
A BILL FOR AN ACT

RELATING TO INCLUSIONARY ZONING.

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

1 SECTION 1. The legislature finds that the State is
2 experiencing an affordable housing shortage. The lack of
3 affordable housing is a major barrier to recruiting and
4 retaining a skilled workforce and one of the primary reasons why
5 Hawaii residents are forced to move to more affordable
6 communities in the continental United States. This trend has
7 severely and negatively affected local families and communities
8 that are now separated because residents have been driven out of
9 the State to search for more affordable housing options.
10 Furthermore, newly available housing units are often purchased
11 by wealthy residents of other states or countries, which can
12 leave many local residents "priced out" and can overwhelm the
13 local market with vacation homes that are often vacant.

14 The legislature further finds that inclusionary zoning is a
15 county-level practice that requires a typically small percentage
16 of units in a new housing development to be reserved for
17 individuals earning incomes within a specified range, but the



1 length of time that the unit is required to be deed-restricted
2 as "affordable" is typically limited. Inclusionary zoning
3 requirements by counties, therefore, should not apply to housing
4 that is offered exclusively for sale or rent in perpetuity to
5 certain residents of the State.

6 Accordingly, to preserve local communities, the purpose of
7 this Act is to prohibit any law, ordinance, or rule from
8 imposing an inclusionary zoning requirement on housing offered
9 exclusively for sale or rent in perpetuity to buyers or renters
10 who are residents of the State, are owner- or renter-occupants,
11 and do not own any other real property.

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

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

19 Zoning in all counties shall be accomplished within the
20 framework of a long-range, comprehensive general plan prepared
21 or being prepared to guide the overall future development of the



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

- 13 (1) The areas [~~within~~] in which agriculture, forestry,
14 industry, trade, and business may be conducted;
15 (2) The areas in which residential uses may be regulated
16 or prohibited;
17 (3) The areas bordering natural watercourses, channels,
18 and streams, in which trades or industries, filling or
19 dumping, erection of structures, and the location of
20 buildings may be prohibited or restricted;



- 1 (4) The areas in which particular uses may be subjected to
- 2 special restrictions;
- 3 (5) The location of buildings and structures designed for
- 4 specific uses and designation of uses for which
- 5 buildings and structures may not be used or altered;
- 6 (6) The location, height, bulk, number of stories, and
- 7 size of buildings and other structures;
- 8 (7) The location of roads, schools, and recreation areas;
- 9 (8) Building setback lines and future street lines;
- 10 (9) The density and distribution of population;
- 11 (10) The percentage of a lot that may be occupied, size of
- 12 yards, courts, and other open spaces;
- 13 (11) Minimum and maximum lot sizes;
- 14 (12) The time, place, manner, and duration in which uses of
- 15 land and structures may take place; and
- 16 (13) Other regulations the boards or council of any county
- 17 find 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
9 chapter 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 before July 1,
14 1957.

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



1 and building regulations, except insofar as forest and water
2 reserve zones are concerned and as provided in subsections (c),
3 (d), (g), and section 46-4.8.

4 Neither this section nor any ordinance enacted pursuant to
5 this section shall prohibit the continued lawful use of any
6 building or premises for any trade, industrial, residential,
7 agricultural, or other purpose for which the building or
8 premises is used at the time this section or the ordinance takes
9 effect; provided that a zoning ordinance may provide for
10 elimination of nonconforming uses as the uses are discontinued,
11 or for the amortization or phasing out of nonconforming uses or
12 signs over a reasonable period of time in commercial,
13 industrial, resort, and apartment zoned areas only. In no event
14 shall the amortization or phasing out of nonconforming uses
15 apply to any existing building or premises used for residential
16 (single-family or duplex) or agricultural uses; provided that
17 uses that include the furnishing or offering of transient
18 accommodations shall not be considered residential or
19 agricultural uses and may be phased out or amortized in any
20 zoning district by county zoning regulations; provided further
21 that a zoning ordinance may provide that transient



1 accommodations may be furnished to a transient for a period of
2 less than one hundred eighty consecutive days. Nothing in this
3 section shall affect or impair the powers and duties of the
4 director of transportation as set forth in chapter 262.

