

A Bill for an Act Relating to Residential Group Living.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1. Findings and purpose.** Present law limits the number of residents in special group homes to a level which is economically unfeasible. This Act will allow unrelated persons to live in a group home and will allow special needs people a chance to live independently in their own community.

**SECTION 2.** Section 321-15.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director shall adopt rules regarding care homes in accordance with chapter 91 which shall be designed to:

Protect the health, safety, and civil rights of persons residing in<sup>1</sup> facilities regulated;

(2) Provide for the licensing of facilities regulated; provided that in areas zoned for residential use, the rules shall allow group living in a family care home of up to five persons, including the elderly, the handicapped, the developmentally disabled, or the totally disabled persons, whether or not such persons are related, and the home operator or facility staff. For purposes of this section, “elderly person” means an elderly person as defined under section 359-52; “handicapped person” means a handicapped individual as defined under section 515-2; “developmentally disabled person” means a person suffering from developmental disabilities as defined under section 333E-2; and “totally disabled person” means a person totally disabled as defined under section 235-1;

(3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and

(4) Provide penalties for the failure to comply with any rule.”

**SECTION 3.** Section 346-1, Hawaii Revised Statutes, is amended by amending the definition of “adult family boarding home” to read as follows:

““Adult family boarding home” means any family home providing twenty-four hour living accommodations for a fee to [one to four] adults unrelated to the family, who are in need of minimal assistance and supervision in their living activities, and includes other similar institutions[.], which home accommodates group living by up to eight persons, including the elderly, the handicapped, the developmentally disabled, or the totally disabled persons, whether or not such persons are related, and the home operator or facility staff. For purposes of this definition, “elderly person” means an elderly person as defined under section 359-52; “handicapped person” means a handicapped individual as defined under section 515-2; “developmentally disabled person” means a person suffering from developmental disabilities as defined under section 333E-2; and “totally disabled person” means a person totally disabled as defined under section 235-1.”

SECTION 4. Section 346-92, Hawaii Revised Statutes, is amended to read as follows:

“**[§346-92]** **Rules.** The department shall adopt such rules as are necessary and in accordance with chapter 91 to carry out the purpose of this subpart and to:

- (1) Protect the health, safety, and welfare of adults residing in adult family boarding homes;
- (2) Establish and enforce minimum licensing standards[; and]; provided that in areas zoned for residential use, the rules shall allow group living in adult family boarding homes of up to eight persons, including the elderly, the handicapped, the developmentally disabled, or the totally disabled persons, whether or not such persons are related, and the home operator or facility staff; and
- (3) Comply with applicable statutes and regulations.”

SECTION 5. Section 46-4, Hawaii Revised Statutes, is amended to read as follows:

“**§46-4 County zoning.** (a) This section and any ordinances or rules and regulations adopted in accordance with it, shall apply only to those lands not contained within the forest reserve boundaries as established on January 31, 1957, or as subsequently amended.

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

- (1) The areas within which agriculture, forestry, industry, trade, and business may be conducted.
- (2) The areas in which residential uses may be regulated or prohibited.
- (3) The areas bordering natural watercourses, channels, and streams, in

which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted.

- (4) The areas in which particular uses may be subjected to special restrictions.
- (5) The locations of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered.
- (6) The location, height, bulk, number of stories, and size of buildings and other structures.
- (7) The location of roads, schools, and recreation areas.
- (8) Building setback lines and future street lines.
- (9) The density and distribution of population.
- (10) The percentage of lot which may be occupied, size of yards, courts, and other open spaces.
- (11) Minimum and maximum lot sizes.
- (12) Other such regulations as may be deemed by the boards or city council as necessary and proper to permit and encourage orderly development of land resources within their jurisdictions.

The council of any county shall prescribe such rules and regulations and administrative procedures and provide such personnel as it may deem necessary for the enforcement of this section and any ordinance enacted in accordance therewith. The ordinances may be enforced by appropriate fines and penalties, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

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

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accord with a long range, comprehensive, general plan, and to insure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers now possessed by any county to achieve the ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in [subsection (c).] subsections (c) and (d).

Neither this section nor any ordinance enacted under this section shall prohibit the continuance of the lawful use of any building or premises for any trade, industry, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

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

(c) Neither this section nor any other law, county ordinance, or rule shall prohibit the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted; provided:

- (1) All applicable county requirements, not inconsistent with the intent of this subsection, are met, including building height, setback, maximum lot coverage, parking, and floor area requirements; and
- (2) The county determines that public facilities are adequate to service the additional dwelling units permitted by this subsection.

This subsection shall not apply to lots developed under planned unit development, cluster development, or similar provisions which allow the aggregate number of dwelling units for the development to exceed the density otherwise allowed in the zoning district.

Each county shall establish a review and permit procedure necessary for the purposes of this subsection.

(d) In areas zoned for residential use, neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities licensed by the State as provided for under sections 321-15.6, 346-91, or 346-122 for persons, including the elderly, the handicapped, the developmentally disabled, or the totally disabled persons, whether or not such persons are related, and the home operator or facility staff; provided that such group living facilities meet all applicable county requirements, not inconsistent with the intent of this subsection and including building height, setback, maximum lot coverage, parking, and floor area requirements. For purposes of this section, "elderly person" means an elderly person as defined under section 359-52; "handicapped person" means a handicapped individual as defined under section 515-2; "developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333E-2; and "totally disabled person" means a person totally disabled as defined under section 235-1."

SECTION 6. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 7. This Act shall take effect on September 1, 1982.

(Approved May 1, 1982.)

#### Notes

1. Prior to amendment, here appeared the word "the".