

**DEPARTMENT OF THE CORPORATION COUNSEL**

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June 29, 2004

MEMO TO: Danny A. Mateo, Council Member  
F R O M: Cindy Y. Young, Deputy Corporation Counsel *Cyy*  
SUBJECT: **AMENDING SECTION 16.26.107.2, MAUI COUNTY CODE.  
PERTAINING TO BUILDING PERMIT FEES (PAF 04-086)**

This responds to your memorandum dated April 15, 2004 requesting a legal opinion regarding whether Resolution No. 96-42 must be amended in order to amend Section 16.26.107.2, Maui County Code ("MCC"), to limit building permit fee exemptions for projects located on the island of Molokai to projects valued at \$200,000 or less. A copy of the proposed bill to amend Section 16.26.107.2 is attached hereto.

**I. Resolution No. 96-42, Relevant Ordinances and Statutes**

Resolution No. 96-42 provides in relevant part:

BE IT RESOLVED by the Council of the County of Maui:

1. That the island of Molokai is hereby nominated for designation as an enterprise zone; and
2. That the County incentives for the Molokai enterprise zone may include:

\* \* \*

(c) Waiver or variance of zoning or building permit fees and requirements; and ...

Section 3.80.030, MCC, provides in relevant part:

A. The mayor or council may nominate an area to be designated as an enterprise zone; provided, that all nominations shall be approved by the council by resolution after a public hearing.

\* \* \*

D. Following approval by the council by resolution, the mayor or the mayor's designated representative shall submit an application to the state DBEDT [department of business, economic development and tourism] for processing and recommendation to the governor for designation of the nominated area as an enterprise zone. The application shall include:

1. A written description of the boundaries of the proposed zone;
2. A map identifying the proposed enterprise zone boundaries relative to the boundaries of the census tracts that will be fully or partially included in the zone; and, relative to the state land use district classifications, publicly held lands, and county general plan and/or development plan designations; and
3. A statement indicating the local incentives proposed by the county.

Hawaii Revised Statutes ("HRS") Section 209E-12 provides:

(a) In applying for designation as an enterprise zone, the applying county may propose local incentives, including, but not limited to:

- (1) Reduction of permit fees;
- (2) Reduction of user fees; and
- (3) Reduction of real property taxes.

(b) The application also may contain proposals for regulatory flexibility, including, but not limited to:

- (1) Special zoning districts;
- (2) Permit process reform;
- (3) Exemptions from local ordinances; and
- (4) Other public incentives proposed in the locality's application, which shall be binding upon the locality upon designation of the enterprise zone.

HRS Section 209E-13 provides:

Upon designation of an area as an enterprise zone, the proposals for regulatory flexibility, tax incentives, and other public incentives specified in this chapter shall be binding upon the county governing body to the extent and for the period of time specified in the application for zone designation. If the county governing body is unable or unwilling to provide any of the incentives set forth in section 209E-12 or any other

incentives acceptable to the department [of business, economic development, and tourism], the enterprise zone shall terminate. Qualified businesses located in the enterprise zone shall be eligible to receive the state tax incentives provided by this chapter even though the zone designation has terminated. No business may become a qualified business after the date of zone termination. The county governing body may amend its application with the approval of the department [of business, economic development, and tourism]; provided the county governing body proposes an incentive equal to or superior to the unamended application.

## **II. Analysis**

The plain language of Resolution No. 96-42 authorizes, but does not mandate, the County to waive or vary building permit fees for projects located on the island of Molokai. Resolution No. 96-42 does not specify the exact scope, timing, and extent of such waivers, but anticipates that the particulars of any incentives will be addressed in legislation following adoption of the Resolution. Therefore, Resolution No. 96-42 would not need to be amended in order to amend section 16.26.107.2, MCC, to limit building permit fee exemptions for projects located on the island of Molokai to projects valued at \$200,000 or less.

Further, the proposed amendment to section 16.26.107.2, MCC, does not require an amendment to the Molokai enterprise zone application.<sup>1</sup> Although the proposed amendment to Section 16.26.107.2 will limit the applicability of the building permit fee exemption, it is not inconsistent with the purpose and terms of County's enterprise zone application.

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<sup>1</sup> Under HRS section 209E-13, the Department of Business, Economic Development, and Tourism must approve any amendment to the county's application for an area to be designated an enterprise zone. Resolution No. 96-42 was included in the application for Molokai to be named an enterprise zone and listed the proposed enterprise zone incentives. The application did not propose any incentives other than those contained in Resolution No. 96-42.

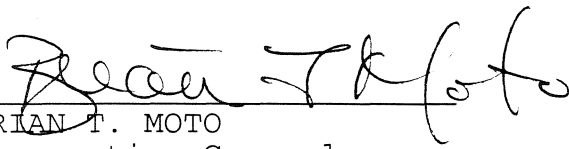
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Should you have any further questions, please do not hesitate to contact this office.

CYY:ko  
Enclosure

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APPROVED FOR TRANSMITTAL:

  
BRIAN T. MOTO  
Corporation Counsel

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2004)

A BILL FOR AN ORDINANCE AMENDING  
CHAPTER 16.26, MAUI COUNTY CODE,  
PERTAINING TO BUILDING PERMIT FEES

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The purpose of this ordinance is to limit the exemption from building permit fees for projects located on the Island of Molokai, to projects valued at \$200,000 or less.

SECTION 2. Chapter 16.26, Maui County Code, is amended by amending section 16.26.107.2 to read as follows:

**"16.26.107.2 Subsection 107.2 amended.** [Subsection 107.2] Section 107 of the Uniform Building Code is amended by amending subsection 107.2 to read as follows:

**107.2 Permit Fees.** (a) A fee as set forth in the annual budget ordinance shall be paid prior to the issuance of any building permit.

**EXCEPTIONS:**

1. Affordable housing projects built and offered for sale or rental in accordance with chapter 2.86 of the Maui County Code shall be charged one-half of the building permit fee set forth in the annual budget ordinance.

2. When permits are required for a county capital improvement program project pursuant to this code, no fee shall be charged for such permits.

3. When permits are required for projects located on the island of Molokai, pursuant to resolution no. 96-42 relating to designation of the island of Molokai as an enterprise zone, no fee shall be charged for such permits[.] for projects valued at \$200,000 or less.

(b) The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be

the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems and any other permanent equipment. The valuation per square foot for dwellings, private garages, decks, and patios shall be as follows:

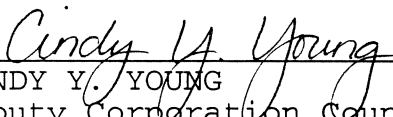
	"Good" Construction	"Average" Construction
1. Dwellings:		
Type V - masonry	\$95.00	\$70.00
Type V - wood frame	\$90.00	\$65.00
Basements - unfinished	\$25.00	\$20.00
2. Private garages:		
Wood frame		\$25.00
Masonry		\$28.00
Open carports		\$20.00
3. Decks and patios:		
Open	\$15.00	\$8.00
Covered		\$20.00

Adjustments to the valuations may be made by the building official for special architectural or structural features, type of material and location of project."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this ordinance, the County Clerk need not include the brackets, the bracketed material or the underscoring.

SECTION 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

  
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 CINDY Y. YOUNG  
 Deputy Corporation Counsel  
 County of Maui

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