

**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 8-1.5, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-1.5 Definitions.

When used in this Chapter, the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

"Accessory Building" or "Structure" means a building or structure which is subordinate to, and the use of which is incidental to that of the main building, structure or use on the same lot or parcel.

"Accessory Use" means a use customarily incidental, appropriate and subordinate to the main use of the parcel or building.

"Adult Family Boarding Home" means any family home providing for a fee, twenty-four (24) hour living accommodations to no more than five (5) adults unrelated to the family, who are in need of minimal 'protective' oversight care in their daily living activities. These facilities are licensed by the Department of Health, State of Hawai'i under the provisions of sections 17-883-74 to 17-883-91.

"Adult Family Group Living Home" means any family home providing twenty-four (24) hour living accommodations for a fee to five (5) to eight (8) elderly, handicapped, developmentally disabled or totally disabled adults, unrelated to the family, who are in need of long-term minimal assistance and supervision in the adult's daily living activities, health care, and behavior management. These facilities are licensed by the Department of Health, State of Hawai'i, under the provisions of sections 17-883-74 to 17-883-91.

"Agriculture" means the breeding, planting, nourishing, caring for, gathering and processing of any animal or plant organism for the purpose of nourishing people or any other plant or animal organism; or for the purpose of providing the raw material for non-food products. For the purposes of this Chapter, Agriculture shall include the growing of flowers and other ornamental crops and the commercial breeding and caring for animals as pets.

"Alley" means a public or permanent private way less than fifteen (15) feet wide for the use of pedestrians or vehicles which has been permanently reserved and which affords, or is designed or intended to afford the secondary means of access to abutting property.

"Animal Hospital" means an establishment for the care and treatment of small animals, including household pets.

"Apartment" See Dwelling, Multiple Family.

"Apartment-Hotel" means a building or portion thereof used as a hotel as defined in this Section and containing the combination of individual guest rooms or suite of rooms with apartments or dwelling units.

"Applicant" means any person having a controlling interest (75% or more of the equitable and legal title) of a lot; any person leasing the land of another under a recorded lease having a stated term of not less than five (5) years; or any person who has full authorization of another having the controlling interest or recorded lease for a stated term of not less than five (5) years.

"Aquaculture" means the growing and harvesting of plant or animal organisms in a natural or artificial aquatic situation which requires a body of water such as a pond, river, lake, estuary or ocean.

"Base Flood" means the flood, from whatever source, having a one percent (1.0%) chance of being equaled or exceeded in any given year, otherwise commonly referred to as the 100-year flood.

"Base Flood Elevation" means the water surface elevation of the base flood.

"Building" means a roofed structure, built for the support, shelter or enclosure of persons, animals, chattels or property of any kind. The word "building" includes the word "structure".

"Cemetery" means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, mausoleums, mortuaries and crematoriums, provided the crematorium has the approval of the Department of Health, Planning Commission and Council when operated in conjunction with and within the boundary of the cemetery.

"Center Line" See "Street Center Line".

"Church" means a building designed for or used principally for religious worship or religious services.

"Coastal High Hazard Area" means the area subject to high velocity waters, including but not limited to coastal and tidal inundation or tsunamis. The area is designated on a FIRM as Zone VE.

"Commercial Use" means the purchase, sale or other transaction involving the handling or disposition (other than that included in the term "industry" as defined in this Section) of any article, substance or commodity for profit or a livelihood, including in addition, public garages, office buildings, offices of doctors and other professionals, public stables, recreational and amusement enterprises conducted for profit, shops for the sale of personal services, places where

commodities or services are sold or are offered for sale, either by direct handling of merchandise or by agreements to furnish them but not including dumps and junk yards.

"Compatible Use" means a use that, because of its manner of operation and characteristics, is or would be in harmony with uses on abutting properties in the same zoning district. In judging compatibility the following shall be considered: intensity of occupancy as measured by dwelling units per acre, pedestrian or vehicular traffic generated, volume of goods handled, and other factors such as, but not limited to: vibration noise level, smoke, odor or dust produced or light or radiation emitted.

"Conforming" means in compliance with the regulations of the pertinent district.

"Construction, Commencement of" means the actual placing of construction materials in their permanent position, fastened in a permanent manner.

