

DRAFT

(March 10, 2010)
FLOOR AMENDMENT
Bill No. 2318, Relating to Farm Worker Housing

INTRODUCED BY: Tim Bynum (by request)

Amend the definitions of "Farm worker" and "Farm worker housing" in Bill No. 2318 to read as follows:

"Farm worker" is a farm owner, employee, contract worker or intern who works no less than nineteen (19) hours per week in farm-related operations on a farm. For the purposes of farm worker housing, a farm owner can qualify as a farm worker only when he can demonstrate 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 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.]

'Farm worker housing' means [housing that is accessory to a farm, over and above the residential density allowed in the Agriculture District, as established in Section 8-7.5, for which a Use Permit is obtained pursuant to Section 8-7.9] the use of a building or portion thereof designed and used exclusively for the housing of farm workers and their immediate families who actively and currently farm on the land upon which the housing is situated."

Amend Bill No. 2318, by adding a new Section to read as follows:

"SECTION 4. 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) The Director shall not accept and an application for a farm worker housing use permit shall not be deemed complete unless the applicant can demonstrate that:

(i) the 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;

(ii) the owner has, as of the effective date of this ordinance, dedicated the property upon which the farm worker housing will be located to agricultural use pursuant to Section 5A-9.1 of the Kaua'i County Code; and

(iv) at least one of the following conditions are met:

(1) The owner or lessee of the respective property on which the farm worker housing is being proposed has provided a farm plan to the Planning Department that demonstrates the feasibility of the respective farm's commercial agricultural production, or

(2) The farm is entitled to Agricultural Rates provided by the Department of Water.

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

(1) The application meets the use permit standards established under Section 8-20 of the Kaua'i County Code; and

(2) The Planning Commission finds that based upon the type of agricultural activity, size of 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.

(c) 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;

(5) If the farm worker housing is attached to a primary dwelling unit that is part of the density allowed on the subject property and the use permit for farm worker housing is revoked, only the additional kitchen and plumbing shall be removed, and not the additional structure itself. If the owner is allowed another kitchen to create a farm worker housing unit attached to the primary dwelling, the owner shall sign a unilateral agreement giving the Planning Department the right to make two (2) unannounced inspections of the property per year. The inspections shall be conducted between the hours of 9:00 a.m and 5:00 p.m. The Planning Department may conduct additional inspections in discharging its duties under the Kaua'i County Code; and

(6) The owner or lessee of the property shall not charge the farm workers or their families for rent or electricity.

(c) The property that has been dedicated to agricultural use pursuant to Section 5A-9.1 of the Kaua'i County Code shall only be eligible for farm worker housing when the maximum permitted residential densities, as established in Section 8-7.5, have been permitted and constructed on the lot or parcel upon which the property is located. If the applicant can demonstrate that the property has been subject to a condominium property regime (C.P.R.), and that the maximum allowable residential density for the respective C.P.R. unit has been permitted and constructed, the Planning Commission may waive the requirements of this provision.

(d) 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 farm.

(e) 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) and (b) above and shall give written consent to the Planning Department for an annual announced inspection by the department.

(f) 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) and (b) respectively, 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.

SECTION [4.] 5. 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.] 6. 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.”

(Material to be deleted is bracketed. New material is underscored.)

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