

DEPARTMENT OF FINANCE
COUNTY OF KAUAI
REAL PROPERTY TAXATION

URBAN DISTRICT OPEN SPACE LAND DEDICATION

RULES AND REGULATIONS OF THE DIRECTOR
OF FINANCE RELATING TO DEDICATION OF
LANDS IN URBAN DISTRICTS FOR LANDSCAPING,
OPEN SPACES, PUBLIC RECREATION AND OTHER
SIMILAR USES UNDER SECTION 5-11.13,
REVISED CODE OF ORDINANCES OF
COUNTY OF KAUAI

SECTION RP-5.1 Purpose of rules. These rules and regulations are intended to clarify and implement the provisions of Section 5-11.13, Revised Code of Ordinances of the County of Kauai, herein referred to as "RCO", which exempts from real property taxation, such portions of land in urban district which are dedicated for landscaping, open spaces, public recreation or other similar uses and are approved by the director for such use or uses.

SECTION RP-5.2 Definitions. (a) As used in these rules and regulations:

- (1) The term "director" shall mean the director of finance or his designee.
- (2) The term "historic district" or "historical site" means the area defined and delineated to be a historic district or historical site at the Department of Land and Natural Resources.
- (3) The term "landscaping" means lands, which are open to the public for their visual enjoyment and, which are improved by cultivated plantings or gardening; flower gardens, rock, gravel or sand arrangements; and by other elements of landscape architecture such as paved terraces, arbors, colonnades or arcades, ornamental fountains, sculptures, benches, etc.
- (4) The term "open spaces" means undeveloped or predominantly undeveloped lands open to the public for pedestrian use and momentary repose, relaxation and contemplation such as trails, streambeds, ponds, beaches, groves, ravines, and other areas of topographic, vegetative or historic-archaeological interest; rights-of-way for ingress or egress to beaches and mountain areas, scenic lookouts or other sites characterized by natural scenic beauty whose existing openness, natural condition, if retained, would maintain or enhance the conservation of natural scenic resources or would enhance the present or potential value of the surrounding area.
- (5) The term "owner" means anyone who owns the land in fee or who is a lessee of real property whose lease term extends at least ten years from the date of the dedication; provided, however, that the "owner" must also be the actual user of the land to be dedicated.
- (6) The term "public recreation" means lands which may be developed for use by the public as parks, playlots, playgrounds, historical sites, picnic or camp grounds, boating or fishing facilities, wild life non-commercial recreational use.
- (7) The term "urban district" means lands designated urban by the State Land Use Commission.

- (8) The term "yard area" means the open grounds in front of and around a dwelling which provide utility to the inhabitants therein.

(b) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things; words importing the plural may include the singular; and words importing the masculine gender may be applied to females.

SECTION RP-5.3 Minimum land area acceptable for dedication.
The land to be dedicated, excepting land designated as historic district or site, shall contain the minimum area set forth herein and shall exclude areas used for vehicular movements and parking.

- (1) Land to be dedicated for "landscaping" use shall have a minimum area of not less than 500 square feet exclusive of all easements except underground and overhead utility easements. A residential parcel dedicated for landscaping shall have a minimum area of not less than 2,000 square feet, exclusive of the above-mentioned easements; provided that the minimum area of the parcel is not used as yard area, is contiguous to the residential parcel, and shall not be applied to meet the minimum zoning requirement area of the parcel.
- (2) Land to be dedicated for "open space" use shall have a minimum area of not less than 500 square feet with a minimum width of not less than 10 feet and shall be exclusive of any easement except underground and overhead utility easements. A residential parcel dedicated for open space use shall have a minimum area, exclusive of the aforesaid easements of not less than 5,000 square feet; provided, that the minimum area is not used as yard area.
- (3) Land to be dedicated for "public recreation" use shall have a minimum area of not less than 5 acres exclusive of all easements except underground and overhead utility easements. Land to be dedicated for playground and beach parks shall have a minimum area of not less than 2.5 acres. For high population density areas without adequate recreational facilities, the land dedicated for public recreation shall have a minimum area of not less than 5,000 square feet and if the land is a residential parcel, the land must not be in use as yard area.

SECTION RP-5.4 Filing of petition. (a) Any owner of taxable real property in the urban district desiring to dedicate a portion or portions thereof for landscaping, open space, public recreation and other similar uses shall file the petition by September 1 of any year for dedication desired for the following tax year. Petition forms required to be prepared and filed by the owner shall be obtained from the director of finance.

