

DEPARTMENT OF FINANCE
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

TITLE 4

SUBTITLE 5 REAL PROPERTY TAXATION

CHAPTER 11

AGRICULTURAL LAND DEDICATION ASSESSMENT

AMENDMENT TO RULES AND REGULATIONS OF THE DIRECTOR
OF FINANCE RELATING TO DEDICATION OF LANDS FOR
RANCHING OR AGRICULTURAL USE UNDER SECTION
8-7.3, REVISED ORDINANCES OF HONOLULU

PART XXI

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Sec. 4-11-1 Purpose of rules. These rules and regulations are intended to implement the provisions of Section 8-7.3, Revised Ordinances of Honolulu, relating to the dedication of land for ranching or other agricultural uses.

Sec. 4-11-2 Definitions. (a) As used in these rules and regulations:

- (1) The term "agricultural," "conservation," "rural," or "urban" district shall mean the respective land use district designated by the Land Use Commission of the State of Hawaii pursuant to Chapter 205, Hawaii Revised Statutes.
- (2) The term "agricultural use" shall mean lands actually put to agricultural use adhering to acceptable standards to produce agricultural crops, aquaculture, specific livestock including ranching use.

Actually put to agricultural use shall be deemed to be when crops are actually in cultivation, and farm management efforts such as weed or pruning control, plowing, planting including housing, fencing and water facilities for aquaculture, livestock and pasturing of animals are clearly evident. It does not include or apply to areas used primarily as yard space, set backs, or open landscape associated with residential use planted with ornamental plants, fruit or ornamental trees and vegetables primarily for home use.

- (3) The term "crop" shall mean the actual production of specific agricultural or farm crops such as sugar cane, pineapple, truck crop, grain or alfalfa, orchard crops, flower, nursery or ornamental crops or the like in the manner provided in these regulations; but excludes koa haole, panicum, pangola, kikuyu, napier grass or other like forage crops used for soilage or silage deemed to be pasture uses within the urban district.

- (4) The term "dedicated area" shall mean the land area approved as dedicated lands by the director.
- (5) The term "director" shall mean the city/county director of finance or his designee.
- (6) The term "fulfillment" or "fulfills" the requirements of the dedication shall mean the owner, or successor to the owner if such be the case, shall have complied with all of the terms, and conditions of the dedication for the minimum period of the dedication.
- (7) The term "homesite" shall mean that portion of the land which is used primarily for residential purposes, including the land upon which any house is located together with all accessory buildings and the land designated to be the yard space. Such homesite shall be delineated in the petition and shall not be included in the dedication.
- (8) The term "owner" shall mean the fee owner or the lessee of real property with an unexpired lease term of not less than ten years from the date of the petition in the case of a ten-year dedication or the lessee with an unexpired lease term of not less than twenty years in the case of a twenty-year dedication.
- (9) The term "ranching use" shall mean the actual use of the land for purposes of pasturing or grazing livestock such as cattle, dairy, sheep, horses, swine and the like.
- (10) The term "specific livestock" shall mean the actual production of livestock under confined housing or controlled conditions to include, for example, swine, poultry, dairy, beef, calf-raising, aquaculture and feed lot operations, but excluding grazing or pasturing uses within an urban district.
- (11) The term "tax year" shall mean the period commencing from July 1 of a calendar year and ending on June 30 of the following calendar year.
- (12) A "violation" means the failure by the owner or any owner by succession to use the land for the agricultural purposes for a period of twelve consecutive months or the failure by the owner to complete the approved change in agricultural use within the period of thirty-six months. It also means the overt act of changing the use of the land without prior notification of such change to the director for other than its agricultural use for any period of time or any failure by the owner to observe any of the terms, conditions or restrictions of the dedication.

(b) Use of Gender and Number. Words importing the singular number shall extend to and include the plural; words importing the plural shall extend to and include the singular; words importing the masculine or the female gender shall extend to and include the female or the masculine as the case may be.

