



ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 19, ARTICLE 1 AND ARTICLE 13, CHAPTER 23, ARTICLE 9, AND CHAPTER 25, ARTICLE 1, ARTICLE 2, ARTICLE 5, AND ARTICLE 6 OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO OHANA DWELLING UNITS.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Chapter 19, article 1, section 19-2, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended by repealing the definition of "Ohana dwelling."

~~["Ohana dwelling" means a second dwelling unit permitted to be built as a separate or an attached unit on a building site, but does not include a guest house or a farm dwelling.]~~

SECTION 2. Chapter 19, article 1, section 19-2, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended by adding a new definition to be appropriately inserted and to read as follows:

"Accessory dwelling unit" means a structure or portion thereof designed and used for single-family residential purposes as permitted under chapter 25, article 6, division 3 of this Code, and which can be detached from or attached to an existing residence, to be used for single-family occupancy and containing one kitchen.

SECTION 3. Chapter 19, article 13, section 19-104, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (a) to read as follows:

- “(a) An owner of real property that has a single-family dwelling, [~~ohana dwelling,~~ accessory dwelling unit, farm dwelling, duplex, or double-family dwelling unit(s) and who installs a solar water heater on the owner's property on or after January 1, 2008, shall be entitled to a one-time tax credit per tax map key of up to \$1,000 under this article against the owner's real property tax liability, except for the minimum tax from all property taxes.”

SECTION 4. Chapter 23, article 9, section 23-108, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

“Section 23-108. Infrastructure.

Notwithstanding any other provisions herein, the requirements of this chapter to provide infrastructure improvements shall not apply to a subdivider of a plantation community subdivision, provided that the planning director in consultation with the director of public works and the manager-chief engineer of the department of water supply may require the improvements necessary to further the public health and safety.

All of the proposed lots within a plantation community subdivision shall prohibit the construction of an ~~[ohana dwelling]~~ accessory dwelling unit or second dwelling unit, or any structure that will further any increase in density of the plantation community subdivision. This prohibition shall be recorded in the deeds of all the proposed lots with the bureau of conveyances and shall be submitted to the planning department for review and approval prior to final subdivision approval. A copy of the approved covenant shall be recited in an instrument executed by the applicant and the county and recorded with the bureau of conveyances likewise prior to final subdivision approval.”

SECTION 5. Chapter 25, article 1, section 25-1-5, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by repealing the definition of “Ohana dwelling.”:

~~“[“Ohana dwelling” means a second dwelling unit permitted to be built as a separate or an attached unit on a building site, but does not include a guest house or a farm dwelling.]”~~

SECTION 6. Chapter 25, article 1, section 25-1-5, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by adding a new definition to be appropriately inserted and to read as follows:

~~““Accessory dwelling unit” means a structure or portion thereof designed and used for single-family residential purposes and which can be detached from or attached to an existing residence, to be used for single-family occupancy and containing one kitchen.”~~

SECTION 7. Chapter 25, sections 25-2-3(a), 25-5-8(c), 25-5-57(c), 25-5-67(d), and 25-5-77(d), of the Hawai‘i County Code 1983 (2016 Edition, as amended), are amended by replacing every reference to “ohana dwelling” with “accessory dwelling unit”.

SECTION 8. Chapter 25, article 6, division 3, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

“Division 3. [~~Ohana Dwellings.~~] Accessory dwelling units.

Section 25-6-30. General provisions, applicability.

~~[Ohana dwellings shall be permitted on a building site within the RS, RA, FA and A districts; provided that:~~