"Contiguous Lots or Parcels in Common Ownership" means more than one (1) adjoining lot or parcel each of which is owned in full or part by the same person, or his representative.

"County Engineer" means the County Engineer of the Department of Public Works of the County of Kaua'i.

"Cultivation" means the disturbance by mechanical means of the surface soil to a depth less than two (2) feet where the original grade and shape of the land is not substantially altered, for the purpose of planting and growing plants.

"Day Care Center" means any facility which complies with the State of Hawai'i licensing requirements where seven or more children under the age of 18 are cared for without overnight accommodations at any location other than their normal place of residence. This term includes child care services and other similar uses and facilities consistent with this definition, and not covered by the "Family Child Care Home" definition.

"Day Use Areas" means land, premises and facilities, designed to be used by members of the public, for a fee or otherwise, for outdoor recreation purposes on a daily basis. Day use areas include uses and facilities such as parks, playgrounds, picnic sites, tennis courts, beaches, marinas, athletic fields, and golf courses.

"Density" means the number of dwelling units allowed on a particular unit of land area.

"Developed Campgrounds" means land or premises designed to be used, let or rented for temporary occupancy by campers traveling by automobile or otherwise and which contain such facilities as tent sites, bathrooms or other sanitary facilities, piped water installations, and parking areas, but not including mobile home parks. Developed campgrounds may include facilities for the temporary placement of camp trailers and camping vehicles which are utilized for non-permanent residential uses at no more than six (6) vehicles per acre.

"Distance, Measurement of" means unless otherwise specified, all distances other than height shall be measured in a horizontal plane. Height shall be measured vertically.

"Diversified Agriculture" means the growing and harvesting of plant crops for human consumption which does not involve a long-range commitment to one (1) crop. Diversified Agriculture includes truck gardening and the production of fresh vegetables, and minor fruit or root crops such as guava or taro.

"Division of Land" means the division of any lot or parcel or portion thereof into two (2) or more lots, plots, sites or parcels for the purpose, whether immediate or future, of sale, transfer, lease, or building development. It includes subdivisions and resubdivision and other divisions of land and may relate to the process of dividing land or to the land or territory divided.

"Dry Cleaning" means the process of removing dirt, grease, paints and other stains from wearing apparel, textile fabrics, rugs and other material by the use of nonaqueous liquid solvents, flammable or nonflammable, and it may include the process of dyeing clothes or other fabrics or textiles in a solution of dye colors and nonaqueous liquid solvents.

"Dump" means a place used for the discarding, disposal, abandonment, or dumping of waste materials.

"Dwelling" means a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency such as living, sleeping, cooking, eating and sanitation.

"Dwelling, Multiple Family" means a building or portion thereof consisting of two (2) or more dwelling units and designed for occupancy by two (2) or more families living independently of each other, where any one (1) of the constructed units is structurally dependent on any other unit.

"Dwelling, Single Family Attached" means a building consisting of two (2) or more dwelling units designed for occupancy by two (2) or more families living independently of each other where each unit is structurally independent although superficially attached or close enough to appear attached.

"Dwelling, Single Family Detached" means a building consisting of only one (1) dwelling unit designed for or occupied exclusively by one (1) family.

"Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone and providing complete living facilities, within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

Any building or portion thereof that contains more than one (1) kitchen shall constitute as many dwelling units as there are kitchens.

"Easement" means an acquired privilege or right of use or enjoyment which an individual, firm, corporation, person, unit of government, or group of individuals has in the land of another.

"Existing grade" means the existing grade or elevation of the ground surface which exists or existed prior to manmade alterations such as grading, grubbing, filling or excavating.

"Factory Built Housing" means any structure or portion thereof which is: designed for use as a building or dwelling; prefabricated or assembled at a place other than the building site; and capable of complying with the standards and requirements contained in Section 12-4.4 of Chapter 12, Building Code.

"Family" means an individual or group of two (2) or more persons related by blood, adoption or marriage living together in a single housekeeping unit as a dwelling unit. For purposes of this Chapter, family shall also include a group of not more than five (5) individuals unrelated by blood, adoption or marriage.