Sec. 4-11-3 Petitions to dedicate, deadline and place to file. (a) The dedication of lands, within any land use districts as designated by the State Land Use Commission, shall be initiated by filing four copies of the petition with the director of finance on or before September 1 for the dedication to become effective in the following tax year.

- (1) The petitions for dedication shall be submitted on a form prescribed by the director. Petitions shall be available at the office of the director.
- (b) Each petition for dedication shall state the specific use to which the land is to be dedicated, and shall be accompanied by the following:
 - (1) If the petitioner is a lessee, one copy of the lease document.
 - (2) A statement of the petitioner's pasture rotation, crop cycle planting, harvesting or marketing schedule of products, livestock or animals shall be submitted.

- (3) If the land is located in an urban district, the owner shall submit proof satisfactory to the director that the land has been substantially and continuously used in the manner prescribed by Section 4-11-4. Such proof may consist of the business records of the owner or affidavits of at least two abutting owners who have continuously owned and occupied their land for at least five consecutive years immediately prior to the date of the petition.
- (4) A tax map or an appropriate facsimile thereof delineating the area to be dedicated and further delineating the homesite to be excluded from the dedication shall be submitted:
 - (c) One or more parcels may be included in the dedication for the same dedication period.
 - (1) Where several parcels of land located in the same use district, other than in an urban district, are to be similarly dedicated, all such parcels may be included in one petition.
 - (2) Where the lands are located within an urban district, separate petitions shall be filed for each parcel or portion thereof to be dedicated.
 - (3) Where a land use boundary divides a contiguous parcel of land so that a portion thereof is situated within an urban district and the remaining portion is situated in any other use district, each such portion shall be treated as a separate petition. Where the owner dedicates the contiguous parcel, a separate petition shall be filed for that portion situated in the urban district and a separate petition shall be filed for that portion situated in the other use district in accordance with the provisions of this section.
 - (d) Petitions to be for ten or twenty-year dedications.
 - (1) Where the land to be dedicated is within an agricultural district, the petitioner shall indicate on the petition whether the dedication shall be for a ten or twenty-year period and, whenever applicable, the petition shall designate any portion of the land which is unusable or unsuitable for any agricultural use.
 - (2) Where the land is not within an agricultural district, the owner shall petition for a 10-year dedication.
 - (e) Petitions shall be submitted for changes in dedicated use.
 - (1) Where the owner desires to change the dedicated use, the owner shall petition the director for such a change in use in accordance with Section 4-11-7 of these regulations.
 - (2) Upon receipt of any such petition, the director shall review the petition and require the findings to be made in the same manner as they are required for the initial petition for dedication.
 - (f) Each petition and document filed shall be reviewed within a reasonable period, and any errors or deficiencies shall be corrected by the petitioner. No petition for dedication shall be deemed to have been filed unless the petition is complete in form and all and any errors or deficiencies have been corrected.

(1) The director shall assign an appropriate number to each petition.

Sec. 4-11-4 Special requirements for dedication within the urban district.

- (a) Dedication or urban lands for the cultivation of crops shall meet the following requirements:
 - (1) The land must have been substantially and continuously used for the cultivation of crops for the immediate past five years. Proof of such substantial and continuous use shall be furnished by the owner in the manner pertinently prescribed in subsection 4-11-3(b) of these rules and regulations.

