LUO AMENDMENT 2015 – A COUNCIL-INITIATED PROPOSAL RELATING TO ADUs

Staff Report

I. Background

On November 20, 2014, the City Council adopted Resolution No. 14-200, initiating amendments to the Land Use Ordinance (LUO) relating to accessory dwelling units (ADUs). The proposed ordinance states that "the purpose of this ordinance is to amend the provisions of the Land Use Ordinance, Revised Ordinances of Honolulu 1990, Chapter 21, relating to Ohana dwellings to encourage the creation of affordable housing and to accommodate a variety of housing arrangements." With this goal in mind, the Council is proposing an LUO amendment. The proposal would amend the Ohana dwellings' provisions of the LUO and add a new definition for ADUs.

In the Resolution No. 14-200 (copy attached), the Council stated that more than half of all households statewide are defined as "cost-burdened" (paying more than 30 percent of their income towards shelter); nearly 80 percent of "extremely low-income households" (with incomes less than 30 percent of the area median income) are paying more than half of their income towards housing. The Council noted that ADUs are housing options that meet the needs of a wide variety of populations, including low-income households in need of affordable housing, the elderly seeking to age in place, and adult children. The Council further made the argument that ADUs are a way to add affordable rental housing stock without substantial government subsidies, while also raising revenues through additional taxes and fees. The Council explained that a growing body of research indicates the success of ADUs as a means to increase housing inventory with a low impact on neighborhood infrastructure, as well as the widespread acceptance of ADUs in cities of comparable size and composition to Honolulu. The Resolution states that ADUs offer homeowners an additional source of income and an opportunity to increase property values while adding to the housing inventory. The Resolution notes that ADUs use already existing infrastructures, but due to smaller household sizes use less sewer capacity and require fewer parking spaces than new residential developments. It states that homeowners have an incentive to create ADUs that enhance their own properties and neighborhoods. It states that the restrictive covenant limiting occupancy of secondary dwelling units to family members ("ohana units") limits the beneficial impacts of ADUs and the creation of authorized secondary dwelling units. It further notes that the State statute permitting secondary dwelling units does not impose any covenants restricting occupancy to family members, and the counties of Maui, Hawaii, and Kauai have imposed no such limitations. The Resolution concludes by noting that the large number of "rec rooms" ["recreation rooms"] indicated on building plans suggests that some of these accessory structures may actually be used as unauthorized ADUs, escaping City taxes and fees, and potentially escaping State general excise and income taxes.

II. FINDINGS OF FACT

A. **Relevant Regulations for Ohana Dwellings and ADUs**: The proposed changes to Article 8 of the Land Use Ordinance (LUO) address replacing ohana dwellings with ADUs. The LUO (Section 21-10.1) defines ohana dwelling units as follows:

"Ohana dwelling unit"; "ohana dwelling"; and "ohana unit" mean a second dwelling unit permitted to the provisions of Hawaii Revised Statutes (HRS) Section 46-4(c); and of Ordinance 3234 (adopting the LUO), as amended.

The State Enabling Legislation of 1981 (Act 229) amended Section 46-4 of the HRS to require that counties permit two dwellings on any residential lot with adequate public facilities. The stated purposes of the law were to assist families to obtain affordable housing and to encourage the extended family. All four counties adopted ordinances to implement Act 229. The phrase "ohana dwelling" was coined by then Honolulu Mayor Eileen Anderson to describe the second units authorized by the State Legislation.

The purpose and intents of the ohana dwellings are enumerated in the LUO Section 21-8.20 as follows:

(a) The purpose of this section is to encourage and accommodate extended family living, without substantially altering existing neighborhood character.

(b) It is intended that "ohana" units be allowed only in areas where wastewater, water supply, and transportation facilities are adequate to support additional density.

(c) One ohana dwelling unit may be located on a lot zoned for residential, country, or agricultural use, with the following limitations:

(1) The maximum size of an ohana dwelling unit shall not be limited but shall be subject to the maximum building area development standard in the applicable zoning district.