"Family Care Home" means any care home occupied by not more than five (5) care home residents. These facilities are licensed by the Department of Health, State of Hawai'i, under the provisions of sections 17-883-74 to 17-883-91.

"Family Child Care Home" means providing child care services and other similar uses consistent with this definition where six or fewer children under the age of 18 are cared for in a private dwelling unit without overnight accommodations at any location other than the children's normal place of residence and which complies with State of Hawai'i licensing requirements.

"Farm" means an operation or enterprise in operation for at least one year, the core function of which is the commercial cultivation of crops, including but not limited to crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber or the raising of livestock, including but not limited to poultry, bees, fish, or other

animal or aquatic life that are propagated for commercial purposes as evidenced by the annual filing of a Schedule F form with federal income tax filings by the owner or lessee.

“Farm worker” is an employee or intern who works no less than nineteen (19) hours per week in farm-related operations on a farm.

“Farm worker housing” means housing over and above the residential density allowed in the Agriculture District, as established in Section 8-7.5, which meets the following criteria:

(a) Is accessory to a farm that has generated at least \$35,000 of gross sales of agricultural product(s) per year, for the preceding (2) two consecutive years, for each farm worker housing unit on the lot, as shown by State general excise tax forms and Federal Schedule F forms.

(b) The owner or lessee of the respective lot on which the farm worker housing is being proposed shall provide a farm plan to the Planning Department that demonstrates the feasibility of the respective farm’s commercial agricultural production.

(c) Is used exclusively for the housing of farm workers and their immediate family.

(d) For a family – the living space does not exceed 1200 square feet in area

(e) For a single person – the unit does not exceed 650 square feet in area

(f) If the farm ceases operation or fails to meet the definition of a farm, the owner shall remove all farm worker housing from the subject parcel within four (4) months of the triggering event (the cessation of a farm or failure to meet the definition). If the farm worker housing is attached to a primary dwelling unit that is part of the density allowed on the subject property, only the additional kitchen shall be removed, and not the additional structure itself. At the time the owner is allowed another kitchen to create a farm worker housing unit, the owner shall sign a unilateral agreement giving the Planning Department the right to make two (2) unannounced inspections per year by the Planning Department for the purpose of ascertaining compliance in the case where the farm worker housing must be removed. Said agreement shall be recorded in the Bureau of Conveyances or the Land Court, as the case may be. Nothing in the agreement shall prevent the Planning Department from making as many properly executed announced inspections as may be necessary for the enforcement of other planning laws.

(g) Said housing shall be located on the subject parcel where the farming is occurring and the owner shall not, subsequent to obtaining the required zoning permits for the farm worker housing, subdivide said housing from the farm nor form any condominium property regime around said housing.

(h) Said housing may be portable and or temporary, but in all cases shall meet all health, safety and Occupational Safety and Health Administration (O.S.H.A.) requirements.

(i) A property shall be eligible for farm worker housing only when all of the subject property's respective maximum permitted residential densities, as established in Section 8-7.5, have been permitted and constructed.

(j) The owner of farm worker housing shall annually certify to the Director of Planning that the Farm Worker Housing meets the conditions of subsection a through i above and shall give written consent to the Planning Department for an annual announced inspection by the department

(k) 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 above conditions, explicitly stating that the use permit does not run with the land but is personal to the specific applicant, and that any subsequent owner must secure a separate use permit for farm worker housing.

"Finished grade" means the final elevation of the ground surface after manmade alterations such as grading, grubbing, filling or excavating have been made on the ground surface.

"Flag Lots" means a lot or parcel bounded by at least six (6) sides and describing two (2) distinct but contiguous areas, one (1) of which is the primary development area used to determine lot area, width and proportion, and the other of which is an appendage normally used as access from a street to the primary development area. The primary development area is referred to as the "flag" portion of the lot, and the appendage is referred to as the "pole" portion of the lot.

"Flammable Liquid" means any liquid having a flash point below two hundred degrees Fahrenheit (200 degrees F.) and having a vapor pressure not exceeding forty (40) pounds per square inch (absolute) at one hundred degrees Fahrenheit (100 degrees F.).

"Flood Fringe Area" means the portion of the flood plain outside the floodway, designated as AE, AO, and AH Zones on the FIRM.

