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# A BILL FOR AN ACT

RELATING TO LAND USE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 46-4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§46-4 County zoning.** (a) This section and any  
4 ordinance, rule, or regulation adopted in accordance with this  
5 section shall apply to lands not contained within the forest  
6 reserve boundaries as established on January 31, 1957, or as  
7 subsequently amended.

8           Zoning in all counties shall be accomplished within the  
9 framework of a long-range, comprehensive general plan prepared  
10 or being prepared to guide the overall future development of the  
11 county. Zoning shall be one of the tools available to the  
12 county to put the general plan into effect in an orderly manner.  
13 Zoning in the counties of Hawaii, Maui, and Kauai means the  
14 establishment of districts of such number, shape, and area, and  
15 the adoption of regulations for each district to carry out the  
16 purposes of this section. In establishing or regulating the  
17 districts, full consideration shall be given to all available  
18 data as to soil classification and physical use capabilities of



1 the land to allow and encourage the most beneficial use of the  
2 land consonant with good zoning practices. The zoning power  
3 granted herein shall be exercised by ordinance which may relate  
4 to:

- 5 (1) The areas within which agriculture, forestry,  
6 industry, trade, and business may be conducted;
- 7 (2) The areas in which residential uses may be regulated  
8 or prohibited;
- 9 (3) The areas bordering natural watercourses, channels,  
10 and streams, in which trades or industries, filling or  
11 dumping, erection of structures, and the location of  
12 buildings may be prohibited or restricted;
- 13 (4) The areas in which particular uses may be subjected to  
14 special restrictions;
- 15 (5) The location of buildings and structures designed for  
16 specific uses and designation of uses for which  
17 buildings and structures may not be used or altered;
- 18 (6) The location, height, bulk, number of stories, and  
19 size of buildings and other structures;
- 20 (7) The location of roads, schools, and recreation areas;
- 21 (8) Building setback lines and future street lines;
- 22 (9) The density and distribution of population;

- 1 (10) The percentage of a lot that may be occupied, size of  
2 yards, courts, and other open spaces;
- 3 (11) Minimum and maximum lot sizes; and
- 4 (12) Other regulations the boards or city council find  
5 necessary and proper to permit and encourage the  
6 orderly development of land resources within their  
7 jurisdictions.

8 The council of any county shall prescribe rules,  
9 regulations, and administrative procedures and provide personnel  
10 it finds necessary to enforce this section and any ordinance  
11 enacted in accordance with this section. The ordinances may be  
12 enforced by appropriate fines and penalties, civil or criminal,  
13 or by court order at the suit of the county or the owner or  
14 owners of real estate directly affected by the ordinances.

15 Any civil fine or penalty provided by ordinance under this  
16 section may be imposed by the district court, or by the zoning  
17 agency after an opportunity for a hearing pursuant to chapter  
18 91. The proceeding shall not be a prerequisite for any  
19 injunctive relief ordered by the circuit court.

20 Nothing in this section shall invalidate any zoning  
21 ordinance or regulation adopted by any county or other agency of



1 government pursuant to the statutes in effect prior to July 1,  
2 1957.

3 The powers granted [~~herein~~] in this section shall be  
4 liberally construed in favor of the county exercising them, and  
5 in such a manner as to promote the orderly development of each  
6 county or city and county in accordance with a long-range,  
7 comprehensive general plan to insure the greatest benefit for  
8 the State as a whole. This section shall not be construed to  
9 limit or repeal any powers of any county to achieve these ends  
10 through zoning and building regulations, except insofar as  
11 forest and water reserve zones are concerned and as provided in  
12 subsections (c) and (d).

13 Neither this section nor any ordinance enacted pursuant to  
14 this section shall prohibit the continued lawful use of any  
15 building or premises for any trade, industrial, residential,  
16 agricultural, or other purpose for which the building or  
17 premises is used at the time this section or the ordinance takes  
18 effect; provided that a zoning ordinance may provide for  
19 elimination of nonconforming uses as the uses are discontinued,  
20 or for the amortization or phasing out of nonconforming uses or  
21 signs over a reasonable period of time in commercial,  
22 industrial, resort, and apartment zoned areas only. In no event



1 shall [~~such~~] the amortization or phasing out of nonconforming  
2 uses apply to any existing building or premises used for  
3 residential (single-family or duplex) or agricultural uses.  
4 Nothing in this section shall affect or impair the powers and  
5 duties of the director of transportation as set forth in chapter  
6 262.

