

SUMMARY OF PROPOSED COMMITTEE DRAFT:

BILL 45 (2021) RELATING TO INCENTIVES FOR BUSINESSES.

The PROPOSED CD1 makes the following amendments:

- A. Amends ROH Section 8-10.1 to allow the continuing tax exemption for the 30 year tax exemption established under ROH subdivision 8-10.__(b)(1).
- B. Repeals ROH Section 35-2.2 relating to a real property tax rebate and replaces it with a new section in ROH Chapter 8, Article 10, creating a real property tax exemption.
- C. Amends ROH subdivision 31-1.3(a)(2) to conform the qualifications for incentives to the amended definition of "eligible business."
- D. Amends ROH subdivision 31-1.3(a)(3) to require that the 100 new jobs required for the 30 year tax exemption must be created and filled throughout the 30 year exemption period.
- E. Removes ROH subsection 31-1.3(b) which established that a business may be certified as a qualified business if the business provided 50 or more new jobs.
- F. Amends proposed new ROH subdivision 31-1.3(a)(4) by reducing the minimum investment to \$75,000,000 (from \$100,000,000).
- G. Amends proposed new ROH subdivision 31-1.3(a)(5) to enable the City to utilize internal administrative analysis to determine whether a business will provide a net benefit to the City.
- H. Adds a new ROH subdivision 31-1.3(a)(6) to limit certification to those businesses that partner with an anchor institution.
- I. Deletes proposed new ROH subsection 31-1.3(d), which had originally provided for additional tax incentives.
- J. Clarifies that the exemption will apply to tax years beginning July 1, 2024 and thereafter.
- K. Makes conforming amendments to ensure consistency.
- L. Makes miscellaneous technical and non-substantive amendments.



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RELATING TO INCENTIVES FOR BUSINESSES.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to provide incentives to businesses located within certain areas to create new jobs and generate economic benefits for the City.

SECTION 2. Section 8-10.1, Revised Ordinances of Honolulu 1990, as amended by Ordinance 20-37, is amended to read as follows:

"Sec. 8-10.1 Claims for certain exemptions.

- (a) None of the exemptions from taxation granted in Sections 8-10.4, 8-10.7 through 8-10.11, 8-10.24, 8-10.27, 8-10.29, 8-10.32, ~~[and]~~ 8-10.33, and 8-10. will be allowed in any case, unless the claimant has filed with the department of budget and fiscal services on or before the September 30th preceding the tax year for which the exemption is claimed, a claim for exemption in a form as prescribed by the department.
- (b) A claim for exemption, once allowed, shall have continuing effect until:
 - (1) The exemption is disallowed;
 - (2) The assessor voids the claim after first giving notice (either to the claimant or to all claimants in the manner provided for by this chapter) that the claim or claims on file will be voided on a certain date, not less than 30 days after such notice;
 - (3) The five year period for exemption, as allowed in Sections 8-10.4(e) and 8-10.11, expires; ~~[or]~~
 - (4) The 30 year period for exemption, as allowed in Section 8-10- (b)(1), expires; or
 - ~~[(4)]~~ (5) The report required by subsection (d) is made.
- (c) A claimant may file a claim for exemption even though there is on file and in effect a claim covering the same premises, or a claim previously filed and disallowed or otherwise voided. However, no such claim shall be filed if it is identical with one already on file and having continuing effect. The report



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required by subsection (d) of this section may be accompanied by or combined with a new claim.

- (d) The owner of any property which has been allowed an exemption under Sections 8-10.4, 8-10.6 through 8-10.10, 8-10.24, 8-10.27, 8-10.29, 8-10.32, ~~[or]~~ 8-10.33, or 8-10. has a duty to report to the assessor within 30 days after such owner or property ceases to qualify for such an exemption for, among others, the following reasons:

- (1) The ownership of the property has changed;
- (2) A change in the facts previously reported has occurred concerning the occupation, use or renting of the premises, buildings or other improvements thereon; or
- (3) A change in status has occurred which affects the owner's exemption.

Such report shall have the effect of voiding the claim for exemption previously filed, as provided in subsection (b)(4) of this section. The report shall be sufficient if it identifies the property involved, states the change in facts or status, and requests that the claim for exemption previously filed be voided.

In the event the property comes into the hands of a fiduciary who is answerable as provided for by this chapter, the fiduciary shall make the report required by this subsection within 30 days after the assumption of the fiduciary's duties or within the time otherwise required, whichever is later.

