to all interested persons and the Assessor. Like notice and hearing shall be given in order for the Board to include in its report any other property not brought before it by an appeal. The Board may proceed by districts designated by their tax map designation, and may, from time to time, publish the notice above provided for as the work proceeds by districts.

(e) The Assessor, in the making of assessments for the succeeding year, shall give due consideration to the report of the Board made pursuant to Subsection (d) of this Section.

(f) The Board and each member thereof, in addition to all other powers, shall also have the power to subpoena witnesses, administer oaths, examine books and records, and hear and take evidence in relation to any subject pending before the Board. It may request the Tax Appeal Court, as prescribed in Section 232-7, H.R.S., to order the attendance of witnesses and the giving of testimony by them, and the production of books, records and papers at the hearings of the Board.

(g) The Board shall promulgate rules and regulations as provided in Chapter 91, H.R.S., for its hearings.”



SECTION 7. Chapter 5A, Article 12, Section 5A-12.8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

**“Sec. 5A-12.8 Tax Appeal Court.**

Any owner aggrieved by a Board of Review final decision may appeal [any decision of the Director or the Board] to the Tax Appeal Court as provided in Sections 232-8 to 232-14, 232-16 to 232-18, H.R.S., or to the State Supreme Court as provided in Sections 232-19 to 232-21, H.R.S., except when an appeal is filed with the district court for small claims.”

SECTION 8. 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 9. 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 10. The Ordinance shall take effect upon its approval.

Introduced by:



LUKE A. EVSLIN  
(By Request)

DATE OF INTRODUCTION:

May 18, 2022

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. 2861, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on May 18, 2022, by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kaneshiro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Līhu'e, Hawai'i  
May 18, 2022



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