
A BILL FOR AN ACT

RELATING TO HOUSING.

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

1 SECTION 1. According to the department of business
2 economic development, and tourism, for the period from 2015 to
3 2025, the number of additional housing units that will be
4 required for the counties of Hawaii, Maui, and Kauai is 19,610,
5 13,949, and 5,287 units, respectively. The city and county of
6 Honolulu will require 25,847 additional units for the same time
7 period. The city and county of Honolulu's draft affordable
8 housing strategy explains that the marketplace is not building
9 enough affordable homes to keep up with demand. Further, over
10 seventy-five per cent of the projected demand is for households
11 earning less than eighty per cent of the area median income, or
12 approximately \$75,650 for a family of four.

13 The policies of inclusionary zoning and the imposition of
14 development exactions do not coincide with the State's goal of
15 developing more affordable workforce housing, which are units
16 that are affordable for households making at or below one
17 hundred forty per cent of the area median income. Inclusionary



1 zoning requirements, which has the aim of increasing affordable
2 housing units, have had the opposite effect by making housing
3 projects unfeasible. In addition, the imposition of
4 requirements as a condition for approval of development, a
5 concept known as exactions, during the zoning and permitting
6 process has also resulted in the slower housing growth.

7 The legislature finds that a healthy housing market
8 provides opportunities for owners to upgrade to higher priced
9 units, which would increase the inventory of lower priced units
10 for new buyers and renters to enter the market. The legislature
11 further finds that the State should encourage the development of
12 workforce housing to stimulate a healthy housing market. The
13 policies of inclusionary zoning and exactions are contrary to a
14 healthy housing market.

15 The purpose of this Act is to encourage the private sector
16 to increase the supply of workforce housing by prohibiting the
17 imposition of inclusionary zoning and exactions during the
18 zoning and permitting process for certain housing developments.

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



1 "§46-4 County zoning. (a) This section and any
2 ordinance, rule, or regulation adopted in accordance with this
3 section shall apply to lands not contained within the forest
4 reserve boundaries as established on January 31, 1957, or as
5 subsequently amended.

6 Zoning in all counties shall be accomplished within the
7 framework of a long-range, comprehensive general plan prepared
8 or being prepared to guide the overall future development of the
9 county. Zoning shall be one of the tools available to the
10 county to put the general plan into effect in an orderly manner.
11 Zoning in the counties of Hawaii, Maui, and Kauai means the
12 establishment of districts of such number, shape, and area, and
13 the adoption of regulations for each district to carry out the
14 purposes of this section. In establishing or regulating the
15 districts, full consideration shall be given to all available
16 data as to soil classification and physical use capabilities of
17 the land to allow and encourage the most beneficial use of the
18 land consonant with good zoning practices. The zoning power
19 granted herein shall be exercised by ordinance which may relate
20 to:



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



1 (12) Other regulations the boards or city council find
2 necessary and proper to permit and encourage the
3 orderly development of land resources within their
4 jurisdictions.

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

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

17 Nothing in this section shall invalidate any zoning
18 ordinance or regulation adopted by any county or other agency of
19 government pursuant to the statutes in effect prior to July 1,
20 1957.



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

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



1 (single-family or duplex) or agricultural uses. Nothing in this
2 section shall affect or impair the powers and duties of the
3 director of transportation as set forth in chapter 262.

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

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

11 (d) Neither this section nor any other law, county
12 ordinance, or rule shall prohibit group living in facilities
13 with eight or fewer residents for purposes or functions that are
14 licensed, certified, registered, or monitored by the State;
15 provided that a resident manager or a resident supervisor and
16 the resident manager's or resident supervisor's family shall not
17 be included in this resident count. These group living
18 facilities shall meet all applicable county requirements not
19 inconsistent with the intent of this subsection, including but
20 not limited to building height, setback, maximum lot coverage,
21 parking, and floor area requirements.



1 (e) Neither this section nor any other law, county
2 ordinance, or rule shall prohibit the use of land for employee
3 housing and community buildings in plantation community
4 subdivisions as defined in section 205-4.5(a)(12); in addition,
5 no zoning ordinance shall provide for the elimination,
6 amortization, or phasing out of plantation community
7 subdivisions as a nonconforming use.

8 (f) Neither this section nor any other law, county
9 ordinance, or rule shall prohibit the use of land for medical
10 cannabis production centers or medical cannabis dispensaries
11 established and licensed pursuant to chapter 329D; provided that
12 the land is otherwise zoned for agriculture, manufacturing, or
13 retail purposes.

14 (g) Neither this section nor any other law, county
15 ordinance, or rule shall impose an inclusionary zoning
16 requirement on a housing development offered exclusively for
17 sale to buyers earning less than one hundred forty per cent of
18 the area median income.

19 (h) Neither this section nor any other law, county
20 ordinance, or rule shall impose an exaction on a housing



1 development offered exclusively for sale to buyers earning less
2 than one hundred forty per cent of the area median income.

3 (i) As used in this section:

4 "Exaction" means a condition placed on a land use permit
5 that requires the developer to fulfill other requirements not
6 required under the zoning ordinance or regulation for the land
7 use permit, including dedicating land, building infrastructure,
8 or paying one or more fees to mitigate anticipated negative
9 impacts of the development.

10 "Inclusionary zoning requirement" means any requirement to
11 set aside a fraction of a housing development to be sold at
12 below market prices."

13 SECTION 3. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 4. New statutory material is underscored.

17 SECTION 5. This Act shall take effect on July 1, 2018.

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Report Title:

Housing; Inclusionary Zoning; Exactions; Development; Exemption;
Affordable Housing

Description:

Provides that a county shall not impose an exaction or inclusionary zoning requirement on a housing development offered exclusively for sale to buyers earning less than 140 per cent of the area median income.

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

