

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO LAND USE.

**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~~] a number, shape, and area,  
15 and the adoption of regulations as necessary for each district  
16 to carry out the purposes of this section. In establishing or  
17 regulating the districts, full consideration shall be given to  
18 all available data as to soil classification and physical use



1 capabilities of the land to allow and encourage the most  
2 beneficial use of the land consonant with good zoning practices.  
3 The zoning power granted herein shall be exercised by ordinance  
4 which may relate to:

- 5 (1) The areas within which agriculture, forestry,  
6 industry, trade, and business may be conducted;
- 7 (2) The areas in which residential uses may be regulated  
8 or prohibited;
- 9 (3) The areas bordering natural watercourses, channels,  
10 and streams, in which trades or industries, filling or  
11 dumping, erection of structures, and the location of  
12 buildings may be prohibited or restricted;
- 13 (4) The areas in which particular uses may be subjected to  
14 special restrictions;
- 15 (5) The location of buildings and structures designed for  
16 specific uses and designation of uses for which  
17 buildings and structures may not be used or altered;
- 18 (6) The location, height, bulk, number of stories, and  
19 size of buildings and other structures;
- 20 (7) The location of roads, schools, and recreation areas;
- 21 (8) Building setback lines and future street lines;
- 22 (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 (b) The council of [~~any~~] each county shall prescribe  
9 rules, regulations, and administrative procedures and provide  
10 personnel as it finds necessary to enforce this section and any  
11 ordinance enacted in accordance with this section. [~~The~~] All  
12 ordinances enacted pursuant to this section may be enforced by  
13 appropriate fines and penalties, civil or criminal, or by court  
14 order at the suit of the county or the owner or owners of real  
15 estate directly affected by the ordinances.

16 Any civil fine or penalty provided by ordinance under this  
17 section may be imposed by the district court, or by the zoning  
18 agency after an opportunity for a hearing pursuant to chapter  
19 91 [~~—The~~]; provided that an administrative proceeding shall not  
20 be a prerequisite for any injunctive relief ordered by the  
21 circuit court.



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

16        (e) Neither this section nor any ordinance enacted  
17 pursuant to this section shall prohibit the continued lawful use  
18 of any building or premises for any trade, industrial,  
19 residential, agricultural, or other purpose for which the  
20 building or premises is used at the time this section or the  
21 ordinance takes effect; provided that a zoning ordinance may  
22 provide for elimination of nonconforming uses as the uses are



1 discontinued~~[7]~~ or for the amortization or phasing out of  
2 nonconforming uses or signs over a reasonable period of time in  
3 commercial, industrial, resort, and apartment zoned areas only.  
4 In no event shall ~~[such]~~ the amortization or phasing out of  
5 nonconforming uses apply to any existing building or premises  
6 used for residential, including ~~[+]~~single-family or duplex~~[+]~~,  
7 or agricultural uses. Nothing in this section shall affect or  
8 impair the powers and duties of the director of transportation  
9 as set forth in chapter 262.

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

14 ~~[(e)]~~ (g) Each county may adopt reasonable standards to  
15 allow the construction of two single-family dwelling units on  
16 any lot where a residential dwelling unit is permitted.

17 ~~[(d)]~~ (h) Neither this section nor any other law, county  
18 ordinance, or rule shall prohibit group living in facilities  
19 with eight or fewer residents and that are licensed by the State  
20 as provided for under section 321-15.6, or in an intermediate  
21 care facility/mental retardation-community for persons,  
22 including mentally ill, elder, disabled, developmentally



1 disabled, or totally disabled persons, who are not related to  
2 the home operator or facility staff; provided that those group  
3 living facilities meet all applicable county requirements not  
4 inconsistent with the intent of this subsection and including  
5 building height, setback, maximum lot coverage, parking, and  
6 floor area requirements.

7 ~~[(e)]~~ (i) No permit shall be issued by a county agency for  
8 the operation of a halfway house, a clean and sober home, or a  
9 drug rehabilitation home unless a public informational meeting  
10 is first held in the affected community. The State shall  
11 provide notification and access to relevant information, as  
12 required, under chapter 846E.

13 A clean and sober home shall be considered a residential  
14 use of property and shall be a permitted or conditional use in  
15 residentially designated zones, including but not limited to  
16 zones for single-family dwellings.

17 (j) Neither this section nor any other law, county  
18 ordinance, or rule shall prohibit the use of land for employee  
19 housing and community buildings in plantation community  
20 subdivisions as defined in section 205-4.5(a)(12); in addition,  
21 no zoning ordinance shall provide for the elimination,



1 amortization, or phasing out of plantation community  
2 subdivisions as a nonconforming use.

