

HB-2280-HD-2

Submitted on: 3/26/2022 11:32:00 AM

Testimony for CPN on 3/29/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Testifying for Associa	Support	Written Testimony Only

Comments:

We support the testimony of CAI with their amendments.

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

March 28, 2022

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Stanley Chang, Vice Chair
Committee on Commerce and Consumer Protection
415 South Beretania Street
Honolulu, HI 96813

Re: HB2280/Opposition

Dear Chair Baker, Vice Chair Chang, and Committee Members:

The Community Associations Institute Legislative Action Committee ("CAI LAC") opposes HB2280 for the following concerns:

First, depending on the underlying zoning of the land certain planned communities are situated and whether there are master landscape plans incorporated in existing covenants, HB2280 will be problematic for certain associations, may lead to disputes on covenants enforcement and impact property values.

HB2280 will likely lead to neighbor disputes in connection of application of pesticide in residential area, certain fertilizer that has strong smells, and rodent control problem. When HB2280 is inconsistent with the Association's existing master landscape plan or other applicable restrictive covenants. Applying pesticides may be necessary in the personal agriculture activity, but pesticide may drift with wind into other people's yards, causing health and safety hazard to pets and children playing there. Some people may consider the neighbor's use of manure or other smelly fertilizers as a private nuisance that would deprive them from use and enjoyment of their yards. The vague definition of "reasonable restrictions" fail to provide guidance and protection for community associations that may be caught in the middle of such fight. Does HB2280 intend to invalidate any existing covenants and County mandated master landscape plan when they conflict with HB2280? Does HB2280 intend to take away all unit owners' rights from enforcing such covenants and conditions included in their deeds? Will the State defend and indemnify community associations when an association is sued by unit owners for failure to enforce such covenants and conditions?

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Moreover, CAI LAC believes this bill will cause more harm than its beneficial intent. Oahu is currently facing critical water shortage. Though we understand some homeowners would love to grow their own vegetables or enjoy gardening as a hobby. The reality is we do not even have enough water to meet the current demand of our community. Encouraging people to using more water on gardening will create more problems that are much more difficult to solve. The water usage needed for such a small plant growing area will likely exceed the benefit of the food produced. Associations will need to adjust budgets to account for additional water usage where water is not separately billed.

Third, CAI LAC is concerned about the constitutionality of the proposed legislation as applicable to existing planned communities when the proposed personal agriculture in limited common element will violate existing master landscape plan certain community associations are obligated to enforce. Under the Contract Clause, no state shall pass law impairing the obligations of private contracts.

Planned communities are created by a recorded declaration placing restrictions and obligations on the owners of the real properties within such communities, which creates restrictive covenants running with the land. The planned community associations are obligated to enforce such covenants, i.e., legal agreements that are binding upon all current owners and future buyers of the properties, as title transfers incorporate such covenants as encumbrances. All unit owners within such communities have legal standing to compel for enforcement of such restrictive covenant agreements, and they also have to adhere to state and federal laws. Before the County approves a subdivision, the County often also imposes certain master landscape plan for planned communities, and such requirement is also incorporated in the community association's declaration.

Both the declarations for planned community associations and Chapter 421J provide options for members of such associations to amend restrictive covenants with approval by a certain percentage of membership. Individual planned communities should reserve their own discretion on whether personal agriculture should be allowed or encouraged within their own communities.

CAI LAC respectfully requests this bill be deferred or at very least, be amended as follows (deletion marked by ~~strikethrough~~, addition marked in ***bold italics***):

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

"§421J- Personal agriculture allowed. ~~(a) Notwithstanding any provision of an association document to the contrary, no~~ ***No*** ~~association shall prohibit or unreasonably restrict the use of a unit owner's enclosed yard area for personal agriculture,~~ ***provided that such use is not in violation of the association's existing master landscape plan or other restrictive covenants applicable to such unit.***

~~(b) This section shall apply only to enclosed yard areas that are designated for the exclusive use of the unit owner.~~

~~(c) This section shall not:~~

~~(1) Apply to provisions in an association document that impose reasonable restrictions on the use of a unit owner's enclosed yard area for personal agriculture; or~~

~~(2) Prohibit an association from applying rules and regulations requiring that dead plant material and weeds, with the exception of straw, mulch, compost, and other organic materials intended to encourage vegetation and retention of moisture in the soil, be regularly cleared from the enclosed yard area.~~

~~(d) For purposes of this section:~~

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"Personal agriculture" means a use of land where an individual cultivates **lawful** edible plant crops for personal use or donation.

"Reasonable restrictions" means restrictions that **are reasonably necessary to protect neighbor unit owners or residents' use and enjoyment of their property and** do not **unreasonably** significantly increase the cost of engaging in personal agriculture or **unreasonably** significantly decrease its efficiency."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2050."

Very truly yours,

/s/Na Lan

Na Lan

HB-2280-HD-2

Submitted on: 3/28/2022 5:43:43 AM

Testimony for CPN on 3/29/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Philip Nerney	Individual	Oppose	Written Testimony Only

Comments:

Oppose

Bill: HB2280 **Title:** Planned Community Associations; Personal Agriculture; Enclosed Yard Area

Dear committee chair and members,

I am writing in support of HB2280 to ensure no association shall restrict the use of a member's enclosed yard area for personal agriculture. I write this testimony as a hobbyist gardener in Kaimuki on O'ahu, and someone who hopes to expand his gardening endeavors.