- (2) The cultivation of crops must be determined to be economically feasible by the director.
 - (3) The petitioner must be an owner as defined herein and all other requirements for dedication have been met.
- (b) Dedication for urban lands for specific livestock use shall meet the following requirements:
- (1) The land must be used for specific livestock uses, such as feed lots, calf-raising and like operations in dairy, beef, swine, poultry and aquaculture as defined, but excluding open grazing and pasturing.
 - (2) The land must have been substantially and continuously used in the specific livestock uses for the immediate past five years.
 - (3) The specific livestock use must be situated in an area wherein such use or uses shall be permissible under county zoning ordinances and compatible with the surrounding uses.
 - (4) The petitioner must be an owner as defined herein and all other requirements for the dedication have been met.
- (c) The director's determination of economic feasibility shall be based upon the following findings:
- (1) The owner must have obtained a general excise tax license for the purpose of engaging in business in the production of crops or specific livestock.
 - (2) The annual gross income derived from the production of crops or specific livestock, as the case may be, shall not be less than \$500 for parcels which are one acre or less and \$500 per acre for parcels which are more than one acre.
 - (3) The director has determined to his satisfaction that the land has been substantially and continuously used for the production of crops or specific livestock. For this purpose, the owner shall furnish proof of such substantial and continuous use as required by subsection 4-11-3(b)(3) of these rules and regulations.

Sec. 4-11-5 Finding of facts. (a) The director shall, by November 15 of each year, make the following findings with respect to petitions filed by September 1 of said year:

- (1) whether the petitioned land is actually put to the agricultural, specific livestock or ranching use and is reasonably suited for such use;
- (2) the productivity ratings of the land for those uses to which it is best suited;
- (3) the adequacy or sufficiency of the size or area of the unit for the petitioned use and the present use of the surrounding lands;
- (4) whether the petitioned use is permissible under the county zoning district or ordinance;
- (5) whether the use is in conflict with the general plan of the county and the overall development plan of the State.

Sec. 4-11-6 Approval or disapproval of the petition. (a) For lands in the urban district, the director shall approve the petition if the requirements of section 4-11-4 are met and the finding of facts, including the economic feasibility of the petitioned use, are all favorable to the owner.

(b) For lands in other land use districts, the director shall approve the petition if the findings are favorable to the owner.

(c) The director shall disapprove the petition if any of the findings are not favorable to the owner or if he determines good cause exists for such disapproval.

(d) Notice of the approval or disapproval of the petition shall be sent to the petitioner. If the petition is disapproved, the notice shall state the reasons for such disapproval.

(e) The director shall notify the petitioner of approval or disapproval of the petition no later than December 15. Upon approval, the dedication shall become effective July 1 of the following tax year, but the assessed value will be determined on the assessment date January 1. The petition number and the effective date of the dedication are to be noted on appropriate records accessible to the public.

(f) Upon approval, the director shall prepare and deliver to the owner an original and a copy of the notice of dedication. The notice shall be recorded at the State Bureau of Conveyances by the owner before January 15 next following the approval of dedication. A copy of the recorded document shall be returned to the assessor's office.

Sec. 4-11-7 Effects of dedication and enforceable restriction upon use.

(a) Each approved dedication shall constitute a forfeiture on the part of the owner of any right to change the use of the land to a use other than an agricultural or ranching use for a minimum period of ten or twenty years as the case may be. Each dedication shall be automatically renewable indefinitely subject only to proper cancellation by the owner or release by the director.

- (1) The dedication shall bind and enure to each successor owner unless properly cancelled by the owner or released by the director.
- (2) Where dedicated land has been subdivided, each parcel shall be independently subject to the provisions of the original dedication. The owner shall notify the director of any subdivision of his land and shall submit a copy of the approved subdivision map or the registered File Plan number if applicable.
 - A. The director shall note the dedication upon appropriate records of each subdivided parcel.
 - B. The owner shall inform each purchaser of a subdivided parcel of the dedicated status of the land. (Dedicated lands may be freely sold or conveyed in the same manner as any land.)
 - C. Each owner of a subdivided parcel may, independently of any other owner, petition for a change in dedicated use or to give the notice of cancellation.
 - D. Any action taken by the owner of a subdivided parcel shall not have any effect on the owners of the other parcels resulting from the subdivision.