5 For purposes of this subsection, "transient accommodations"
6 has the same meaning as defined in section 237D-1. "Transient
7 accommodations" includes uses that require the payment of
8 transient accommodations taxes.

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

13 (c) Except as provided in section 46-4.8, each county may
14 adopt reasonable standards to allow the construction of two
15 single-family dwelling units on any lot where a residential
16 dwelling unit is permitted.

17 (d) Neither this section nor any other law, county
18 ordinance, or rule shall prohibit group living in facilities
19 with eight or fewer residents for purposes or functions that are
20 licensed, certified, registered, or monitored by the State;
21 provided that a resident manager or a resident supervisor and



1 the resident manager's or resident supervisor's family shall not
2 be included in this resident count. These group living
3 facilities shall meet all applicable county requirements not
4 inconsistent with the intent of this subsection, including but
5 not limited to building height, setback, maximum lot coverage,
6 parking, and floor area requirements.

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

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

20 (g) Notwithstanding any other law, county charter, county
21 ordinance, or rule, any administrative authority to accept,



1 reject, and approve or deny any application for subdivision,
2 consolidation, or resubdivision of a parcel of land that has
3 been fully zoned for residential use within the state urban
4 district designated pursuant to section 205-2 shall be vested
5 with the director of the county agency responsible for land use
6 or a single county officer designated by ordinance; provided
7 that:

8 (1) The parcel of land being subdivided is not located on
9 a site that is:

- 10 (A) Designated as important agricultural land
11 pursuant to part III of chapter 205;
- 12 (B) On wetlands, as defined in the United States Fish
13 and Wildlife Service Manual, Part 660 FW2;
- 14 (C) Within a floodplain as determined by maps adopted
15 by the Federal Emergency Management Agency;
- 16 (D) A habitat for protected or endangered species;
- 17 (E) Within a state historic district:
 - 18 (i) Listed on the Hawaii register of historic
19 places or national register of historic
20 places;



1 (ii) Listed as a historic property on the Hawaii
2 register of historic places or the national
3 register of historic places; or

4 (iii) During the period after a nomination for
5 listing on the Hawaii register of historic
6 places or national register of historic
7 places is submitted to the department of
8 land and natural [+]resources' [+] state
9 historic preservation division and before
10 the Hawaii historic places review board has
11 rendered a decision; or

12 (F) Within lava zone 1 or lava zone 2, as designated
13 by the United States Geological Survey;

14 (2) Any approval under this subsection shall be consistent
15 with all county zoning, development standards, and
16 requirements pursuant to part II of chapter 205A; and

17 (3) This subsection shall not apply to county powers
18 within special management areas delineated pursuant to
19 part II of chapter 205A.

20 Neither this subsection, any permit issued in accordance
21 with this subsection, [~~or structures~~] nor any structure



1 developed pursuant to this subsection shall create any vested
2 rights for any applicant, permit holder, or land owner.

3 (h) Neither this section nor any other law, county
4 ordinance, or rule shall impose an inclusionary zoning
5 requirement on housing offered exclusively for sale or rent in
6 perpetuity to buyers or renters who:

7 (1) Are residents of the State;

8 (2) Are owner-occupants or renters; and

9 (3) Do not own any other real property.

10 As used in this subsection, "inclusionary zoning
11 requirement" means any requirement to set aside a fraction of a
12 housing development to be sold or rented at below market
13 prices."

14 SECTION 3. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

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

19 SECTION 5. This Act shall take effect on March 22, 2075.



S.B. NO. 2190
S.D. 2

Report Title:

Housing; Development; Counties; Inclusionary Zoning; Exemption

Description:

Prohibits any law, ordinance, or rule from imposing an inclusionary zoning requirement on housing offered exclusively for sale or rent in perpetuity to buyers or renters who are residents of the State, are owner-occupants or renters, and do not own any other real property. Effective 3/22/2075. (SD2)

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