- ~~(a) The building site is a legal lot of record as determined by the director;~~
- ~~(b) Any building site which is within the State land use agricultural district shall be subject to agricultural requirements for farm dwellings as established by ordinance or by rule of the director, adopted pursuant to chapter 91, Hawai'i Revised Statutes;~~
- ~~(c) All applicable provisions of this chapter are met, including but not limited to, height limits, minimum yards and parking; and~~
- ~~(d) The following public facilities are adequate to serve the ohana dwelling unit:
 - ~~(1) Sewage Disposal System. The building site shall be served by a public or private sewage disposal system. An adequate public sewage disposal system shall meet with the requirements of the department of public works and an adequate private sewage disposal system, cesspool or septic tank shall meet with the requirements of the State department of health.~~
 - ~~(2) Potable Water Supply. The building site shall be served by an approved public or private water system meeting with the requirements of the department of water supply which system can accommodate the ohana dwelling and the main dwelling unit. An ohana dwelling that is not served by an approved public or private water system may use a water catchment system provided that the director determines that there is sufficient annual rainfall in the area to accommodate a water catchment system and water catchment system meets the requirements of the department of health and the department of water supply.~~
 - ~~(3) Fire Protection. The building site shall be served by adequate fire protection measures meeting with the requirements of the fire department.~~
 - ~~(4) Streets. The building site shall gain access to a public or private street meeting with the requirements of the department of public works.]~~~~

The following facilities are required to serve an accessory dwelling unit:

- (1) Sewage Disposal System. The building site shall be served by a public or private sewage disposal system and shall meet the requirements of the State department of health.
- (2) Potable Water Supply. The building site shall be served by a public or private water system, rain catchment system, or private well. A combination of water systems may also be allowed when approved by the director after meeting the requirements of the State department of health.

Section 25-6-31. [Eligibility for ohana dwelling permit.] Where permitted.

~~[(a) An application for an ohana dwelling permit on any building site shall only be accepted by the director after the completion of all subdivision improvements required by chapter 23 (subdivisions), for the subdivision in which the building site is located. For purposes of this subsection, "completion" means the construction of all of the subdivision improvements including the subdivision roads, drainage, water, and if applicable, wastewater systems, in accordance with approved construction plans, which improvements have been completed to the satisfaction of the director of public works.~~

- ~~(b) Only one permit application for an ohana dwelling unit may be active for any one applicant at any time. Any applicant who has obtained an ohana dwelling permit shall not be eligible or apply for a subsequent ohana dwelling permit on any building site for a period of two years from the date on which the first ohana dwelling unit was completed to the satisfaction of the director of public works. For purposes of this subsection, each titleholder and person named in an application for an ohana dwelling permit, pursuant to section 25-6-39(a)(2), shall be considered the applicant. The director shall maintain and keep readily available for public reference a current list of applicants for ohana dwelling units, including the dates of application and approval or denial.]~~
- (a) Accessory dwelling units shall be permitted on a building site within the RS, RD, RA, FA, and A districts.
- (b) Any building site within the State land use agricultural district shall be subject to agricultural requirements for farm dwellings as established by ordinance or by rule of the director, adopted pursuant to chapter 91, Hawai'i Revised Statutes.
- (c) Accessory dwelling units shall have a final inspection and a certificate of occupancy before use as a dwelling.

Section 25-6-32. Prohibited areas.

[~~Ohana~~] Accessory dwelling units shall be prohibited in the following areas:

- ~~[(a)](1) Any building site within the State land use conservation district;~~
- ~~[(b)](2) Any building site developed under an affordable housing project [approved by the State housing finance and development corporation (HFDC) and/or the County housing agency] which has been granted preemptions from the requirements of this Code;~~
- ~~[(c) Any building site developed as a planned unit development (P.U.D.) or a cluster plan development (C.P.D.);]~~
- ~~[(d)](3) Any building site [where more than one dwelling unit is permitted in the zoning district, including building sites that permit more than one dwelling unit in the RS district, building sites with duplex and multiple-family dwellings, care homes, family child care homes, group living facilities, and single-family dwellings which are] with transient [vacation units] accommodation rentals; or~~
- ~~[(e) Any building site which is the subject of an approved variance from the provisions of this chapter or chapter 23 (subdivisions);]~~
- ~~[(f)](4) Any building site on which the construction of an [~~ohana~~] accessory dwelling unit or a second dwelling unit is specifically prohibited by a change of zone ordinance.~~

Section 25-6-33. Designation of the [~~ohana~~] accessory dwelling unit.