"Flood Insurance Rate Map" means the official map on which the Federal Insurance Administration has delineated the areas of special flood hazards, the risk premium zones applicable, base flood elevations, and floodways.

"Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, and the water surface elevation of the base flood.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Forestry" means the growing or harvesting of trees for timber or wood fibre purposes.

"Frontage" means that portion of a parcel of property which abuts on a road, street, or highway.

"Front, Building" means the side of a building or structure nearest the street on which the building fronts, or the side intended for access from public area. In cases where this definition is not applicable, the Planning Director shall make the determination.

"Garage" means a building or structure or a portion thereof in which a motor vehicle is stored, housed, kept, repaired or serviced.

"Garage, Automobile Repair" means a garage wherein major repairs are made to motor vehicles or in which any major repairs are made to motor vehicles other than those normally used by the occupants of the parcel on which the garage is located.

"Garage, Automobile Storage" means any garage used exclusively for the storage of vehicles.

"General Flood Plain Area" means the area consisting of the approximate flood plain area as delineated on the flood maps, where detailed engineering studies have not been conducted by the Federal Insurance Administration to delineate the flood fringe and floodway and identified as A, X, and D Zones on the FIRM.

"Grade" with reference to a street or land surface, means the gradient, the rate of incline or decline expressed as a percent.

"Grazing" means the production or use of vegetative land cover for the pasturing of animals.

"Ground Level" means with reference to a building, the average elevation of the finished ground levels adjoining the walls of a building.

"Guest House" means a building used for dwelling purposes by guests with a floor area of no more than five hundred (500) square feet that contains no kitchen and is located on a parcel of at least nine thousand (9,000) square feet that contains one (1) or more dwelling units.

"Height-Building". See appropriate Chapter provisions.

"Height, Fence or Screen" means the vertical distance measured from the ground level to the top of the fence. For the purpose of applying height regulations, the average height of the fence along any unbroken run may be used provided the height at any point is not more than ten percent (10%) greater than that normally permitted.

"Height, Wall" means the vertical distance to the wall plate measured from the ground level at the bottom of the wall.

"Historic Resource" means any property, area, place, district, building, structure, site, neighborhood, scenic viewplane or other object having special historical, cultural, architectural or aesthetic value to the County of Kaua'i.

"Home Business" means any use customarily conducted entirely within a dwelling and carried on solely by the inhabitants thereof, in connection with which there are: no display from the outside of the building; no mechanical equipment used except as is normally used for domestic or household purposes; and no selling of any commodity on the premises; which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. The office, studio, or occupational room of an architect, artist, engineer, lawyer or other similar professional person; a family child care home; business conducted entirely by phone or by mail (not involving frequent bulk shipments); and an office for "homework" of a person in business elsewhere; all shall be permitted as home businesses except that no activity involving, encouraging, or depending upon frequent visits by the public and no shop or clinic of any type shall be deemed to be a home business.

"Horizontal Property Regime" means the forms of development defined in the Horizontal Property Act, Chapter 514A, H.R.S.

"Hospital" means any building or portion thereof to which persons may be admitted for overnight stay or longer and which is used for diagnosis, care or treatment of human illness or infirmity or which provides care during and after pregnancy.

"Hotel" means any building containing six (6) or more rooms intended or designed to be used, or which are used, rented or hired out to be occupied for sleeping purposes by guests when the rooms are open to the occupancy by the general public on a commercial basis whether the establishment is called a hotel, resort hotel, inn, lodge or otherwise which rooms do not constitute dwelling units.

"HPR Commission" means the Historic Preservation Review Commission.

"Indoor Amusement, Commercial" means buildings and structures designed to be used by members of the public that contain amusement facilities such as movie theaters, bowling alleys, pool halls and skating rinks.

"Industry" means the manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity, or any other treatment thereof in a manner so as to change the form, character or appearance thereof, and storage other than that accessory to a nonmanufacturing use on the same parcel including storage elevators, truck storage yards, warehouses, wholesale storage and other similar types of enterprises.

"Intensive Agriculture" means the growing and harvesting of plant crops for human consumption or animal feeds primarily for sale to others and involving the long-range commitment to one crop such as sugar, pineapple, sorghum, or grain.