A penalty shall be imposed if the change in facts occurred in the 12 months ending September 30th preceding the tax year for which an exemption is to take effect and the report required by this subsection is not filed by the immediately following November 1st. The amount of the penalty shall be \$300 imposed on the November 2nd preceding the tax year for which the owner or the property no longer qualifies for the exemption and on November 2nd for each year thereafter that the change in facts remains unreported. In addition to this penalty, the taxes due on the property plus any additional penalties and interest thereon shall be a paramount lien on the property as provided for by this chapter.

- (e) If the assessor is of the view that, for any tax year, the exemption should not be allowed, in whole or in part, the assessor may at any time within five years of October 1st of that year disallow the exemption for that year, in whole or in part, and may add to the assessment list for that year the amount of value involved, in the manner provided for by this chapter for the assessment of omitted property."



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SECTION 3. Chapter 8, Article 10, Revised Ordinances of Honolulu 1990 ("Exemptions"), is amended by adding a new section to be designated by the Revisor of Ordinances and to read as follows:

"Sec. 8-10. Exemption—Certain businesses in neighborhood transit-oriented development plan areas.

(a) For the purposes of this section:

"Eligible business" means the same as the definition of that term contained in Section 35-1.1.

"Full-time employee" means the same as the definition of that term contained in Section 35-1.1.

"Property owner" means the same as the definition of that term contained in Section 8-6.3, modified as follows:

(1) "Property owner" includes a lessee holding real property, as defined in Section 8-1.2, for a stated term of three years or more, provided the lease:

(A) Has been duly entered into and recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court; and

(B) Provides that the lessee shall pay all taxes levied on the property during the term of the lease.

(2) "Property owner" excludes a lessee under a government lease whose stated term is less than three years.

"Qualified business" means the same as the definition of that term contained in Section 35-1.1.

(b) Real property tax exemption for qualified businesses.

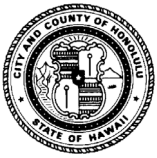
Upon proper application, any owner of a qualified business who owned the real property utilized by that business on the date of the business's first qualification pursuant to Section 35-1.3(a) and continues to own the real property during the tax year is eligible for an exemption, for a period of no more than 30 consecutive years, of all real property taxes paid on real property qualifying under Section 35-1.3(a) by the business which are in excess of the amount of real property taxes



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paid in the tax year immediately preceding the date of the business's first qualification; provided that the business continues to meet the definition of "eligible business" under Section 35-1.1, throughout the 30-year period.

- (c) The exemption shall apply only in those years in which the business continues to employ the number of full-time employees required by Section 35-1.3(a), as applicable. In the event the real property is transferred after taxes have been paid, only the qualified business that paid the taxes shall be eligible for the exemption.
- (d) A claim for a real property tax exemption may be filed for excess taxes paid during a tax year at any time during the succeeding tax year only.
- (e) The exemption will apply to real property that is held and used by the qualified business.
- (f) Administration.
 - (1) The director shall prescribe the appropriate form or forms for exemption. For each tax year in which an exemption is filed, the director shall require proof of the applicant's status as a property owner as of the date of determination of qualification. The director shall request such proof as the director shall deem necessary to verify the applicant's eligibility for the exemption, including but not limited to proof that the real property for which the claim for exemption of taxes is made is used by the qualified business, and that the applicant is subject to the taxes for which the claim for exemption is made.
 - (2) The applicant may refuse to provide any such proof requested by the director; provided that the director may deny the claim for exemption based upon such refusal. Notwithstanding any other provision to the contrary, there shall be no appeal from the director's denial of the claim due to such refusal of the applicant.
 - (3) Where the applicant is eligible for an exemption of only a portion of the real property taxes on a tax map key parcel, the director shall calculate the exemption based only on the portion of real property held and used by the qualified business.
 - (4) Upon review and verification of each claim, the director shall determine eligibility for exemption within 45 days of the director's receipt of a duly submitted claim. If an applicant is found ineligible, the director shall notify



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the applicant within 45 days after the applicant has been found ineligible by the director. If an applicant's claim is approved, any excess resulting from the exemption, if any, shall be made by check in the name of the applicant and shall be issued within 45 days after the applicant has been found eligible by the director. All checks issued shall be subject to audit.