- ~~[(a) Regardless of the size of a building site, not more than one ohana dwelling unit shall be permitted on the same building site with the first single-family dwelling unit.]~~
- ~~[(b)] The director may designate an existing, first single-family dwelling unit as an [~~ohana~~] accessory dwelling unit in order to allow permitting of a new first single-family dwelling unit [when such existing dwelling is the only dwelling unit on the building site and the dwelling unit complies or will be modified to comply with all the requirements of this division].~~

Section 25-6-34. Height limit.

~~[Except when the living areas of the ohana dwelling unit and the first dwelling unit are joined by a common wall, floor, or ceiling, the height limit for an ohana dwelling unit shall be twenty five feet, regardless of whether a greater height limit is provided for the zoning district.]~~

The height limit for an accessory dwelling unit shall be the height limit for the zoning district in which the building site is situated.

Section 25-6-35. Minimum ~~[building site area and yards.]~~ yard requirements; duplex permitted.

~~[(a) The minimum building site area for a building site containing both the first dwelling and the ohana dwelling unit shall be ten thousand square feet.]~~

~~[(b)](a)~~ The minimum front, rear, and side yard requirements for ~~[a detached ohana]~~ an accessory dwelling unit shall be the minimum yard requirements for the zoning district in which the building site is situated ~~[plus an additional five feet.]~~ unless the parcel is nonconforming to the zoning district, in which case the minimum yard requirements of the zoning appropriate to the parcel size shall be required.

~~[(e)](b)~~ An ~~[ohana]~~ accessory dwelling unit and a single-family dwelling unit may be constructed as a duplex (i.e., there is a common wall or floor/ceiling).

Section 25-6-36. ~~[Guest houses.]~~ Repealed.

~~[A guest house, as described in section 25-4-9, shall not be permitted on any building site where an ohana dwelling unit has been permitted or constructed. If an existing guest house is situated on a building site, an ohana dwelling unit shall not also be permitted on the building site. Provided, that an existing guest house may be converted into an ohana dwelling unit in accordance with the requirements of this division.]~~

Section 25-6-37. Off-street parking spaces.

The number of parking spaces for an ~~[ohana]~~ accessory dwelling unit shall be as provided under section 25-4-51.

Section 25-6-38. ~~[Variances prohibited.]~~ Prohibited uses.

~~[No variance from either this chapter or chapter 23 (subdivisions), shall be granted to permit the construction or placement of an ohana dwelling unit on a building site. In addition, an ohana dwelling unit shall not be permitted on a building site for which a variance from either this chapter or chapter 23 (subdivisions), has already been granted.]~~ Accessory dwelling units shall not be permitted for use as transient accommodation rentals.

Section 25-6-39. ~~[Application for ohana dwelling permit; requirements.]~~ Repealed.

~~[(a) An application form for an ohana dwelling permit shall be filed with the director on a form prescribed for this purpose by the director, and shall be accompanied by:~~

- ~~(1) A filing fee of \$25;~~

- (2) ~~The names and addresses of all the owners of the building site, provided that when the property is owned by a corporation, association, partnership or trust, the names and addresses of all partners, director, officers, shareholders or beneficiaries holding an ownership or beneficial interest of at least ten or more percent shall be included; and~~
- (3) ~~An affidavit, in the form prescribed by the director, verifying that there is no restriction or covenant applicable to the building site, contained in any deed, lease, or other recorded document, which prohibits the construction or placement of an ohana dwelling or a second dwelling unit on the building site.~~
- (b) ~~The applicant shall serve notice of the ohana dwelling permit application on surrounding owners and lessees of record as provided by section 25-2-4. The applicant shall also serve notice on all owners of the property identified in the application who did not execute the application, and any known association of property owners which has jurisdiction or authority over the subdivision in which the building site is situated. Proof of service of the notice, in the manner provided under section 25-2-4, shall be submitted together with the ohana dwelling permit application.]~~

Section 25-6-39.1. [Action on ohana dwelling permit.] Repealed.

