

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,
KAUA'I COUNTY CODE 1987,
RELATING TO THE COMPREHENSIVE ZONING ORDINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Council of the County of Kaua'i finds that agriculture, from small farms to agribusiness, is an essential industry and activity in the county. It is key to the survival and wellbeing of the people of Kaua'i County. It is also an economic driver for the county and state, a means to diversify the economy, a desired lifestyle for some, and a way to preserve open space and rural character that perpetuate Kaua'i's natural beauty and attractiveness as a visitor destination and a place to live. All of this is affirmed in the Kaua'i General Plan (2000).

The Council also finds that farm labor is an essential component of farming. Without farm workers, crops cannot be planted, tended, harvested, processed or transported to markets. Without farm workers, agriculture is not viable.

Despite the numerous benefits bestowed on the community by the agriculture industry, however, agricultural work is strenuous and historically low paying. People who want to work in agriculture often choose between the satisfaction of working the land and being paid low wages or working a less satisfying job often with wages that enable them to make a decent living for themselves and their family. Finding and keeping labor is thus one of the biggest challenges for agricultural businesses. This can make the difference between survival and failure, struggle and success, in an agricultural enterprise.

An important incentive to attracting and retaining farm workers is free or discounted farm worker housing. State law allows employee housing on lands in the Agricultural District, but existing ordinances in Kaua'i County do not address this issue. This bill amends the current Comprehensive Zoning Ordinance (C.Z.O.) to allow farm worker housing through Use Permit provisions in the Agriculture District. Safeguards are included that ensure that the housing is used for the purpose of housing farm workers and that the housing is properly integrated into the community and meets standards for health and sanitation.

SECTION 2. Section 8-7.3, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-7.3 Uses And Structures That Require A Use Permit.

(a) The following uses and structures in agricultural districts shall require a use permit:

- (1) Animal hospitals
- (2) Cemeteries
- (3) Churches, temples and monasteries
- (4) Commercial recreation
- (5) Construction and worker temporary housing
- (6) Development campgrounds
- (7) Farm worker housing
- ~~[(7)]~~(8) Golf courses
- ~~[(8)]~~(9) Mineral extraction and quarries
- ~~[(9)]~~(10) Pet keeping and raising proposed within five hundred (500) feet of any Residential District
- ~~[(10)]~~(11) Poultry and piggeries when to be located within three thousand (3000) feet of any Use District
- ~~[(11)]~~(12) Private and public utility facilities
- ~~[(12)]~~(13) Schools and day care centers
- ~~[(13)]~~(14) Transportation terminals
- ~~[(14)]~~(15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District.”

SECTION 3. Article 7 of Chapter 8, Kaua‘i County Code, 1987, as amended, is hereby amended by adding a new section to read as follows:

“Sec. 8-7.9 Special Standards For Issuance of Farm Worker Housing Use Permits.

(a) For the purposes of this Section, the following definitions shall apply:

“Commercial Farm” means an operation or enterprise in operation for at least one year whose owner has filed a Schedule F form with federal income tax filings with the Internal Revenue Service. The core function of the commercial farm shall be:

(1) the commercial cultivation of fruits, vegetables, flowers, foliage, crops for bioenergy and forage (but excluding timber and turf farms); or

(2) the raising of livestock, including but not limited to, meat and dairy cattle, pigs, goats, sheep, poultry, bees, fish, or other animal or aquatic life that are propagated for commercial purposes (but excluding the husbandry of horses for recreational or hobby purposes unless the farm complies with the guidelines set forth in §RP-2-3(a)(1) of the County of Kaua‘i’s Department of Finance Real Property Tax Division’s Agricultural Dedication Program Rules as of April, 2010).

“Exclusive residence” means the real property that is the person’s only home or residence. If the person has more than one home or residence, then the person does not have an exclusive residence.

“Farm worker” is a farm owner, employee, contract worker or unpaid intern in a program that qualifies under the Fair Labor Standards Act who works no less than nineteen (19) hours per week in farm-related operations on a commercial farm. For the purposes of farm worker housing, a commercial farm owner may qualify as a farm worker only when he can demonstrate that the proposed farm worker housing will be the farm owner’s exclusive residence, that the affected lot has been subject to a condominium property regime (C.P.R.), and that his respective C.P.R. unit does not qualify for any allowable residential density.