"Junk" means any worn-out, cast-off, or discarded article or material which is ready for destruction or has been collected or stored for salvage or conversion to some use; any article or material which, unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new shall not be considered junk.

"Junk Yard" means any open space in excess of two hundred (200) square feet, used for the breaking up, dismantling, sorting, storage or distribution of any scrap, waste material or junk.

"Kitchen" means any room used or intended or designed to be used for cooking and preparing food.

"Land Coverage" means a man-made structure, improvement or covering that prevents normal precipitation from directly reaching the surface of the land underlying the structure, improvement or covering. Structures, improvements and covering include roofs, surfaces that are paved with asphalt, stone, or the like such as roads, streets, sidewalks, driveways, parking lots, tennis courts, patios, and lands so used that the soil will be compacted so as to prevent substantial infiltration, such as parking of cars and heavy and repeated pedestrian traffic.

"Landscaping" means the modification of the landscape for an aesthetic or functional purpose. It includes the preservation of existing vegetation and the continued maintenance thereof together with grading and installation of minor structures and appurtenances.

"Land Use" and "Use of Land" includes "building use" and "use of building".

"Livestock" means domestic animals of types customarily raised or kept on farms for profit or other productive purposes.

"Loft" means the floor placed between the roof and the floor of the uppermost story within a single family detached dwelling, the floor area of which is not more than one-third (1/3) the floor area of the story or room in which it is placed.

"Lot" means a portion of land shown as a unit on an approved and recorded Subdivision Map.

"Lot Area" means the total of the area, measured in a horizontal plane, within the lot boundary lines.

"Lot Coverage". See "Land Coverage".

"Lot Length" means the horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.

"Lot Width" means the average horizontal distance between the side lot lines measured at right angles to the line followed in measuring the lot depth.

"Manager" means the Manager and Chief Engineer of the Water Department of the County of Kaua'i .

"Mineral Extraction" means any excavation or removal of natural materials not related to or not occasioned by an impending development of the site of the excavation.

"Motel" means a group of attached or detached buildings containing rooms, designed for or used temporarily by automobile tourists or transients, with garages attached or parking space conveniently located to each unit, including auto court, tourist court or motor lodge, or otherwise, which rooms do not constitute dwelling units.

"Non-conforming Building and Structure" means a building or portion thereof lawfully existing at the time of the adoption of this Zoning Ordinance or as a result of any subsequent amendment and which does not comply with the regulations of the zoning district in which it is located.

"Non-conforming Use" means a lawful use of a building or land existing at the time of the adoption of this Ordinance or as a result of any subsequent amendment, and which does not comply with the regulations for the zoning district in which it is located.

"Nursery" means the growing, collecting or storing of plants for the purpose of selling to others for transplanting.

"Nursing Home" means a facility established for profit or nonprofit, which provides nursing care and related medical services on a twenty-four (24) hour per day basis to two (2) or more individuals because of illness, disease, or physical or mental infirmity. It provides care for those persons not in need of hospital care.

"Open Space" means the portion or portions of a parcel unoccupied or unobstructed by buildings, paving or structures from the ground upward.

"Orchards" means the establishment, care and harvesting of over twenty-five (25) fruit bearing trees such as persimmon, guava, banana or papaya for the purpose of selling the fruit to others.

"Organized Recreation Camps" means land or premises containing structures designed to be used for organized camping. The structures include bunk houses, tent platforms, mess halls and cooking facilities, and playfields. Examples include Boy Scout Camps and summer camps.

"Outdoor-Amusement, Commercial" means land or premises designed to be used by members of the public, for a fee, that contain outdoor amusement facilities such as miniature golf courses, merry-go-rounds, car race tracks, and outdoor motion picture theaters.

"Outdoor Recreation" means uses and facilities pertaining primarily to recreation activities that are carried on primarily outside of structures.

"Outdoor Recreation Concession" means uses and facilities ancillary to outdoor recreation uses, such as gasoline pumps at piers and marinas, and boat rental and food and beverage facilities at public beaches.

"Owner" means the holders of at least seventy-five percent (75%) of the equitable and legal title of a lot.

"Parcel" means an area of contiguous land owned by a person.

