

JAN 19 2023

A BILL FOR AN ACT

RELATING TO COUNTY ZONING.

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

1 SECTION 1. The legislature finds that there is a lack of
2 clarity regarding the authority of the counties to adopt zoning
3 regulations that prohibit or phase out land uses, activities,
4 and structures established after the passage of the Hawaii
5 zoning enabling act in 1957. Specifically, the legislature is
6 aware that section 46-4, Hawaii Revised Statutes, has been
7 interpreted as prohibiting the counties from adopting zoning
8 regulations that eliminate or amortize land uses and structures
9 outside of county commercial, industrial, resort, and apartment
10 zoned areas. The legislature is also aware that section 46-4,
11 Hawaii Revised Statutes, has been interpreted as prohibiting the
12 counties from ordaining zoning ordinances that eliminate or
13 amortize land uses and structures that are used for residential
14 or agricultural purposes regardless of their underlying county
15 zoning. The legislature finds that these interpretations of
16 section 46-4, Hawaii Revised Statutes, are not consistent with
17 the legislature's intended limitations on county zoning powers.



1 The legislature further finds that when section 46-4,
2 Hawaii Revised Statutes, was enacted in 1957, the legislature
3 intended to protect land uses and structures that were
4 established prior to the implementation of comprehensive zoning
5 ordinances by the counties. Interpretations of section 46-4,
6 Hawaii Revised Statutes, that prohibit the counties from
7 adopting zoning regulations that eliminate or amortize land uses
8 and structures established after the ordainment of comprehensive
9 county zoning ordinances are inimical to the legislature's
10 intent and direction that county zoning is to be accomplished
11 within the framework of a long-range, comprehensive general
12 plan, and zoning districts are to guide the overall future
13 development of each county.

14 The legislature additionally finds that the rise of
15 short-term rentals, time shares and other short-duration uses of
16 real property have raised questions about whether the rental of
17 property for human occupancy can be treated as different types
18 of land uses depending on the duration of a renter's length of
19 stay or the duration of the underlying rental agreement. The
20 legislature finds that clarifications to section 46-4, Hawaii
21 Revised Statutes, are needed to address the regulation of



1 short-term rentals, time shares, and other short-duration uses
2 of real property by the counties under their local zoning
3 ordinances.

4 Accordingly, the purpose of this Act is to amend section
5 46-4, Hawaii Revised Statutes, relating to county zoning, in
6 order to:

7 (1) Clarify that section 46-4, Hawaii Revised Statutes,
8 does not prohibit the counties from adopting zoning
9 regulations that eliminate or amortize land uses or
10 structures established after the effective date of the
11 first comprehensive zoning ordinance adopted by a
12 county; and

13 (2) Clarify that county zoning regulations that restrict
14 the time, place, manner, or duration of a land use
15 activity do not create different types of land uses by
16 limiting the time, place, manner, or duration of a use
17 of land.

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

20 "(a) This section and any ordinance, rule, or regulation
21 adopted in accordance with this section shall apply to lands not



1 contained within the forest reserve boundaries as established on
2 January 31, 1957, or as subsequently amended.

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

- 18 (1) The areas within which agriculture, forestry,
19 industry, trade, and business may be conducted;
- 20 (2) The areas in which residential uses may be regulated
21 or prohibited;



- 1 (3) The areas bordering natural watercourses, channels,
2 and streams, in which trades or industries, filling or
3 dumping, erection of structures, and the location of
4 buildings may be prohibited or restricted;
- 5 (4) The areas in which particular uses may be subjected to
6 special restrictions;
- 7 (5) The location of buildings and structures designed for
8 specific uses and designation of uses for which
9 buildings and structures may not be used or altered;
- 10 (6) The location, height, bulk, number of stories, and
11 size of buildings and other structures;
- 12 (7) The location of roads, schools, and recreation areas;
- 13 (8) Building setback lines and future street lines;
- 14 (9) The density and distribution of population;
- 15 (10) The percentage of a lot that may be occupied, size of
16 yards, courts, and other open spaces;
- 17 (11) Minimum and maximum lot sizes; [~~and~~]
- 18 (12) The time, place, manner, and duration in which uses of
19 land and structures may take place; provided that
20 zoning regulations that restrict the time, place,
21 manner, or duration of a use of property shall not be



1 deemed to create different types of land uses or
2 structures based on time, place, manner, or duration
3 restrictions established by the counties; and

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

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

20 Nothing in this section shall invalidate any zoning
21 ordinance or regulation adopted by any county or other agency of

1 government pursuant to the statutes in effect prior to July 1,
2 1957.

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

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



S.B. NO. 219

Report Title:

City and County of Honolulu Package; County Zoning

Description:

Clarifies county zoning to explicitly authorize counties to adopt zoning regulations that eliminate or amortize land uses or structures established after the effective date of the first comprehensive zoning ordinance adopted by a county and zoning regulations that restrict the time, place, manner, or duration of a land use activity that do not create different types of land uses by limiting the time, place, manner, or duration of a use of land.

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