- (a) ~~Upon acceptance of an ohana dwelling permit application, the director shall forward the application to appropriate agencies for review and comment on the adequacy of those infrastructure facilities required for the ohana dwelling unit, under section 25-6-30.~~
- (b) ~~Within a period of at least thirty days but not more than sixty days after acceptance of an ohana dwelling permit application, the director shall either approve or deny the application.~~
- (c) ~~If the director fails to render a decision within the prescribed sixty-day period, the application shall be considered as being approved.]~~

Section 25-6-39.2. [Building permit for an ohana dwelling.] Repealed.

- (a) ~~A building permit for the construction of an ohana dwelling unit shall be secured within one year from the date that the ohana dwelling unit permit was issued. A thirty-day time extension may be granted by the director if it can be demonstrated by the applicant that nonperformance was not the result of the applicant's fault or negligence. In the event that the applicant fails to secure a building permit for the construction of the ohana dwelling unit within the one-year time period, or any extension granted by the director, the ohana dwelling unit permit shall be void.~~
- (b) ~~The time extension provided for an ohana dwelling permit under subsection (a) above shall be the only time extension available to an applicant, and no further time extension shall be allowed. Further, the failure to obtain any further time extension of an ohana dwelling permit shall not be cause to petition the director, the commission or the board of appeals for relief from the time limitation for an ohana dwelling permit as provided under this section.]~~

Section 25-6-39.3. [Nontransferability of permit.] Repealed.

- (a) ~~A permit for an ohana dwelling unit shall be personal to the applicant and shall not be transferable or assignable to any other person until construction of the ohana dwelling unit has been completed and final approval has been issued by the director of public works.~~

~~(b) No person shall advertise or represent to the public that a permit to construct an ohana dwelling unit is transferable with the sale of the property on which the permit has been granted.]~~

Section 25-6-39.4. [~~Pending applications.~~] Repealed.

~~[All pending applications for ohana dwellings filed with the director prior to May 4, 1996 shall be processed in accordance with this division, with the exception of the filing fee. The director may require the applicant to submit additional information to comply with this division.]~~

Section 25-6-39.5. [~~Illegally constructed ohana dwellings.~~] Repealed.

~~[In the event that an ohana dwelling unit is constructed contrary to the provisions of this division, with or without a permit therefor having been issued, the ohana dwelling unit, shall be considered unlawful and a public nuisance, and action or proceedings for abatement, removal and enjoinder of the unlawful ohana dwelling shall immediately be commenced in accordance with this chapter.]~~

Section 25-6-39.6. [~~Revocation of an ohana dwelling permit.~~] Repealed.

- ~~(a) The director may initiate proceedings to revoke a permit for an ohana dwelling unit if:~~
- ~~(1) The applicant intentionally misrepresented a material fact in the permit application, including all attachments; or~~
 - ~~(2) The applicant transferred or attempted to transfer an ohana dwelling unit permit issued by the director prior to completion of the construction of the ohana dwelling unit and final approval by the director of public works.~~
- ~~(b) The director shall serve written notice of the proposed revocation on the applicant by registered or certified mail with return receipt.~~
- ~~(c) The applicant may, within thirty days after receipt of the proposed revocation notice, appeal the revocation notice to the board of appeals as provided by section 6-9.2, County Charter and sections 25-2-20 through 25-2-24. An appeal to the board of appeals shall stay the provisions of the director's order pending the final decision of the board of appeals.]~~

Section 25-6-39.7. [~~Appeals.~~] Repealed.

~~[Any person aggrieved by the decision of the director in the issuance of an ohana dwelling permit decision, except for a decision regarding the duration of a permit under section 25-6-39.2, may appeal the director's action to the board of appeals, in accordance with this chapter, within thirty days after the date of the director's written decision.]"~~

SECTION 9. Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

SECTION 10. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 11. This ordinance shall take effect on June 30, 2024.

INTRODUCED BY:

Heather J. Kurlall
COUNCIL MEMBER, COUNTY OF HAWAII

[Signature]
COUNCIL MEMBER, COUNTY OF HAWAII

_____, Hawai'i
Date of Introduction:
Date of 1st Reading:
Date of 2nd Reading:
Effective Date:

REFERENCE Comm. 677