

JAN 21 2022

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# A BILL FOR AN ACT

RELATING TO HOUSING DENSITY.

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

1           SECTION 1. The Legislature finds that the provision of  
2 adequate housing, in light of the severe shortage of housing at  
3 all income levels in the State, is a matter of statewide  
4 concern.

5 The purpose of this Act is to help alleviate the housing supply  
6 shortage by:

7           (1) Prohibiting the denial of housing development projects  
8               based solely on minimum lot size; and

9           (2) Increasing the permissible floor area ratio for  
10             housing development projects.

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

13          "**§46-4 County zoning.** (a) This section and any  
14 ordinance, rule, or regulation adopted in accordance with this  
15 section shall apply to lands not contained within the forest  
16 reserve boundaries as established on January 31, 1957, or as  
17 subsequently amended.



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

- 16           (1) The areas [~~within~~] in which agriculture, forestry,  
17           industry, trade, and business may be conducted;
- 18           (2) The areas in which residential uses may be regulated  
19           or prohibited;
- 20           (3) The areas bordering natural watercourses, channels,  
21           and streams, in which trades or industries, filling or



- 1            dumping, erection of structures, and the location of  
2            buildings may be prohibited or restricted;
- 3            (4) The areas in which particular uses may be subjected to  
4            special restrictions;
- 5            (5) The location of buildings and structures designed for  
6            specific uses and designation of uses for which  
7            buildings and structures may not be used or altered;
- 8            (6) The location, height, bulk, number of stories, and  
9            size of buildings and other structures;
- 10           (7) The location of roads, schools, and recreation areas;
- 11           (8) Building setback lines and future street lines;
- 12           (9) The density and distribution of population;
- 13           (10) The percentage of a lot that may be occupied, size of  
14           yards, courts, and other open spaces;
- 15           (11) Minimum and maximum lot sizes; and
- 16           (12) Other regulations the boards or city council find  
17           necessary and proper to permit and encourage the  
18           orderly development of land resources within their  
19           jurisdictions.
- 20           The council of any county shall prescribe rules,  
21 regulations, and administrative procedures and provide personnel



1 it finds necessary to enforce this section and any ordinance  
2 enacted in accordance with this section. The ordinances may be  
3 enforced by appropriate fines and penalties, civil or criminal,  
4 or by court order at the suit of the county or the owner or  
5 owners of real estate directly affected by the ordinances.

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

11 Nothing in this section shall invalidate any zoning  
12 ordinance or regulation adopted by any county or other agency of  
13 government pursuant to the statutes in effect prior to July 1,  
14 1957.

15 The powers granted herein shall be liberally construed in  
16 favor of the county exercising them, and in such a manner as to  
17 promote the orderly development of each county or city and  
18 county in accordance with a long-range, comprehensive general  
19 plan to ensure the greatest benefit for the State as a whole.  
20 This section shall not be construed to limit or repeal any  
21 powers of any county to achieve these ends through zoning and



1 building regulations, except insofar as forest and water reserve  
2 zones are concerned and as provided in subsections (c) and (d).

3       Neither this section nor any ordinance enacted pursuant to  
4 this section shall prohibit the continued lawful use of any  
5 building or premises for any trade, industrial, residential,  
6 agricultural, or other purpose for which the building or  
7 premises is used at the time this section or the ordinance takes  
8 effect; provided that a zoning ordinance may provide for  
9 elimination of nonconforming uses as the uses are discontinued,  
10 or for the amortization or phasing out of nonconforming uses or  
11 signs over a reasonable period of time in commercial,  
12 industrial, resort, and apartment zoned areas only. In no event  
13 shall ~~[such]~~ the amortization or phasing out of nonconforming  
14 uses apply to any existing building or premises used for  
15 residential (single-family or duplex) or agricultural uses.  
16 Nothing in this section shall affect or impair the powers and  
17 duties of the director of transportation as set forth in chapter  
18 262.

19       (b) Any final order of a zoning agency established under  
20 this section may be appealed to the circuit court of the circuit



1 in which the land in question is found. The appeal shall be in  
2 accordance with the Hawaii rules of civil procedure.

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

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

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



1 amortization, or phasing out of plantation community  
2 subdivisions as a nonconforming use.

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

9 (g) No law, county ordinance, or agency rule shall  
10 prohibit a development project, located on an existing legal  
11 parcel, solely on the basis that the parcel does not meet a  
12 requirement for minimum lot size.

13 (h) No law, county ordinance, or agency rule shall limit  
14 the permissible floor area ratio of a housing development  
15 project to less than 1.5. The maximum allowable floor area  
16 shall be determined by multiplying the permissible floor area  
17 ratio by the lot area of the zoning lot.

18 For purposes of this subsection:

19 "Floor area" shall be defined by county ordinance or agency  
20 rule, as the case may be.



1        "Floor area ratio" means the ratio of floor area to total  
2 area of the zoning lot expressed as a per cent or decimal;  
3 provided that where rounding of numbers is necessary to  
4 determine floor area ratio, the nearest one hundredth shall be  
5 used.

6        SECTION 3. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9        SECTION 4. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'ASL', is written over a horizontal line.

# S.B. NO. 2219

**Report Title:**

Housing; High Density Housing

**Description:**

Prohibits the counties from denying a housing development project based solely on minimum lot size. Increases the minimum floor area ratio for housing development projects.

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