The ultimate reason I am supporting this bill is because I find that food sovereignty and the ability to produce one's own sustenance is a human right. By affording members the ability to have free rein to use their yard area for personal agriculture, it will allow residents to have the autonomy to support themselves financially and physically. This legislation will allow tenants to have freedom in using their plot, and reduce conflicts between associations and their tenants.

In my own life, I have seen how the shortage of 'āina reduces the average citizen's access to personal agriculture. While living in Ashland Oregon, we were told by our landlord that we would not be able to grow produce on our small lot. We signed up for the waiting list to use the community garden, and it took over a year to finally receive access to our single raised bed in a community garden across town. It didn't make much sense to have to travel across town to use a raised bed that was smaller than our yard, and was frustrating to have to wait over a year to gain access to personal agriculture space in a region as vast as Southern Oregon. Living in Hawai'i with less access to land, there is a greater need for the availability of personal agriculture.

In conclusion, I ask for your support in passing this bill so that more individuals here in Hawai'i have access to quality mental health care services. Thank you for giving me this opportunity to share my beliefs and testify.

Best,

Benji Zachariah

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Submitted on: 3/28/2022 9:38:31 AM

Testimony for CPN on 3/29/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Elaine Panlilio	Individual	Oppose	Written Testimony Only

Comments:

I **oppose HB2280** because it will potentially lead to disputes on covenants enforcement, impact property values, lead to neighbor disputes on the use of pesticide and fertilizer leading to health and safety hazards to children and pets. Additionally with the critical water shortage Oahu is facing, there is not enough water to meet the demands of cultivating personal agriculture. Associations will need to adjust their budgets to account for additional water usage where water is not billed separately.

Please reference the amendments suggested in the testimony submitted by CAI - LAC and incorporate that testimony herein by reference.

Mahalo for the opportunity to testify.

LATE

HB-2280-HD-2

Submitted on: 3/28/2022 10:41:29 AM

Testimony for CPN on 3/29/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
R Laree McGuire	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I respectfully oppose this Bill and incorporate by reference the testimony submitted by CAI in opposition.

Mahalo for the opportunity to testify.

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Submitted on: 3/28/2022 1:38:16 PM

Testimony for CPN on 3/29/2022 10:00:00 AM



Submitted By	Organization	Testifier Position	Testify
Shawn Rose	Individual	Support	Written Testimony Only

Comments:

TESTIMONY In Support of HB 2280 HD2

From:

Shawn M. Rose

91-1045 Kai Kukuma St.

Ewa Beach, HI 96706

808-232-4013 shawn.r@me.com

RE: HB 2280 HD2 – Relating to Planned Community Associations & Private Gardens

Grown a “kitchen garden” with vegetables, fruit, and herbs for the kitchen is one of the many things the average person can do to help make our Island home more sustainable. In addition, it helps improve health when people are able to eat fresh foods from the garden & get the added physical activity of caring for the garden. Growing food, even a small amount, allows people to save some money on groceries. There are many other benefits to growing a garden - these are just the biggest reasons we should ensure all have the option of growing small garden plots.

Planned Community Association/Home Owner’s Associations (HOA) are intended to serve the community that hired them, using reasonable enforcement powers of reasonable community standards.

The idea that an HOA could levy fines, and put leans on property – for planting plots of food crops on one’s own land, inside one’s own fence – is not only unreasonable, it is untenable.

A vast majority of these kitchen gardens are not visible from the street – HOA’s employee “fine hunters” to drive around with camaras on poles that allow them to see above the fence, into homeowners back yards, and take pictures of what is otherwise unviable. They then send a fine to the homeowner. How does this help the community? How does this “protect property values?

They are policing things that no one can see without great effort – it is unreasonable & feels Orwellian.

This feels especially wrong in our COVID times when people are already stressed, fearful, and struggling financially.

Please vote in support of HB 2280 to prevent HOA's from demanding removal, approval for, or fining people for growing gardens on property owned by the homeowner.

Respectfully requesting your help & thankful for your service to our community,

Shawn M. Rose

LATE

HB-2280-HD-2

Submitted on: 3/28/2022 5:03:04 PM

Testimony for CPN on 3/29/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ameena Ahmed MD MPH	Individual	Support	Written Testimony Only

Comments:

Home cultivation of food is one of the key strategies to improve the health of the people of Hawaii. This was recognized in a Health Impact Assessment of the Hawai'i County Agricultural plan, a project of The Kohala Center in collaboration with Kaiser Permanente Center for Health Research, Hawai'i and the Hawai'i Department of Agriculture and funded by the Health Impact Project—a collaboration of the Robert Wood Johnson Foundation and The Pew Charitable Trusts. See <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2015/hi-map/state/hawaii/hawaii-county-agriculture-development-plan>. Speaking as a physician, epidemiologist, and mother, HB2280 is good policy.