

JAN 20 2023

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# A BILL FOR AN ACT

RELATING TO INCLUSIONARY ZONING.

**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~~] a number, shape, and area,  
15 and the adoption of regulations for each district to carry out  
16 the purposes of this section. In establishing or regulating the  
17 districts, full consideration shall be given to all available



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

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



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

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  
7 to 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



1 signs over a reasonable period of time in commercial,  
2 industrial, resort, and apartment zoned areas only. In no event  
3 shall ~~such~~ the amortization or phasing out of nonconforming  
4 uses apply to any existing building or premises used for  
5 residential (single-family or duplex) or agricultural uses.  
6 Nothing in this section shall affect or impair the powers and  
7 duties of the director of transportation as set forth in chapter  
8 262.

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

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

16 (d) Neither this section nor any other law, county  
17 ordinance, or rule shall prohibit group living in facilities  
18 with eight or fewer residents for purposes or functions that are  
19 licensed, certified, registered, or monitored by the State;  
20 provided that a resident manager or a resident supervisor and  
21 the resident manager's or resident supervisor's family shall not



1 be included in this resident count. These group living  
2 facilities shall meet all applicable county requirements not  
3 inconsistent with the intent of this subsection, including but  
4 not limited to building height, setback, maximum lot coverage,  
5 parking, and floor area requirements.

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

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

19 (g) Neither this section nor any other law, county  
20 ordinance, or rule shall impose an inclusionary zoning



1 requirement on housing offered exclusively for sale in  
2 perpetuity to buyers who:

3 (1) Are residents of the State;

4 (2) Are owner-occupants; and

5 (3) Do not own any other real property.

6 (h) As used in this section, "inclusionary zoning  
7 requirement" means any requirement to set aside a fraction of a  
8 housing development to be sold at below market prices."

9 SECTION 2. Each county shall submit a report on  
10 inclusionary zoning requirements, including the number of  
11 housing units still owned by original owners and the resale  
12 prices of or profit realized from resold units to the  
13 legislature no later than twenty days prior to the convening of  
14 the regular sessions of 2024, 2025, 2026, 2027, and 2028.

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

18 SECTION 4. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

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# S.B. NO. 867

**Report Title:**

Housing; Development; Counties; Inclusionary Zoning; Exemption; Report

**Description:**

Prohibits any law, ordinance, or rule from imposing an inclusionary zoning requirement on housing offered exclusively for sale in perpetuity to buyers who are residents of the State, are owner-occupants, and do not own any other real property. Requires each county to submit a report on inclusionary zoning requirements to the Legislature every year until the Regular Session of 2028.

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