“Farm worker housing” means the use of a building or portion thereof designed and used exclusively for the housing of farm workers who actively and currently farm on the land upon which the housing is situated. Farm worker housing may also be used to house the immediate family members of the respective farm worker.

(b) The Director shall not deem an application for a farm worker housing use permit complete unless the applicant can demonstrate that:

(1) the commercial farm has generated at least thirty five thousand dollars (\$35,000.00) of gross sales of agricultural product(s) per year, for the preceding (2) two consecutive years for each farm worker housing structure, as shown by State general excise tax forms and Internal Revenue Service Schedule F forms;

(2) the owner has dedicated the property upon which the farm worker housing will be located (hereinafter the “subject property”) to agricultural use pursuant to Section 5A-9.1 of the Kaua’i County Code; and

(3) the owner or lessee of the subject property upon which the farm worker housing is being proposed has provided a commercial farm plan with staffing needs outlined to the Planning Department that demonstrates the feasibility of the respective farm’s commercial agricultural production.

(c) The owner of a condominium property regime or unit in a condominium property regime may not apply for farm worker housing unless, as of the effective date of this ordinance:

(1) the condominium property regime has been registered with and received an effective date for the final public report from the Real Estate Commission of the State of Hawai'i and

(2) the unit has been dedicated to agricultural use pursuant to Section 5A-9.1 of the Kaua'i County Code.

(d) No use permit for farm worker housing shall be approved unless:

(1) The application meets the use permit standards established under Section 8-20.5 of the Kaua'i County Code;

(2) The Planning Commission finds that based upon the type of agricultural activity, size of the commercial farm, and farming methodologies, the applicant has demonstrated a clear and compelling need for farm worker housing and the number and size of structures applied for; and

(3) The subject property's maximum residential densities, as established in Section 8-7.5, have been permitted and constructed. If the applicant can demonstrate that the subject property is a unit in a condominium property regime (C.P.R.), and that the maximum allowable residential density for the applicant's respective C.P.R. unit has been permitted and constructed, the Planning Commission may waive the requirements of this provision.

(e) In addition to conditions of approval that the Planning Commission may impose pursuant to Section 8-20.5(b), a use permit for farm worker housing shall be subject to the following conditions:

(1) The farm worker housing shall be used exclusively for the housing of farm workers and their immediate family;

(2) A maximum of three (3) farm worker housing structures may be built on the property that is the subject of the permit. The total floor area of all structures combined shall be limited to 1,800 square feet and no structure may exceed 1,200 square feet of floor area. For the purposes of farm worker housing, the total floor area shall mean the sum of the horizontal areas of each floor of a building, measured from the interior faces of the exterior walls. The total floor area shall include enclosed attached accessory structures such as garages or storage areas, but it shall exclude unenclosed attached structures such as breezeways, lanais, or porches;

(3) The structures shall have post and pier foundations. No concrete slabs shall be used in constructing the farm worker housing;

(4) The structures shall be located on a plot plan approved by the Planning Commission; and

(5) The owner or lessee of the property shall not charge the farm workers or their immediate family members for rent or electricity.

(f) The land upon which the farm worker housing is located shall not be subdivided to create separate lots for the farm worker housing and the commercial farm. A farm worker housing use permit shall be subject to revocation if the farm worker housing and the commercial farm are designated as limited common elements of separate condominium units.

(g) The owner of farm worker housing shall annually certify to the Director of Planning that the Farm Worker Housing meets requirements and conditions set forth in Sections 8-7.9 (a) through (f). If any interest in the property that is the subject of the use permit is transferred, conveyed or sold, the successor in interest shall immediately notify the Director of Planning of such change in ownership.

(h) Prior to the issuance of the building permit, the applicant shall demonstrate to the satisfaction of the Planning Director that the applicant has recorded in the Bureau of Conveyances or the Land Court, as the case may be, the requirements and conditions set forth in Sections 8-7.9 (a) through (g) respectively.”

SECTION 4. 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 application 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 5. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revision, compiling, or printing this ordinance for inclusion in the Kaua'i County Code 1987, the brackets, bracketed material, and underscoring shall not be included.

SECTION 6. This ordinance shall take effect upon its approval.

Introduced by: /s/ JAY FURFARO
(By Request)

Date of Introduction:

June 3, 2009

Lihu'e, Kaua'i, Hawai'i

(V:\CS OFFICE FILES\BILLS\2010\Bill No. 2318, Draft 3.doc)