7 (b) Any final order of a zoning agency established under  
8 this section may be appealed to the circuit court of the circuit  
9 in which the land in question is found. The appeal shall be in  
10 accordance with the Hawaii rules of civil procedure.

11 (c) Each county may adopt reasonable standards to allow  
12 the construction of two single-family dwelling units on any lot  
13 where a residential dwelling unit is permitted.

14 (d) Neither this section nor any other law, county  
15 ordinance, or rule shall prohibit group living in facilities  
16 with eight or fewer residents and that are licensed by the State  
17 as provided for under section 321-15.6, or in an intermediate  
18 care facility/mental retardation-community for persons,  
19 including mentally ill, elder, disabled, developmentally  
20 disabled, or totally disabled persons, who are not related to  
21 the home operator or facility staff; provided that those group  
22 living facilities meet all applicable county requirements not



1 inconsistent with the intent of this subsection and including  
2 building height, setback, maximum lot coverage, parking, and  
3 floor area requirements.

4 (e) No permit shall be issued by a county agency for the  
5 operation of a halfway house, a clean and sober home, or a drug  
6 rehabilitation home unless a public informational meeting is  
7 first held in the affected community. The State shall provide  
8 notification and access to relevant information, as required,  
9 under chapter 846E.

10 A clean and sober home shall be considered a residential  
11 use of property and shall be a permitted or conditional use in  
12 residentially designated zones, including but not limited to  
13 zones for single-family dwellings.

14 (f) For purposes of this section:

15 "Clean and sober home" means a house that is operated  
16 pursuant to a program designed to provide a stable environment  
17 of clean and sober living conditions to sustain recovery and  
18 that is shared by unrelated adult persons who:

19 (1) Are recovering from substance abuse;

20 (2) Share household expenses; and

21 (3) Do not require twenty-four-hour supervision,

22 rehabilitation, or therapeutic services or care in the



1 home or on the premises. The home shall meet all  
2 applicable laws, codes, and rules of the counties and  
3 State.

4 "Developmentally disabled person" means a person suffering  
5 from developmental disabilities as defined under section 333F-1.

6 "Disabled person" means a person with a disability as  
7 defined under section 515-2.

8 "Drug rehabilitation home" means:

- 9 (1) A residential treatment facility that provides a  
10 therapeutic residential program for care, diagnosis,  
11 treatment, or rehabilitation for socially or  
12 emotionally distressed persons, mentally ill persons,  
13 persons suffering from substance abuse, and  
14 developmentally disabled persons; or  
15 (2) A supervised living arrangement that provides mental  
16 health services, substance abuse services, or  
17 supportive services for individuals or families who do  
18 not need the structure of a special treatment facility  
19 and are transitioning to independent living;  
20 provided that drug rehabilitation homes shall not include  
21 halfway houses or clean and sober homes.

22 "Elder" means an elder as defined under section 201G-1.



1 "Halfway house" is defined as a group living facility for  
2 people who:

3 (1) Have been released or are under supervised release  
4 from a correctional facility;

5 (2) Have been released from a mental health treatment  
6 facility; or

7 (3) Are receiving substance abuse or sex offender  
8 treatment; and

9 are housed to participate in programs that help them readjust to  
10 living in the community.

11 "Intermediate care facility/mental retardation-community"  
12 is defined as an identifiable unit providing residence and care  
13 for eight or fewer mentally retarded individuals. Its primary  
14 purpose is the provision of health, social, and rehabilitation  
15 services to the mentally retarded through an individually  
16 designed active treatment program for each resident. No person  
17 who is predominantly confined to bed shall be admitted as a  
18 resident of such a facility.

19 "Mental health treatment facility" means a psychiatric  
20 facility or special treatment facility as defined under section  
21 334-1.