(b) The owner shall petition the director to change the dedicated agricultural or ranching use to another agricultural or ranching use. Each petition for a change in use shall be subject to the required finding of facts and approval in the same manner as the initial petition for dedication. The owner shall declare that:

- (1) the land can best be used for another type of agricultural or ranching use other than that as formerly dedicated;
- (2) the land shall be used for that new agricultural or ranching use if the petition to change is approved;
- (3) he shall be allowed a maximum of thirty-six (36) months from the date of approval of the change to convert to the new ranching or agricultural use, except that for leased land the conversion period shall be limited to the remaining term of the lease, where such remaining term is less than thirty-six months;
- (4) he understands that failure to complete the change in use (conversion) within the allowed period shall be a violation and that the period of the change in use shall be added to the minimum period of the retroactive assessment.
- (5) he shall submit a yearly progress report to the director on or before each anniversary date of the approval of the change in use until such change is completed.

(c) The director shall be responsible for the annual inspection of dedicated lands, and shall note all violations for appropriate action pursuant to section 4-11-9.

Sec. 4-11-8 Special tax assessment of dedicated lands. (a) The determination of the value of dedicated lands shall be based upon considerations prescribed in Section 8-7.1, Revised Ordinances of Honolulu. Whenever the prescribed data are not available, land values for the particular use within the respective land use district shall be based upon the fair agricultural lease rent, as income inputted to land, capitalized into land value.

- (1) For dedicated lands situated within an agricultural use district and which have been dedicated for twenty years, the assessment shall be made at fifty per cent of its assessed value in such use.
- (2) Where dedicated lands are situated within an agricultural district, that portion of the parcel deemed unusable or unsuitable for any agricultural or ranching use shall be subject to the deferred tax provisions of Section 8-7.1(e)(3), Revised Ordinances of Honolulu. If such unusable or unsuitable lands are put to any other use, said lands shall be designated as non-dedicated lands and shall be assessed according to their highest and best use.

(b) Dedicated lands shall bear the notation "Special Assessment - Dedicated Land" on all records and documents relating to the assessment.

- (1) Dedicated lands shall also be assessed at their highest and best use as though not dedicated for purposes of determining and computing retroactive taxes in the event of any violations or cancellations.
- (2) Lands not included in the dedication such as homesites, other than in agricultural or ranching use, shall be valued and assessed at their highest and best use based upon comparable lands of similar land use classification as reflected in the market.

Sec. 4-11-9 Retroactive assessment, violation, and penalty. (a) Whenever a violation of the dedication occurs, the owner shall first be notified of such violation. The notice of such violation may be mailed to the last known address on file with the director. Each owner shall be afforded an opportunity to discuss the violation with the director and he may be allowed a conference prior to final cancellation of the dedication. In the absence of any justifiable excuse, the director shall cancel the dedication and subject the lands to retroactive assessments and penalties.

- (1) The retroactive assessment and penalty provisions of Section 8-7.3(f), Revised Ordinances of Honolulu, shall be imposed by the director for any violation of the dedication.
- (2) If a violation occurs with respect to only a portion of the dedicated lands, such as when a portion of the land is subsequently applied to a use other than its dedicated use or such portion is not put to its agricultural, specific livestock or ranching use, the director shall cancel only that portion that is involved in the violation and subject that portion to retroactive assessment and penalties.

(b) The retroactive assessment shall be the difference in the amount of taxes between what could have been paid when assessed at the highest and best use and the amount paid based upon its assessment for dedicated uses for each year the land has been dedicated retroactive to the date of the dedication. The sum of the retroactive years, however, shall not exceed the term of the original dedication, excepting the period of change in use shall be in addition to the dedication period for owners who fail to complete the change in use as petitioned. In the case of lands that may be subject to both the deferred tax and the retroactive tax of land dedication, the sum of the roll back and the retroactive periods shall not exceed the minimum term of the dedication. The retroactive assessment shall be subject to a penalty of ten per cent per annum.

(c) All unpaid taxes, including retroactive assessments and penalties shall constitute paramount liens upon the property as provided in Chapter 8, Revised Ordinances of Honolulu.