- (5) The owner of a qualified business must also file an annual certification that it continues to maintain the same number of new jobs from which the business gained the initial certification. The director may request documentation to confirm compliance with these requirements.

If the owner of a qualified business does not provide documentation to reasonably satisfy the director that the qualified business has continued to maintain the same number of new jobs from which the business gained initial certification, then the director shall find the qualified business ineligible for this exemption and determine the years in which the business was not in compliance, and the owner must pay the real property taxes that otherwise would have been due if not for the exemption, plus interest.

- (6) In the event of a sale or transfer of the qualified business, the new owner will qualify for a continued exemption if the new owner:

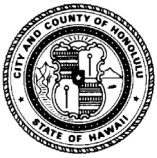
(A) Applies for certification within 30 days of closing of the sale or transfer of the real property; and

(B) The business has or will continue to maintain the same number of new jobs from which the business gained initial certification.

(g) Appeal.

- (1) An applicant may appeal the director's denial of a claim for an exemption to the director. The director or a hearings officer appointed by the director shall hear the appeal. The appeal shall be filed within 30 days of the applicant's receipt of the notification of denial from the director. The director shall establish the procedure for an appeal.

- (2) This subsection shall not be construed as superior to subdivision (f)(2). A claim denied under that subdivision shall not be appealable under this subsection."



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SECTION 4. The title of Chapter 35, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"INCENTIVES FOR CERTAIN BUSINESSES THAT ARE LOCATED WITHIN
NEIGHBORHOOD TRANSIT-ORIENTED DEVELOPMENT PLAN AREAS TO
CREATE NEW JOBS"**

SECTION 5. Section 35-1.1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 35-1.1 Definitions.

(a) As used in this chapter[:], unless the context otherwise requires:

"Anchor institution" means a governmental entity or nonprofit entity authorized to do business in the State and having a primary mission and specific policy goals that align with those of the city. "Anchor institution" includes, but is not limited to: a comprehensive health care system; a public or private research university; a major cultural, scientific, research, or philanthropic institution; a public college that is separate from any public research university; or an experienced nonprofit or governmental economic or community development entity.

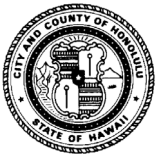
"City" means the City and County of Honolulu.

"Eligible business" means any corporation, partnership, limited liability company, or sole proprietorship authorized to do business in the ~~[state]~~ State, which is:

(1) Subject to the ~~[state]~~ State corporate or individual income tax under HRS Chapter 235; ~~[and]~~

(2) ~~[(A)] Engaged in [manufacturing, the wholesale sale of tangible personal property as defined in HRS Section 237-4, or a service business; or] one or more of the growth industries specified in HRS Section 201-19(a)(1) and identified as a "base-growth activity" or "emerging activity" by the State Department of Business, Economic Development and Tourism; and~~

~~[(B)] Engaged in producing agricultural products where the business is a producer as defined in HRS Section 237-5.]~~



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- (3) Located within a neighborhood transit-oriented development plan area that will result in the economic expansion of the growth industry engaged in by the business.

"Full-time employee" means an individual employed by a qualified business who works more than twenty hours a week during the business's payroll period~~[-]~~ including staffing configurations specific to particular targeted industries identified in HRS Section 201-19.

"Neighborhood transit-oriented development plan area" means the area specified in a neighborhood transit-oriented development plan adopted by the council in accordance with Section 21-9.100-2.

"Qualified business" means a business certified as such pursuant to Section 35-1.3.

~~["Service business" means the same as defined in HRS Section 209E-2.]~~

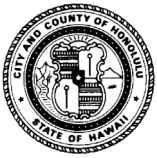
~~["Wholesale" means the same as defined in HRS Section 237-4.]~~

- (b) As used in this article, unless the context otherwise requires, "director" means the director ~~[of the department]~~ of budget and fiscal services."

SECTION 6. Section 35-1.3, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 35-1.3 Qualification for incentives.