1 "Mentally ill person" means a mentally ill person as  
2 defined under section 334-1.

3 "Totally disabled person" means a "person totally disabled"  
4 as defined under section 235-1.

5 "Treatment program" means a "substance abuse program" or  
6 "treatment program", as those terms are defined under section  
7 353G-2.

8 (g) Anything to the contrary notwithstanding, no county,  
9 by ordinance or private agreement, may permit any use in the  
10 agricultural district, as described in section 205-2, other than  
11 a permissible use pursuant to section 205-4.5."

12 SECTION 2. Section 205-2, Hawaii Revised Statutes, is  
13 amended by amending subsection (d) to read as follows:

14 "(d) Agricultural districts shall include activities or  
15 uses as characterized by the cultivation of crops, orchards,  
16 forage, and forestry; farming activities or uses related to  
17 animal husbandry, aquaculture, and game and fish propagation;  
18 aquaculture, which means the production of aquatic plant and  
19 animal life for food and fiber within ponds and other bodies of  
20 water; wind generated energy production for public, private, and  
21 commercial use; bona fide agricultural services and uses that  
22 support the agricultural activities of the fee or leasehold



1 owner of the property and accessory to any of the above  
2 activities, whether or not conducted on the same premises as the  
3 agricultural activities to which they are accessory, including  
4 but not limited to farm dwellings as defined in section 205-  
5 4.5(a)(4), employee housing, farm buildings, mills, storage  
6 facilities, processing facilities, vehicle and equipment storage  
7 areas, and roadside stands for the sale of products grown on the  
8 premises; wind machines and wind farms; small-scale  
9 meteorological, air quality, noise, and other scientific and  
10 environmental data collection and monitoring facilities  
11 occupying less than one-half acre of land, provided that these  
12 facilities shall not be used as or equipped for use as living  
13 quarters or dwellings; agricultural parks; and open area  
14 recreational facilities. For the purposes of this chapter, golf  
15 courses ~~[and]~~, golf driving ranges [are prohibited in], golf-  
16 related facilities, private membership facilities or other  
17 resorts facilities, including hotels and resort-related  
18 commercial uses, time share facilities, and commercial vacation  
19 facilities or homes shall not be permitted within agricultural  
20 districts, except as provided in section 205-4.5(d).

21 These districts may include areas which are not used for,  
22 or which are not suited to, agricultural and ancillary



1 activities by reason of topography, soils, and other related  
2 characteristics."

3 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5 "(b) Uses not expressly permitted in subsection (a) shall  
6 be prohibited, except the uses permitted as provided in sections  
7 205-6 and 205-8, and construction of single-family dwellings on  
8 lots existing before June 4, 1976. Any other law to the  
9 contrary notwithstanding, no subdivision of land [~~within the~~  
10 ~~agricultural district with soil classified by the land study~~  
11 ~~bureau's detailed land classification as overall (master)~~  
12 ~~productivity rating class A or B~~] or division of land shall be  
13 approved by a county or other governmental agency unless the  
14 [~~said A and B lands within the subdivision shall be~~] subdivision  
15 of land or division of land is made subject to the restriction  
16 [~~on uses as prescribed in this section and to the condition~~]  
17 that the uses shall be primarily in pursuit of [~~an~~] those  
18 agricultural [~~activity.~~] activities described in this chapter.

19 Any deed, lease, agreement of sale, mortgage, or other  
20 instrument of conveyance covering any land within the  
21 agricultural subdivision shall expressly contain the restriction  
22 on uses and the condition, as prescribed in this section that



1 [†]the[†] restriction and condition shall be encumbrances  
2 running with the land until such time that the land is  
3 reclassified to a land use district other than agricultural  
4 district.

5 If the foregoing requirement of encumbrances running with  
6 the land jeopardizes the owner or lessee from obtaining mortgage  
7 financing from any of the mortgage lending agencies set forth  
8 hereinbelow, and the requirement is the sole reason for failure  
9 to obtain mortgage financing, then such requirement of  
10 encumbrances shall, insofar as the mortgage financing is so  
11 jeopardized, be conditionally waived by the appropriate county  
12 enforcement officer; provided that the conditional waiver shall  
13 thereafter become effective only in the event that the property  
14 is subjected to foreclosure proceedings by the mortgage lender.

