
A BILL FOR AN ACT

RELATING TO URBAN DEVELOPMENT.

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

1 PART I

2 SECTION 1. Chapter 205, Hawaii Revised Statutes, is
3 amended by adding a new section to part I to be appropriately
4 designated and to read as follows:

5 **"§205- Private covenants; residentially zoned lots;**
6 **urban district.** (a) No private covenant for a residentially
7 zoned lot within an urban district recorded after the effective
8 date of this Act shall restrict:

9 (1) Density on that lot below the amount allowed by county
10 zoning codes; or

11 (2) The long-term rental of residential units on that lot.

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

14 (c) For purposes of this section, "residentially zoned
15 lot" means a zoning lot in a county zoning district that is
16 principally reserved for one-family and two-family detached
17 dwellingings."



1 PART II

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

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

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



1 granted [~~herein~~] in this section shall be exercised by
2 ordinance, which may relate to:

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



- 1 (10) The percentage of a lot that may be occupied, size of
- 2 yards, courts, and other open spaces;
- 3 (11) Minimum and maximum lot sizes; and
- 4 (12) 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
18 chapter 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~~] before
2 July 1, 1957.

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

13 Neither this section nor any ordinance enacted pursuant to
14 this section shall prohibit the continued lawful use of any
15 building or premises for any trade, industrial, residential,
16 agricultural, or other purpose for which the building or
17 premises is used at the time this section or the ordinance takes
18 effect; provided that a zoning ordinance may provide for
19 elimination of nonconforming uses as the uses are discontinued,
20 or for the amortization or phasing out of nonconforming uses or
21 signs over a reasonable period of time in commercial,



1 industrial, resort, and apartment zoned areas only. In no event
2 shall [~~such~~] the amortization or phasing out of nonconforming
3 uses apply to any existing building or premises used for
4 residential (single-family or duplex) or agricultural uses.
5 Nothing in this section shall affect or impair the powers and
6 duties of the director of transportation as set forth in
7 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) Notwithstanding any other law, county charter, county
19 ordinance, or rule, the director of the county agency
20 responsible for land use shall review and approve, deny, or
21 otherwise act upon any application for subdivision,



1 consolidation, or resubdivision of parcels within the urban
2 district as designated pursuant to chapter 205; provided that:

3 (1) Each county may enact ordinances or adopt rules
4 pursuant to chapter 91 that:

5 (A) Govern eligibility requirements and standards for
6 the subdivision, consolidation, or resubdivision
7 of parcels within the urban district; and

8 (B) Are in accordance with each county's general
9 plan;

10 (2) Following the enactment or adoption of an ordinance or
11 rule pursuant to this subsection, no land shall be
12 subdivided, consolidated, or resubdivided unless the:

13 (A) Proposed subdivision plans are in conformity with
14 county ordinances or rules governing the
15 subdivision, consolidation, or resubdivision of
16 land; and

17 (B) Application for subdivision, consolidation, or
18 resubdivision of parcels has been approved by the
19 director of the county agency responsible for
20 land use; and



1 (3) No application for subdivision, consolidation, or
 2 resubdivision that has been approved by the director
 3 of the county agency responsible for land use shall
 4 require any additional county approval."

PART III

6 SECTION 3. Section 46-143, Hawaii Revised Statutes, is
 7 amended by amending subsection (d) to read as follows:

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

14 (1) The level of public facility capital improvements
 15 required to appropriately serve a development, based
 16 on a needs assessment study that identifies:

17 (A) Deficiencies in existing public facilities;

18 (B) The means, other than impact fees, by which
 19 existing deficiencies will be eliminated within a
 20 reasonable period of time; and



- 1 (C) Additional demands anticipated to be placed on
2 specified public facilities by a development;
- 3 (2) The availability of other funding for public facility
4 capital improvements, including but not limited to
5 user charges, taxes, bonds, intergovernmental
6 transfers, and special taxation or assessments;
- 7 (3) The cost of existing public facility capital
8 improvements;
- 9 (4) The methods by which existing public facility capital
10 improvements were financed;
- 11 (5) The extent to which a developer required to pay impact
12 fees has contributed in the previous five years to the
13 cost of existing public facility capital improvements
14 and received no reasonable benefit therefrom, and any
15 credits that may be due to a development because of
16 [~~such~~] the contributions;
- 17 (6) The extent to which a developer required to pay impact
18 fees over the next twenty years may reasonably be
19 anticipated to contribute to the cost of existing
20 public facility capital improvements through user
21 fees, debt service payments, or other payments, and



1 any credits that may accrue to a development because
2 of future payments; [~~and~~]

3 (7) The extent to which a developer is required to pay
4 impact fees as a condition precedent to the
5 development of non-site related public facility
6 capital improvements, and any offsets payable to a
7 developer because of this provision[~~-~~]; and

8 (8) The square footage of the development; provided that:

9 (A) In cases where the developer is converting an
10 existing structure, the square footage of the
11 existing structure shall be deducted from the
12 total square footage of the development when
13 calculating impact fees; and

14 (B) In cases where the public facility impacted is a
15 water or sewage facility, the appropriate board
16 of water supply may choose to calculate impact
17 fees based on the total number of fixtures in the
18 development, rather than by square footage."

19 PART IV

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

1 SECTION 5. This Act shall take effect on January 1, 3000.



S.B. NO. 3202
S.D. 2
H.D. 1

Report Title:

Counties; Zoning; Urban District; Subdivision; Consolidation;
Resubdivision; Parcels; Residentially Zoned Lots; Impact Fees
Assessment; Calculation

Description:

Requires the director of the county agency responsible for land use to review and act on any application for subdivision, consolidation, or resubdivision of certain parcels within the urban district, with certain conditions. Amends the calculation of impact fees for certain developments. Effective 1/1/3000.
(HD1)

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