3 (k) Neither this section nor any other law, county  
4 ordinance, or rule shall prohibit an individual landowner of  
5 privately-held land classified as agricultural or rural pursuant  
6 to section 205-2 from allowing camping on the landowner's land;  
7 provided that:

8 (1) The landowner shall collect for the privilege of  
9 camping on the individual's land no more than a  
10 nominal fee sufficient to recover a portion of the  
11 actual costs incurred in complying with the  
12 requirements of this subsection;

13 (2) The landowner shall provide adequate facilities for  
14 sanitation; provided that sanitation facilities  
15 located outside of the land used for camping shall not  
16 be sufficient to meet the requirement of this  
17 paragraph;

18 (3) The landowner shall provide access to potable water on  
19 or near the land used for camping;

20 (4) The landowner shall provide for the collection and  
21 removal of refuse from the landowner's property;



1       (5) There shall be adequate space separating the land used  
2       for camping from land belonging to any other person or  
3       entity, including the State or a county, so as not to  
4       infringe on the property rights of any other  
5       individual or the rights of the public to access  
6       public land; and

7       (6) The landowner shall be liable for any injury or  
8       damages to persons, property, or natural resources  
9       caused by any person or persons camping on the  
10       landlord's land.

11       The counties shall adopt rules and ordinances necessary for  
12       the administration of this subsection, including rules for  
13       enforcing the limitations on fees contained in paragraph (1) and  
14       for determining adequacy of sanitation facilities pursuant to  
15       paragraph (2).

16       Nothing in this subsection shall be construed to permit the  
17       construction or siting on a landowner's land of structures or  
18       facilities not otherwise allowable under relevant state and  
19       county laws.

20       [~~(f)~~] (1) For purposes of this section:

21       "Camping" means living or staying outdoors for a period of  
22       time not less than twenty-four hours with the intent to sleep





1 for at least one night in the open air or in a tent, or other  
2 temporary, portable structure, and all related activities  
3 including preparing and eating food and maintaining personal  
4 sanitation.

5 "Clean and sober home" means a house that is operated  
6 pursuant to a program designed to provide a stable environment  
7 of clean and sober living conditions to sustain recovery and  
8 that is shared by unrelated adult persons who:

- 9 (1) Are recovering from substance abuse;  
10 (2) Share household expenses; and  
11 (3) Do not require twenty-four-hour supervision,  
12 rehabilitation, or therapeutic services or care in the  
13 home or on the premises;  
14 provided that the home shall meet all applicable laws, codes,  
15 and rules of the counties and State.

16 "Developmentally disabled person" means a person suffering  
17 from developmental disabilities as defined under section 333F-1.

18 "Disabled person" means a person with a disability as  
19 defined under section 515-2.

20 "Drug rehabilitation home" means:

- 21 (1) A residential treatment facility that provides a  
22 therapeutic residential program for care, diagnosis,



1 treatment, or rehabilitation for socially or  
2 emotionally distressed persons, mentally ill persons,  
3 persons suffering from substance abuse, and  
4 developmentally disabled persons; or

5 (2) A supervised living arrangement that provides mental  
6 health services, substance abuse services, or  
7 supportive services for individuals or families who do  
8 not need the structure of a special treatment facility  
9 and are transitioning to independent living;

10 provided that drug rehabilitation homes shall not include  
11 halfway houses or clean and sober homes.

12 "Elder" means an elder as defined under section 356D-1.

13 "Halfway house" means a group living facility for people  
14 who:

15 (1) Have been released or are under supervised release  
16 from a correctional facility;

17 (2) Have been released from a mental health treatment  
18 facility; or

19 (3) Are receiving substance abuse or sex offender  
20 treatment; and

21 are housed to participate in programs that help them readjust to  
22 living in the community.



1 "Intermediate care facility/mental retardation-community"  
2 means an identifiable unit providing residence and care for  
3 eight or fewer mentally retarded individuals. Its primary  
4 purpose is the provision of health, social, and rehabilitation  
5 services to the mentally retarded through an individually  
6 designed active treatment program for each resident. No person  
7 who is predominantly confined to bed shall be admitted as a  
8 resident of such a facility.

9 "Mental health treatment facility" means a psychiatric  
10 facility or special treatment facility as defined under section  
11 334-1.

12 "Mentally ill person" has the same meaning as defined under  
13 section 334-1.

14 "Totally disabled person" means a "person totally disabled"  
15 as defined under section 235-1.

16 "Treatment program" means a "substance abuse program" or  
17 "treatment program", as those terms are defined under section  
18 353G-2.