(2) Ohana dwelling units shall not be permitted on lots within zero lot line project, cluster housing project, agricultural cluster, country cluster, planned development housing, R-3.5 zoning districts, or on duplex unit lots.

(3) An ohana dwelling unit shall not be permitted on any nonconforming lot.

(4) The ohana dwelling unit and the first dwelling shall be located within a single structure, i.e., within the same two-family detached dwelling.

(5) The ohana dwelling unit shall be occupied by persons who are related by blood, marriage, or adoption to the family residing in the first dwelling. Notwithstanding this provision, ohana dwelling units for which a building permit was obtained before September 10, 1992, are not subject to this restriction and their occupancy by persons other than family members is permitted.

(6) All other provisions of the zoning district shall apply.

(7) The parking provisions of this chapter applicable at the time the ohana building permit is issued shall apply and the provision of such parking shall be a continuing duty of the owner.

(8) The owner or owners of the lot shall record in the bureau of conveyances of the State of Hawaii, or if the lot is subject to land court registration under HRS Chapter 501, they shall record in the land court, a covenant that neither the owner or owners shall submit the lot or any portion thereof to condominium property regime established by HRS Chapter 514A. The covenant shall be recorded on a form approved by or provided by the director and may contain such terms as the director deems necessary to ensure its enforceability. The failure of an owner or owner's heir, successor or assign to abide by such a covenant shall be deemed a violation of Chapter 21 and be grounds for enforcement of the covenant by the director pursuant to Section 21-2.150, et seq., and shall be grounds for an action by the director to require the owner or owners to remove, pursuant to HRS Section 514A-21, the property from a submission of the lot or any portion thereof to the condominium property regime made in violation of the covenant.

Under the current LUO, there are no provisions for ADUs. For purposes of this report and attached bills (Bill A and Bill B), an ADU is defined as a second dwelling unit, including separate kitchen, bedroom and bathroom facilities, attached or detached from the primary dwelling unit on the zoning lot.

B. **Timeline of Ohana Dwellings' Provisions**: In the City and County of Honolulu, the regulations and standards relating to Ohana dwellings have gone through a number of amendments since the State Enabling Legislation of 1981 (Act 229), which has also been amended since its inception; follows:

(a) Ordinance 82-44 (November 12, 1982) amended Honolulu's Comprehensive Zoning Code by adding provisions relating to ohana dwellings. This ordinance established standards for ohana dwellings.

(b) Ordinance 88-48 (April 28, 1988) attempted to address widespread concerns about the impacts of ohana development on existing neighborhoods; and as such, it placed size limits on ohana dwellings. The maximum floor area was limited from 700 to 1,000 square feet, depending on the residential zoning district. The administrative rules implementing this ordinance were adopted and took effect on February 10, 1989.

(c) Act 252 (1988) amended the state ohana law. It permitted the counties to adopt "reasonable standards" for ohana units and required that Applicants for ohana permits place a legal notice in the newspaper. The administrative rule implementing this Act was adopted and took effect on February 10, 1989.

(d) Act 313 (1989) amended the state ohana law to make ohana optional rather than mandatory, and it repealed the notice requirement. Therefore, the control and

regulation of residential density was given to the counties. However, to date, no county has repealed its ohana provisions.

(e) Ordinance 89-155 (December 28, 1989) made the following amendments:

(1) Gave the City Council, rather than administrative agencies, the authority to designate ohana-eligible areas;

(2) Prohibited new ohana dwellings in the R-3.5 Residential District;

(3) Established a zoning adjustment to permit existing ohana dwellings which had become nonconforming in size pursuant to the size limits in Ordinance 88-48, to be rebuilt following destruction; and

(4) Provided for limited expansion of ohana dwellings that had been registered as condominium prior to December 31, 1988.

