

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO ZONING.

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

1           SECTION 1. Chapter 421J, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§421J-    Planned community association offices; zoning  
5 exemption. (a) Subject to the conditions in subsection (b) and  
6 the limitations in subsection (c), a planned community  
7 association, with the approval of the board of directors  
8 pursuant to the terms of the association's governing documents,  
9 is authorized to increase the floor area of its principal  
10 office, which increase shall be exempt from county zoning-  
11 related building restrictions. The increase in floor area may  
12 be accomplished through an expansion of the existing structure  
13 containing the principal office or by demolishing the existing  
14 structure and replacing it with a new structure.

15           (b) A planned community association may seek an exemption  
16 from county zoning-related building restrictions if:



- 1        (1) The principal office of the planned community  
2                    association is located on a lot or an area within the  
3                    planned community;
- 4        (2) The principal office is contained within a structure  
5                    that complied with the state and county zoning  
6                    regulations and building requirements when  
7                    constructed;
- 8        (3) Between the time when the principal office was  
9                    constructed and the date of the exemption request, the  
10                   planned community increased in size such that the  
11                   planned community association, and its principal  
12                   office, now serves more members of the planned  
13                   community association than when the principal office  
14                   was permitted by the county;
- 15        (4) The planned community association has no reasonable  
16                   alternative for additional office space in a different  
17                   location that is owned by the planned community  
18                   association; and
- 19        (5) All or a portion of the increase in floor area  
20                   requested by the planned community association would  
21                   be otherwise prohibited by the county zoning-related  
22                   building restrictions.



1        (c) The exemption authorized under this section may only  
2 result in an increase to the floor area of the existing  
3 principal office building in proportion to the percentage  
4 increase in the number of lots or units served by the planned  
5 community association; provided that yard area setbacks shall be  
6 no less than five feet.

7        (d) In order to obtain an exemption under this section,  
8 the planned community association shall submit to the county any  
9 construction plans required by the county for the issuance of a  
10 building permit, together with the information required in  
11 subsection (b), in order to ensure that the planned community  
12 association qualifies for the exemption. The planned community  
13 association shall be required to adhere to the applicable  
14 provisions of the county's building code, electrical code,  
15 plumbing code, and any other building construction requirements  
16 for altered or new structures, as applicable.

17        (e) For purposes of this section:

18        "County zoning-related building restrictions" includes the  
19 governing height limit for structures or portions of structures,  
20 yard areas, maximum building area, maximum commercial use  
21 density (floor area ratio), height setbacks, and use  
22 restrictions within the applicable zoning district on office



1 space or the use category assigned to the principal office by  
2 the county, including any zoning-specific permits required by  
3 the county. For purposes of this definition, "county zoning-  
4 related building restrictions" does not include permits and  
5 restrictions for special management areas under chapter 205A."

6 SECTION 2. Section 46-4, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) This section and any ordinance, rule, or regulation  
9 adopted in accordance with this section shall apply to lands not  
10 contained within the forest reserve boundaries as established on  
11 January 31, 1957, or as subsequently amended.

12 Zoning in all counties shall be accomplished within the  
13 framework of a long-range, comprehensive general plan prepared  
14 or being prepared to guide the overall future development of the  
15 county. Zoning shall be one of the tools available to the  
16 county to put the general plan into effect in an orderly manner.  
17 Zoning in the counties of Hawaii, Maui, and Kauai means the  
18 establishment of districts of such number, shape, and area, and  
19 the adoption of regulations for each district to carry out the  
20 purposes of this section. In establishing or regulating the  
21 districts, full consideration shall be given to all available  
22 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 provided that the zoning power may be limited as otherwise
- 9 provided by law, including by section 421J- .

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

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



1           Nothing in this section shall invalidate any zoning  
2 ordinance or regulation adopted by any county or other agency of  
3 government pursuant to the statutes in effect prior to July 1,  
4 1957.

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

14           Neither this section nor any ordinance enacted pursuant to  
15 this section shall prohibit the continued lawful use of any  
16 building or premises for any trade, industrial, residential,  
17 agricultural, or other purpose for which the building or  
18 premises is used at the time this section or the ordinance takes  
19 effect; provided that a zoning ordinance may provide for  
20 elimination of nonconforming uses as the uses are discontinued,  
21 or for the amortization or phasing out of nonconforming uses or  
22 signs over a reasonable period of time in commercial,



1 industrial, resort, and apartment zoned areas only. In no event  
 2 shall such amortization or phasing out of nonconforming uses  
 3 apply to any existing building or premises used for residential  
 4 (single-family or duplex) or agricultural uses. Nothing in this  
 5 section shall affect or impair the powers and duties of the  
 6 director of transportation as set forth in chapter 262."

7 SECTION 3. Statutory material to be repealed is bracketed  
 8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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**Report Title:**

Planned Community Associations; Principal Office; Zoning

**Description:**

Authorizes an exemption from county zoning-related building restrictions for an increase in floor area of the principal office of a planned community association, subject to conditions.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