19 ~~[(g) Neither this section nor any other law, county~~  
20 ~~ordinance, or rule shall prohibit the use of land for employee~~  
21 ~~housing and community buildings in plantation community~~  
22 ~~subdivisions as defined in section 205 4.5(a)(12); in addition,~~



1 ~~no zoning ordinance shall provide for elimination, amortization,~~  
2 ~~or phasing out of plantation community subdivisions as a~~  
3 ~~nonconforming use.] "~~

4 SECTION 2. Section 205-2, Hawaii Revised Statutes, is  
5 amended as follows:

6 1. By amending subsection (c) to read:

7 (c) Rural districts shall include activities or uses as  
8 characterized by low density residential lots of not more than  
9 one dwelling house per one-half acre, except as provided by  
10 county ordinance pursuant to section ~~[46-4(e),]~~ 46-4(g); in  
11 areas where "city-like" concentration of people, structures,  
12 streets, and urban level of services are absent ~~[.]~~; and where  
13 small farms are intermixed with low density residential lots  
14 ~~[except]~~; provided that within a subdivision, as defined in  
15 section 484-1, the commission for good cause may allow one lot  
16 of less than one-half acre, but not less than 18,500 square  
17 feet, or an equivalent residential density, within a rural  
18 subdivision and permit the construction of one dwelling on such  
19 lot ~~[.]~~; provided further that all other dwellings in the  
20 subdivision shall have a minimum lot size of one-half acre or  
21 21,780 square feet. ~~[Such]~~ A petition for variance may be  
22 processed under the special permit procedure. ~~[These]~~ Rural



1 districts may include contiguous areas which are not suited to  
2 low density residential lots or small farms by reason of  
3 topography, soils, and other related characteristics. Rural  
4 districts shall also include golf courses, golf driving ranges,  
5 and golf-related facilities[-] as well as facilities for camping  
6 as provided in section 46-4(k).

7 2. By amending subsection (d) to read:

8 (d) Agricultural districts shall include:

- 9 (1) Activities or uses as characterized by the cultivation  
10 of crops, crops for bioenergy, orchards, forage, and  
11 forestry;
- 12 (2) Farming activities or uses related to animal husbandry  
13 and game and fish propagation;
- 14 (3) Aquaculture, which means the production of aquatic  
15 plant and animal life within ponds and other bodies of  
16 water;
- 17 (4) Wind generated energy production for public, private,  
18 and commercial use;
- 19 (5) Biofuel production, as described in section  
20 205-4.5(a)(15), for public, private, and commercial  
21 use;



1           (6) Solar energy facilities; provided that this paragraph  
2           shall apply only to land with soil classified by the  
3           land study bureau's detailed land classification as  
4           overall [+] or master[+] productivity rating class D  
5           or E;

6           (7) Bona fide agricultural services and uses that support  
7           the agricultural activities of the fee or leasehold  
8           owner of the property and accessory to any of the  
9           above activities, regardless of whether conducted on  
10          the same premises as the agricultural activities to  
11          which they are accessory[7] including farm dwellings  
12          as defined in section 205-4.5(a)(4), employee housing,  
13          farm buildings, mills, storage facilities, processing  
14          facilities, agricultural-energy facilities as defined  
15          in section 205-4.5(a)(16), vehicle and equipment  
16          storage areas, roadside stands for the sale of  
17          products grown on the premises, and plantation  
18          community subdivisions as defined in section  
19          205-4.5(a)(12);

20          (8) Wind machines and wind farms;

21          (9) Small-scale meteorological, air quality, noise, and  
22          other scientific and environmental data collection and



1 monitoring facilities occupying less than one-half  
2 acre of land; provided that these facilities shall not  
3 be used as or equipped for use as living quarters or  
4 dwellings;

5 (10) Agricultural parks;

6 (11) Agricultural tourism conducted on a working farm[-] or  
7 a farming operation as defined in section 165-2[-] for  
8 the enjoyment, education, or involvement of visitors;  
9 provided that the agricultural tourism activity is  
10 accessory and secondary to the principal agricultural  
11 use and does not interfere with surrounding farm  
12 operations; and provided further that this paragraph  
13 shall apply only to a county that has adopted  
14 ordinances regulating agricultural tourism under  
15 section 205-5; and

16 (12) Open area recreational facilities[-], including  
17 facilities for camping as provided in section 46-4(k).

18 Agricultural districts shall not include golf courses and golf  
19 driving ranges, except as provided in section 205-4.5(d).

20 Agricultural districts include areas that are not used for, or  
21 that are not suited to, agricultural and ancillary activities by  
22 reason of topography, soils, and other related characteristics."



1 SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 2011.

4

INTRODUCED BY:

  
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**Report Title:**

Land Use; Agricultural and Rural Land; Camping

**Description:**

Permits camping under certain conditions on privately-owned agricultural and rural lands.

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

