ACT 39

S.B. NO. 3202

A Bill for an Act Relating to Urban Development.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§46- Accessory dwelling units on residentially zoned lots. (a) Each county shall adopt or amend accessory dwelling unit ordinances pursuant to this section to help address deficits in their housing inventory based on Hawaii housing planning studies published by the Hawaii housing finance and development corporation.

(b) Except as provided in subsections (c) and (d), each county shall adopt or amend ordinances defining reasonable standards that allow for the construction of at least two accessory dwelling units, or the reasonable equivalent, for residential use on all residentially zoned lots.

(c) A county that does not adopt or amend an ordinance pursuant to subsection (b) shall adopt or amend ordinances pursuant to this subsection and subsection (d), if applicable, defining:

(1) Districts that authorize at least two accessory dwelling units, or the reasonable equivalent, for residential use per each permitted exist-

ing single-family dwelling on a residentially zoned lot; provided that these districts shall be:

(A) Consistent with the county's comprehensive general plan;

(B) Reasonably distributed throughout the county's various regional planning areas; and

(C) Estimated to add development potential equivalent to half of the county's projected five-year demand of needed housing units for ownership or rental as stated in the 2019 Hawaii housing planning study; and

(2) Districts that authorize at least two accessory dwelling units or the reasonable equivalent for residential use per each permitted existing single-family dwelling on a residentially zoned lot within a reasonable walking distance to and from:

(A) Stations of a locally preferred alternative for a mass transit project; and

(B) Urban principal arterials as classified by the Federal Highway Administration for purposes of federal-aid highways projects and situated within a primary urban area, urban core, or county equivalent identified by a county comprehensive general plan.

(d) In addition to the requirements under subsection (c), a county with a population of five hundred thousand or more shall adopt or amend an ordinance defining reasonable standards to add development potential in existing apartment districts or apartment mixed-use districts equivalent to the county's projected five-year demand of needed housing units for ownership or rental in the 2019 Hawaii housing planning study.

(e) Accessory dwelling units developed pursuant to this section shall be subject to all development standards adopted by the respective county, including but not limited to those adopted pursuant to this chapter.

(f) Nothing in this section shall preclude a county from denying applications for permits if there is insufficient utility infrastructure to service the additional demand caused by the development of accessory dwelling units pursuant to this section.

(g) If a county does not adopt or amend zoning ordinances pursuant to this section by December 31, 2026, the county shall not deny any permit application on the basis of exceeding the maximum number of housing units allowed if any owner, or their designated representative, of a single-family dwelling in a residentially zoned lot applies for construction of up to two accessory dwelling units, or the reasonable equivalent, until the county adopts or amends an ordinance pursuant to this section; provided that a county may deny a permit application on the basis of infrastructure, design, or development standards.

(h) No county shall adopt prohibitions on using any dwelling unit on a residentially zoned lot as separately leased long-term rentals, as defined by each county.

(i) This section shall not apply to:

(1) Any area outside of the urban district established by chapter 205;

(2) County powers within special management areas delineated pursuant to chapter 205A; and

(3) Any area within an urban district that a county deems to be at high risk of a natural hazard such as flooding, lava, or fire, as determined by the most current data and maps issued by a federal or state department or agency.

(j) Neither this section, any permit issued in accordance with this section, or structures developed pursuant to this section shall create any vested

rights for any applicant, permit holder, or land owner. This section shall not preempt a county's ability to accept, review, approve, and deny permit applications.

(k) For purposes of this section, "residentially zoned lot" means a zoning lot in a county zoning district that is principally reserved for single-family and two-family detached dwellings. "Residentially zoned lot" does not include a lot in a county zoning district that is intended for rural, low density residential development, and open space preservation."

SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§205- Private covenants; residentially zoned lots; urban district. (a) No private covenant for a residentially zoned lot within an urban district recorded after the effective date of this Act shall limit the:

(1) Number of accessory dwelling units on that residentially zoned lot below the amount allowed pursuant to section 46- ; or

(2) Long-term rental of residential units on that residentially zoned lot.

(b) This section shall not apply to any private covenants recorded before the effective date of this Act.

(c) For purposes of this section, "residentially zoned lot" means a zoning lot in a county zoning district that is principally reserved for single-family and two-family detached dwellings. "Residentially zoned lot" does not include a lot in a county zoning district that is intended for rural, low density residential development, and open space preservation."