(d) A change in land use district classification upon a petition by the owner shall not be deemed to constitute an overt act of changing the use of the dedicated land, provided, that the land shall continue to be subject to the terms and conditions of the dedication.

Sec. 4-11-10 Cancellation (withdrawal) without penalty. (a) Where lands have been reclassified and placed within an urban district by the State Land Use Commission not as a result of a petition initiated by the owner, such owner may cancel the dedication within sixty days after the reclassification and shall not be subject to the retroactive assessment and penalty provisions of section 8-7.3(f), Revised Ordinances of Honolulu.

(1) The owner shall, if he desires to cancel the dedication, notify the director of such cancellation by written notice to the director. The notice of cancellation shall be accompanied by a copy of the notice of land use change from the Land Use Commission.

(2) All cancellations shall become effective July 1 of the following tax year.

(b) Upon expiration of the minimum period of dedication, the owner may cancel or withdraw the dedication without being subject to retroactive assessments or penalties by presenting the proper cancellation notice in the following situations:

(1) For a ten-year dedication, the owner shall submit the cancellation notice after the ninth year and annually thereafter;

(2) For a twenty-year dedication, the notice shall be submitted after the nineteenth year and annually thereafter as provided herein.

(c) Each such notice hereunder shall be submitted on or before December 31, to become effective on July 1 of the following tax year.

Sec. 4-11-11 Cancellation and release of dedication. Upon cancellation or release of the dedication, the director shall file the cancellation or release document at the State Bureau of Conveyances. A copy of the recorded cancellation or release document shall be delivered, together with the Notice of Cancellation-Fulfillment of Dedication, to the owner.

Sec. 4-11-12 Appeals. (a) The owner may appeal any disapproved petition as in the case of an appeal from an assessment. Appeals shall be governed by the appropriate sections of Chapter 8, Revised Ordinances of Honolulu and may be taken directly to the tax appeal court without appealing to the board of review.

Sec. 4-11-13 Retroactive and specific application. (a) The regulations relating to the change in agricultural use shall apply retroactively to any petition submitted or pending before the director as of January 1, 1982. Such petition shall be given the thirty-six months conversion period. Upon approval of the petition to change the use, the director shall make the adjustments to the property tax assessment if adjustments are necessary.

(b) The recording or filing of the document of dedication and the cancellation and release of the dedication shall apply to a dedication approved as of December 15, 1985 and thereafter, and shall not apply to dedication approved prior to this date.

The Procedural Rules for the Implementation of Section 8-7.3, Revised Ordinances of Honolulu, Relating to Dedication of Lands for Ranching or Agricultural Use, were adopted on OCT 10 1985, following a public hearing held on September 4, 1985, after public notice was given in the Honolulu Advertiser on August 14, 1985.

These rules shall take effect ten days after filing with the City Clerk.

Rizalino R. Vicente

RIZALINO R. VICENTE
Director of Finance
City and County of Honolulu

Approved this 10th day of October,
1985.

Frank F. Fasi

FRANK F. FASI
Mayor
City and County of Honolulu

APPROVED AS TO FORM:

Waia T. Kawachi
Deputy Corporation Counsel

Received this 18th day of
October, 1985.

Raymond K. Iha
City Clerk

CERTIFICATE

I, RIZALINO R. VICENTE, Director of Finance, City and County of Honolulu, hereby certify:

1. That the foregoing is a full, true and correct copy of an amendment to Part XXI of the Rules and Regulations of the Director of Finance, relating to the dedication of lands for ranching or agricultural use, having been adopted by the Director of Finance on October 10, 1985, after a public hearing held on September 4, 1985.

2. That notice of public hearing on the foregoing amendment to the Rules and Regulations, which notice included a statement of substances of the proposed amendment to the Rules and Regulations, was published in the Honolulu Advertiser on August 14, 1985.

Rizalino R. Vicente

RIZALINO R. VICENTE
Director of Finance
City and County of Honolulu