15 The mortgage lending agencies mentioned hereinabove are the  
16 Federal Housing Administration, Federal National Mortgage  
17 Association, Veterans Administration, Small Business  
18 Administration, United States Department of Agriculture, Federal  
19 Land Bank of Berkeley, Federal Intermediate Credit Bank of  
20 Berkeley, Berkeley Bank for Cooperatives, and any other federal,  
21 state, or private mortgage lending agency qualified to do



1 business in Hawaii, and their respective successors and  
2 assigns."

3 SECTION 4. Section 205-5, Hawaii Revised Statutes, is  
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) Except as herein provided, the powers granted to  
6 counties under section 46-4 shall govern the zoning within the  
7 districts, other than in conservation districts~~[-]~~; provided  
8 that the counties shall not permit any use in the agricultural  
9 district other than those permissible uses set forth in section  
10 205-4.5. Conservation districts shall be governed by the  
11 department of land and natural resources pursuant to chapter  
12 183C.

13 (b) Within agricultural districts, only uses compatible to  
14 the activities described in [~~section 205-2~~] this chapter and as  
15 determined by the commission shall be permitted~~[; provided that~~  
16 ~~accessory agricultural uses and services described in sections~~  
17 ~~205-2 and 205-4.5 may be further defined by each county by~~  
18 ~~zoning ordinance. Other uses may be allowed by special permits~~  
19 ~~issued pursuant to this chapter]~~. The minimum lot size in  
20 agricultural districts shall be determined by each county by  
21 zoning ordinance, subdivision ordinance, or other lawful means;  
22 provided that the minimum lot size for any agricultural use



1 shall not be less than one acre, except as provided herein. If  
2 the county finds that unreasonable economic hardship to the  
3 owner or lessee of land cannot otherwise be prevented or where  
4 land utilization is improved, the county may allow lot sizes of  
5 less than the minimum lot size as specified by law for lots  
6 created by a consolidation of existing lots within an  
7 agricultural district and the resubdivision thereof; provided  
8 that the consolidation and resubdivision do not result in an  
9 increase in the number of lots over the number existing prior to  
10 consolidation; and provided further that in no event shall a  
11 lot, which is equal to or exceeds the minimum lot size of one  
12 acre be less than that minimum after the consolidation and  
13 resubdivision action. The county may also allow lot sizes of  
14 less than the minimum lot size as specified by law for lots  
15 created or used for public, private, and quasi-public utility  
16 purposes, and for lots resulting from the subdivision of  
17 abandoned roadways and railroad easements."

18 SECTION 5. Section 205-6, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) Subject to this section, the county planning  
21 commission may permit certain unusual and reasonable uses within  
22 agricultural and rural districts other than those for which the



1 district is classified[-]; provided that golf courses, golf  
2 driving ranges, golf-related facilities, private membership  
3 facilities or other resort facilities, including hotels and  
4 resort-related commercial uses, time share facilities, and  
5 commercial vacation facilities or homes shall not be permitted  
6 within agricultural districts. Any person who desires to use  
7 the person's land within an agricultural or rural district other  
8 than for an agricultural or rural use, as the case may be, may  
9 petition the planning commission of the county within which the  
10 person's land is located for permission to use the person's land  
11 in the manner desired. Each county may establish the  
12 appropriate fee for processing the special permit petition.  
13 Copies of the special permit petition shall be forwarded to the  
14 land use commission, the office of planning, and the department  
15 of agriculture for their review and comment."

16 SECTION 6. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun, before its effective date.

19 SECTION 7. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 8. This Act shall take effect upon its approval.



**Report Title:**

Land Use; Zoning; Agricultural District

**Description:**

Prohibits counties from permitting uses in the state land use agricultural district other than the statutorily enumerated permissible uses. (HB1938 HD1)

HB1938 HD1 HMS 2006-1457