PART II

SECTION 3. Section 46-4, Hawaii Revised Statutes, is amended to read as follows:

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

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

(1) The areas within which agriculture, forestry, industry, trade, and business may be conducted;

(2) The areas in which residential uses may be regulated or prohibited;

(3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted;

(4) The areas in which particular uses may be subjected to special restrictions;

(5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered;
(6) The location, height, bulk, number of stories, and size of buildings and other structures;
(7) The location of roads, schools, and recreation areas;
(8) Building setback lines and future street lines;
(9) The density and distribution of population;
(10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;
(11) Minimum and maximum lot sizes; and
(12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

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

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

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

The powers granted [~~herein~~] in this section shall be liberally construed in favor of the county exercising them, and in [~~such~~] a manner [~~as to promote~~] that promotes the orderly development of each county or city and county in accordance with a long-range, comprehensive general plan to ensure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers of any county to achieve these ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsections (c) [~~and~~], (d)[~~.~~], (g), and section 46- .

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall [~~such~~] the amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

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

(c) [~~Each~~] Except as provided in section 46- , each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted.

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

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

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

(g) Notwithstanding any other law, county charter, county ordinance, or rule, any administrative authority to accept, reject, and approve or deny any application for subdivision, consolidation, or resubdivision of a parcel of land that has been fully zoned for residential use within the state urban district designated pursuant to section 205-2 shall be vested with the director of the county agency responsible for land use or a single county officer designated by ordinance; provided that:

(1) The parcel of land being subdivided is not located on a site that is:
    (A) Designated as important agricultural land pursuant to part III of chapter 205;
    (B) On wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW2;
    (C) Within a floodplain as determined by maps adopted by the Federal Emergency Management Agency;
    (D) A habitat for protected or endangered species;
    (E) Within a state historic district:
        (i) Listed on the Hawaii register of historic places or national register of historic places;
        (ii) Listed as a historic property on the Hawaii register of historic places or the national register of historic places; or
        (iii) During the period after a nomination for listing on the Hawaii register of historic places or national register of historic places is submitted to the department of land and natural resource's state historic preservation division and before the Hawaii historic places review board has rendered a decision; or
    (F) Within lava zone 1 or lava zone 2, as designated by the United States Geological Survey;
(2) Any approval under this subsection shall be consistent with all county zoning, development standards, and requirements pursuant to part II of chapter 205A; and
(3) This subsection shall not apply to county powers within special management areas delineated pursuant to part II of chapter 205A.

Neither this subsection, any permit issued in accordance with this subsection, or structures developed pursuant to this subsection shall create any vested rights for any applicant, permit holder, or land owner."

PART III

SECTION 4. Section 46-143, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) An impact fee shall be substantially related to the needs arising from the development and shall not exceed a proportionate share of the costs incurred or to be incurred in accommodating the development. The following [~~seven~~] factors shall be considered in determining a proportionate share of public facility capital improvement costs:

(1) The level of public facility capital improvements required to appropriately serve a development, based on a needs assessment study that identifies:
   (A) Deficiencies in existing public facilities;
   (B) The means, other than impact fees, by which existing deficiencies will be eliminated within a reasonable period of time; and
   (C) Additional demands anticipated to be placed on specified public facilities by a development;
(2) The availability of other funding for public facility capital improvements, including but not limited to user charges, taxes, bonds, intergovernmental transfers, and special taxation or assessments;
(3) The cost of existing public facility capital improvements;
(4) The methods by which existing public facility capital improvements were financed;
(5) The extent to which a developer required to pay impact fees has contributed in the previous five years to the cost of existing public facility capital improvements and received no reasonable benefit therefrom, and any credits that may be due to a development because of [~~such~~] the contributions;
(6) The extent to which a developer required to pay impact fees over the next twenty years may reasonably be anticipated to contribute to the cost of existing public facility capital improvements through user fees, debt service payments, or other payments, and any credits that may accrue to a development because of future payments; [~~and~~]
(7) The extent to which a developer is required to pay impact fees as a condition precedent to the development of non-site related public facility capital improvements, and any offsets payable to a developer because of this provision[~~.~~]; and
(8) The square footage of the development; provided that:
   (A) In cases where the developer is converting an existing structure, the square footage of the existing structure shall be deducted from the total square footage of the development when calculating impact fees; and
   (B) In cases where the public facility impacted is a water or sewage facility, the appropriate board of water supply may choose to calculate impact fees based on the total number of fixtures in the development, rather than by square footage."

PART IV

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.[1]

SECTION 6. This Act shall take effect on upon its approval.

(Approved May 28, 2024.)

Note

1. Edited pursuant to HRS §23G-16.5.