(b) Each owner shall complete the form prescribed by the director and file the same with the director. The following additional information shall be submitted:

- (1) The exact area, shown on a map of the land to be dedicated;
- (2) The cost of constructing improvements;
- (3) The annual maintenance cost of the land to be dedicated and improvements thereon;
- (4) That such land is not within the setback and open space requirements of applicable zoning and building code laws and ordinances including allowances for bonus floor area,

except for land within a historic district or historical site these requirements herein shall not apply;

- (5) That such land shall be used, improved and maintained in accordance with and for the sole purpose for which it was dedicated; and
- (6) Any other information as the director may require as being pertinent to the dedication.

SECTION RP-5.5 Findings and review of petitions. (a) The director shall make a finding, based on the consideration of the relevant facts as to whether the use to which such land will be dedicated has a benefit to the public at least equal to the value of the current real property taxes payable for such land. Such findings shall be measured by:

- (1) The cost of constructing the improvements;
- (2) The cost of continuing maintenance thereof;
- (3) The aesthetic value thereof; and
- (4) Other factors such as the imposition of stricter zoning requirements relating to the proper development of the neighborhood and the welfare of the general public as the director may deem pertinent.

(b) If the director finds that the public benefit is at least equal to the value of current real property taxes for such land, he shall approve the petition and so notify the owner by December 15. If the director finds that the public benefit is not at least equal to the value of current real property taxes for such land, he shall disapprove the petition and so notify the owner and shall state the reasons therefor by December 15.

(c) If the petition is approved, the exemption based upon the use requested in the dedication shall become effective July 1, of the tax year following the approval for dedication. The assessed values exempted, determined on assessment date January 1, shall be annually posted and recorded appropriately by the director for reference in case of retro-active assessments. Notwithstanding any provision to the contrary, the dedicated land parcel shall be subject to the minimum tax provisions of Section 5-6.3(g), RCO.

SECTION RP-5.6 Posting of sign. Upon approval of the petition, the owner shall place and maintain on the dedicated premises a conspicuous sign or signs, to be approved by the director, which shall note thereon the area, date and nature of dedication, and which shall be so conspicuously posted as to give the public notice of the dedication.

SECTION RP-5.7 Enforceable restrictions on land dedicated. 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 his land for a minimum period of ten years, automatically renewable indefinitely, subject to cancellation by either the owner or the director upon five years' written advance notice at any time after the end of the fifth year. The owner shall notify the director in writing whenever any changes in improvement, use, or transfer of the dedicated property are under consideration.

SECTION RP-5.8 Revocation of dedication and retroactive assessment. In the event that the owner fails to observe the restriction on the use, improvement and maintenance of his land by failing for a period of over

twelve consecutive months to use, improve and maintain the land in the manner requested in the petition or any overt act changing the use for any period or the transfer of the land, the director shall cancel the special tax exemption privilege retroactive to the date of the dedication, and all differences in the amount of taxes that were paid and those that would have been due from the assessment of the tax exempted portion of his land shall be payable together with interest of five per cent per annum for the respective dates that the payments would have been due. Whenever necessary, pertinent provisions of Chapter 8, Revised Ordinances of Kauai, Relating to Real Property Tax, shall be applied when the retroactive assessment is imposed.

SECTION RP-5.9 Appeal. The owner may appeal any disapproved petition or if aggrieved by the retroactive assessment as in the case of real property tax appeal. Appeals shall be governed by the appropriate sections of Chapter 5 RCO, and may be taken to the board of review or be taken directly to the tax appeal court without appealing to the board of review.

The Procedural Rules for the Implementation of Section 5-11.13, RCO, Relating to Dedication of Land in Urban District for Landscaping, Open Space, Public Recreation and Similar Uses were adopted on May 26, 1981 following a public hearing held on May 18, 1981, after public notice was given in The Garden Island Newspaper on April 24, 1981.

These rules shall take effect ten days after filing with the Office of the County Clerk, County of Kauai.

Eduardo E. Malapit
MAYOR, County of Kauai

DATED: 6/3/81

APPROVED AS TO FORM

Henry I. Munak
COUNTY ATTORNEY

John F. [Signature]
COUNTY CLERK

Filed June 3, 1981