"Parking Area, Public" means an open area, other than street or alley, used for the parking of automobiles and available for public use whether free, for compensation, or as an accommodation for clients or customers.

"Parking Space, Automobile" means an area other than a street or alley reserved for the parking of one (1) automobile. The space shall be afforded adequate ingress and egress.

"Pet Keeping" means the feeding or sheltering of more than two (2) animals or four (4) birds as a service to others.

"Pet Raising" means the breeding, feeding or sheltering of more than two (2) animals not normally used for human consumption for the purpose of sale to others.

"Piggery" means any parcel where ten (10) or more weaned hogs are maintained.

"Planning Commission" means the Planning Commission of the County of Kaua'i.

"Planning Director" means the Director of the Planning Department of the County of Kaua'i.

"Poultry Raising" means the breeding, feeding, sheltering or gathering of more than four (4) game or domestic fowl for the purpose of sale, food or egg production, or pets.

"Private Recreation Areas" means lands or premises designed to be used exclusively by owners and renters of dwelling units, that contain such facilities as tennis courts, playfields, swimming pools, clubhouses, bathing beaches, and piers.

"Project; Project Instrument". "Project" means property that is subject to project instruments, including but not limited to condominiums and cooperative housing corporations. "Project instrument" means one or more documents, including any amendments to the documents, by whatever name denominated, containing restrictions or covenants regulating the use or occupancy of a project.

"Property Line" means any property line bounding a lot as defined in this Section.

"Property Line, Front" means the line separating the lot from the street or other public areas. In case a lot abuts on more than one (1) street, the lot owner may elect any street lot line as the front line provided that the choice, in the discretion of the Planning Director, will not be injurious to adjacent properties and will comply with any other reasonable determination of the Planning Director. Where a lot does not abut on a street or where access is by means of an access way, the lot line nearest to and most nearly parallel to the street line is the front lot line. In cases where this definition is not applicable, the Planning Director shall designate the front lot line.

"Property Line, Rear" means that line of a lot which is opposite and most distant from the front line of the lot. In cases where this definition is not applicable the Planning Director shall designate the rear lot line.

"Property Line, Side" means any lot boundary not a front or rear lot line.

"Public Facility" means a facility owned or controlled by a governmental agency.

"Public Utility" has the meaning defined in Section 269-1, H.R.S.

"Rear, Building" means the side of the building or structure opposite the front. In cases where this definition is not applicable, the Planning Director shall make the determination.

"Recreation Vehicle Park" means a parcel of land under one (1) ownership which has been planned and improved and which is let or rented or used for the temporary placement of camp trailers and camping vehicles which are utilized for non-permanent residential use.

"Recreational Trailer" means a portable structure, used or designed for human habitation or occupancy and built on a chassis with wheels, which is capable of being licensed as a motor vehicle, a vehicle or a trailer pursuant to Hawai'i Revised Statutes Chapter 249 and transported on a highway, but which is unable, due to its size, design, construction or other attributes, to comply with the minimum standards and requirements applicable to dwellings or buildings, or portions thereof, contained in Section 12-4.4 of Chapter 12, Building Code.

"Religious Facilities" means buildings, other structures, and land designed to be used for purposes of worship.

"Repair" (as applied to Structures) means the renewal or treatment of any part of an existing structure for the purpose of its maintenance. The word "repairs" shall not apply to any change of construction such as alterations of floors, roofs, walls or the supporting structure of a building or the rearrangement of any of its component parts.

"Residential Care Home" means any care home facility occupied by more than five (5) care home residents.

"Resource Management" means uses and facilities pertaining to forest products, minerals and other natural resources.

"Retail Stores or Shops" means an establishment primarily engaged in selling goods, wares or merchandise directly to the ultimate consumer.

"School" means an institution with an organized curriculum offering instruction to children in the grade range kindergarten through twelve (12), or any portion thereof.

"Setback Line" means a line parallel to any property line and at a distance from there equal to the required minimum dimension from that property line, and extending the full length of the property line.

"Slope" means a natural or artificial incline, as a hillside or terrace. Slope is usually expressed as a ratio or percent.

"Specialized Agriculture" means the growing, collection or storing of any plant for ornamental or non-food use such as flowers and pot plants.