- (a) Any business in the city may be certified as a qualified business by the director for purposes of this chapter if the business:
- (1) Meets the definition of "eligible business" in Section 35-1.1;
 - (2) Begins operations after ~~[May 1, 1997]~~ January 1, 2022 at a particular site. The date on which a business begins operations at a particular site ~~[shall]~~ will be deemed to be the date on which the business begins to provide, at the site, the service~~[-]~~ or to manufacture, grow, or sell wholesale the product which ~~that~~ the business was established to provide~~[-]~~ manufacture, grow or sell; provided that acquiring or renovating the property and other preparations necessary in order to provide the service ~~[or to manufacture, grow, or sell wholesale the product to be used in the~~



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~~business shall~~ will not constitute beginning operations for purposes of qualifying under this chapter; ~~[and]~~

- (3) ~~Creates and fills [at the beginning of operations at the site,]~~ in any tax year, new jobs for [one hundred] 100 or more full-time employees[-A]; provided that a job [shall] will not be deemed a "new job" if, at the time the business begins operations at the site, it is an existing job with an existing business that is sold to another business, reincorporates under a new name, merely changes its name, or creates a subsidiary corporation. A job filled by an employee of a business who is relocated from another site of operations of the business within the city [shall] will be deemed not to be a new job[-];
 - (4) Is involved in the construction or development of new facilities for growth industries identified in HRS Section 201-19(a)(1) that involve a minimum investment of \$75,000,000 for improvement costs;
 - (5) Is projected by the city administration, based on the city's analysis, to provide a net benefit to the city through enhanced real property taxes and related revenues from growth around the new facilities specified in subdivision (4); and
 - (6) Partners with an anchor institution.
- [(b) ~~A business in the city may also be certified a qualified business by the director for purposes of this chapter if the business:~~
- (1) ~~Meets the definition of "eligible business" in Section 35-1.1;~~
 - (2) ~~Is operating at a particular site; and~~
 - (3) ~~Creates and fills in any tax year, other than the tax year in which it begins operations, 50 new jobs at the site for 50 or more new full-time employees in addition to the number of full-time jobs at the site one year prior to the date of the application. A job shall not be deemed a "new job" if, at the beginning of the tax year for which it is claimed 50 or more new jobs have been created, it is an existing job with an existing business that is sold to another business, reincorporates under a new name, merely changes its name, or creates a subsidiary corporation. A job filled by an employee of a business who is relocated from another site of operations of the business within the city shall be deemed not to be a new job.]~~



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~~[(c)]~~ (b) ~~[No]~~ A business ~~[which has received]~~ that is eligible for or has received incentives or been allowed regulatory flexibility pursuant to the enterprise zone ordinance, Chapter 31, ~~[shall]~~ may also be eligible to receive incentives or be allowed regulatory flexibility under this chapter."

SECTION 7. Section 35-1.4, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 35-1.4 Incentives for qualified businesses.

The city shall provide the following incentives to qualified businesses:

- (1) Real property tax ~~[rebate; and]~~ exemption pursuant to section 8-10. ;
- (2) Waiver of ~~[permit]~~ city-imposed fees~~[-]; and~~
- (3) Expedited permits."

SECTION 8. Section 35-1.5, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 35-1.5 Penalties.

Any person who files a fraudulent claim or attests to any false statement with intent to defraud the city or to evade the payment of taxes or any part thereof, or who in any manner intentionally deceives or attempts to deceive the city with respect to qualification for the incentives, shall:

- (1) Be fined not more than \$2,000.00, imprisoned for not more than one year, or both; and
- (2) Pay the city the value of ~~[all rebated taxes and]~~ all fees which were waived as a result of the certification of the business as qualified for benefits under this chapter."

SECTION 9. Article 2 of Chapter 35, Revised Ordinances of Honolulu 1990 ("Property Tax Rebate for Businesses Creating New Jobs"), is repealed.



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SECTION 10. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.

SECTION 11. This ordinance takes effect upon its approval; provided that:

- (1) Qualified businesses that have been granted any incentives pursuant to Chapter 35, Revised Ordinances of Honolulu 1990, as it read prior to the effective date of this ordinance, shall continue to receive such incentives unless the incentives are canceled by the qualified business or canceled or denied by the Director of Budget and Fiscal Services in accordance with Chapter 35, Revised Ordinances of Honolulu 1990, as it read immediately prior to the effective date of this ordinance; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

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- (2) The exemption provided in SECTION 3 of the bill applies to the tax years beginning July 1, 2024 and thereafter.

INTRODUCED BY:

Augie Tulba

Carol Fukunaga

DATE OF INTRODUCTION:

November 4, 2021
Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

RICK BLANGIARDI, Mayor
City and County of Honolulu