

JAN 26 2022

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# A BILL FOR AN ACT

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RELATING TO HOUSING.

**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 number, shape, and area, and  
15   the adoption of regulations for each district to carry out the  
16   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 to  
7 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 amortization or phasing out of nonconforming uses  
4 apply to any existing building or premises used for residential  
5 (single-family or duplex) or agricultural uses. Nothing in this  
6 section shall affect or impair the powers and duties of the  
7 director of transportation as set forth in chapter 262.

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

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

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



1 facilities shall meet all applicable county requirements not  
2 inconsistent with the intent of this subsection, including but  
3 not limited to building height, setback, maximum lot coverage,  
4 parking, and floor area requirements.

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

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

18 (g) In the implementation of zoning regulations pursuant  
19 to this section, no county shall impose or otherwise require the  
20 following:



1        (1) A dwelling unit minimum floor area that is greater  
2        than the minimum floor area set forth in the  
3        applicable building, housing, or other code;

4        (2) A fixed numerical percentage cap on the number of  
5        dwelling units that constitute multifamily housing,  
6        apartments, or mixed-use development permitted in the  
7        county; and

8        (3) More than one parking space for each studio or one-  
9        bedroom dwelling unit or more than two parking spaces  
10       for each dwelling unit with two or more bedrooms.

11       No county shall deny any land use application, including  
12       any site plan approval, special permit, special exception, or  
13       other zoning approval on the basis of a district's character or  
14       the immutable characteristics, source of income, or income level  
15       of any applicant or end user, other than age or disability  
16       whenever age-restricted or disability restricted housing may be  
17       permitted. Notwithstanding subsection (a), the prohibitions in  
18       this subsection shall be liberally construed in favor of the  
19       developer.



1        No power granted in this section shall allow any county to  
2        impose excessive or unreasonable fees for the development of  
3        housing. Any fees imposed by a county shall be consistent."

4        SECTION 2. Each county shall develop a plan for zoning  
5        reform that includes the following:

6            (1) Training requirements for all planning and zoning  
7            commissioners; and

8            (2) A model for form-based zoning codes.

9        Each county shall submit a report of its findings and  
10       recommendations, including any proposed legislation, to the  
11       legislature no later than twenty days prior to the convening of  
12       the regular session of 2023.

13       SECTION 3. There is appropriated out of the general  
14       revenues of the State of Hawaii the sum of \$                    or so  
15       much thereof as may be necessary for fiscal year 2022-2023 as a  
16       grant-in-aid to be equally allocated to each county for the  
17       development of a plan for zoning reform.

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

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1       SECTION 5.   This Act shall take effect on July 1, 2022.

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INTRODUCED BY:

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, is written over a horizontal line.



# S.B. NO. 3263

**Report Title:**

Regulation; Counties; Zoning; Training; Commissioners; Form-Based Code

**Description:**

Prohibits counties from implementing certain zoning restrictions, including unreasonable or inconsistent developer fees. Directs counties to develop a plan for zoning reform that includes training for planning and zoning commissioners and a model for form-based zoning codes.

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