"Stock Raising" means the breeding, feeding, grazing, herding or sheltering of more than one (1) animal such as cattle, sheep, pigs, goats, and horses, for any purpose.

"Story" means the space in a building between the upper surface of any floor and the upper surface of the floor next above, and if there be no floor above, then the space between the upper surface of the topmost floor and the ceiling or roof above. No story shall be more than twelve (12) feet high measured from the floor level to the wall plate line.

"Street Center Line" means the center line of a street as established by official surveys or a recorded subdivision map. If not so established, the center line is midway between the right-of-way lines bounding the street.

"Street or Highway" means a way or place of whatever nature, open to the public for purposes of vehicular travel.

"Street Right-of-Way Line" means the boundary line right-of-way or easement and abutting property.

"Structural Alteration" means any change in the supporting members of a building, such as in a bearing wall, column, beam or girder, floor or ceiling joist, roof rafters, roof diaphragms, foundations, piles or retaining walls or similar components or changes in roof or exterior lines.

"Structure" means anything constructed or erected which requires location on the ground or which is attached to something having location on the ground, excluding vehicles designed and used only for the transportation of people or goods, and excluding utility poles and towers constructed by a public utility.

"Subdivider" means a person commencing proceedings to effect a division of land for himself or for another.

"Subdivision" means the division of land or the consolidation and resubdivision into two (2) or more lots or parcels for the purpose of transfer, sale, lease, or building development, and when appropriate to the context shall relate to the process of dividing land for any purpose. The term also includes a building or group of buildings, other than hotel, containing or divided into two (2) or more dwelling units or lodging units.

"Thoroughfare" means a highway or street.

"Time Share Plan" means any plan or program in which the use, occupancy, or possession of one or more time share units circulates among various persons for less than a sixty (60) day period in any year, for any occupant. The term "time share plan" shall include both time share ownership plans and time share use plans, as follows:

(a) "Time share ownership plan" means any arrangement whether by tenancy in common, sale, deed, or other means whereby the purchaser receives an ownership interest and the right to use the property for a specific or discernible period by temporal division.

(b) "Time share use plan" means any arrangement, excluding normal hotel operations, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, in a time share unit for a specific or discernible period by temporal division, but does not receive an owner- ship interest.

"Time Share Unit" means the actual and promised accommodations, and related facilities, which are the subject of a time share plan.

"Trailer Home" means factory built housing which is capable of being licensed as a vehicle or trailer pursuant to Hawai'i Revised Statutes Chapter 249 and transported upon a highway.

"Transient Vacation Rentals" means rentals in a multi-unit building for visitors over the course of one (1) or more years, with the duration of occupancy less than thirty (30) days for the transient occupant.

"Undeveloped Campground" means land or premises designed to be used for temporary occupancy by campers traveling by foot or horse which may contain facilities and fireplaces, but do not contain facilities as are provided at developed campgrounds.

"Use" means the purpose for which land or building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

"Used" includes "designed, intended or arranged to be used".

"Use, Existing" means a lawful use of land existing on August 17, 1972.

"Use Permit" means a permit issued under the definite procedure provided in this Chapter allowing a certain use which is conditionally permitted for the particular district.

"Utility Facility" means a use or structure used directly in distribution or transmission of utility services.

"Utility Line" means the conduit, wire or pipe employed to conduct water, gas, electricity or other commodity from the source tank or facility for reduction of pressure or voltage or any other installation, employed to facilitate distribution.

"Wall" means any structure or device forming a physical barrier, which is so constructed that fifty percent (50%) or more of the vertical surface is closed and prevents or tends to prevent the passage of light, air and vision through the surface in a horizontal plane. (This includes structures of concrete, concrete block, wood or other materials that are solids and are so assembled as to form a solid barrier, provided carport posts, columns and other similar structures not constructed of fifty percent (50%) or more of the vertical surface shall be deemed walls.)"

SECTION 3. 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 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 revising, compiling, or printing this ordinance for inclusion in the Kaua'i County Code 1987, the brackets, bracketed material, and underscoring shall not be included.

Introduced by:

JAY FURFARO
(By Request)

Date of Introduction:

Līhu'e, Kaua'i, Hawai'i