Following the passage of Ordinance 89-155, from January 1990 to early 1994, there were no permits issued for ohana dwellings, as the City Council, per Ordinance 89-155, did not determine the ohana-eligible areas by adopting maps that show these areas. In 1990, the City Council considered Bill 154, to adopt maps of ohana-eligible areas, but did not take any action.

(f) Ordinance 92-101 (September 28, 1992) made the following major changes in the ohana dwellings' provisions:

(1) Repealed the provisions requiring the City Council to designate the ohana-eligible areas;

(2) Permitted ohana units in Agricultural and Country zoning districts for the first time;

(3) Restricted ohana dwellings to conforming lots;

(4) Added a family occupancy requirement;

(5) Required applicants for ohana dwellings to file a restrictive covenant agreeing not to condominiumize the property;

(6) Clarified requirements for existing ohana dwellings;

(7) Provided a bailout option by which a neighborhood could petition to be excluded from ohana development; and

(8) Required ohana dwellings to be "attached" within a single structure.

Following the passage of Ordinance 92-101, new ohana maps and new rules were prepared to replace the 1989 rules and the City began accepting ohana applications on January 22, 1994.

(g) Ordinance 06-15 (March 15, 2006) amended the ohana dwellings' provisions by repealing the restriction that limits the size limits of ohana units. However, the first dwelling and the ohana dwellings are subject to the maximum building area development standard of the underlying zoning district.

III. Analysis

A. **Ohana Dwellings/ ADU Provisions in Neighboring Islands**: As noted above, Act 313 amended the State ohana law making ohana optional rather than mandatory; and therefore, giving the control of residential density to the counties. It should be noted; however, that every county in the State has adopted different ohana dwellings' provisions and none has ever taken action to have them repealed. The ohana dwelling standards that each county in the state has adopted is summarized as follows:

(a) County of Hawaii[1]: The Hawaii County Code defines an ohana dwelling as a "second dwelling unit permitted to be built as a separate or an attached unit or a building site, but does not include a guest house or a farm dwelling." Hawaii County allows ohana dwellings within the Single-family Residential District, the Residential and Agricultural District, the Family Agricultural District, and the Agricultural District provided that the minimum lot area, containing both the first dwelling and the ohana dwelling, is 10,000 square feet or more. However, regardless of the lot size, in addition to the first single-family dwelling unit, only one ohana dwelling unit per lot is permitted. The ohana dwelling and the single-family dwelling unit may be constructed as a two-family dwelling. Similarly, all other applicable requirements must be met and a guest house is not permitted on any building site where an ohana dwelling unit is permitted or constructed; unless, the guest house is converted into an ohana dwelling unit. The front, rear, and side yard must meet the minimum requirement for the underlying zoning district, plus an additional five feet; the height of the ohana dwelling unit cannot exceed 25 feet regardless of the height limit of the underlying zoning district; and an area for two off-street parking spaces must be provided on the lot. Ohana dwellings are allowed provided that all public facilities (sewage disposal system, potable water supply, fire protection, streets, etc.) are adequate.

Compared to Honolulu County, the ohana dwelling regulations are less stringent. The County of Honolulu requires that the ohana dwelling be occupied by persons who are related by blood, marriage, or adoption to the family residing in the first dwelling; it does not allow the ohana dwelling unit to be constructed as a separate structure; and it uses a pre-approved map for determining the eligibility of the public facilities.

(b) County of Maui[2]: The Maui County Code uses the term accessory dwelling rather than ohana dwelling and it defines it as an "attached or detached dwelling unit which is incidental or subordinate to the main or principal dwelling on a lot." Accessory dwellings are a permitted use in a Residential District, Apartment District, Hotel District, Interim Zoning District, and State Land Use Rural District. However, an accessory dwelling is not allowed on any lot within a Duplex Zone,

[1] Source: Hawaii County Code 1983 (2005 Edition), as amended. Refer to Appendix A to review the entire regulation.
[2] Source: Maui County Code. Refer to Appendix A to review the entire regulation.

R-O Zero Lot Line Residential District Zone, R-O Zero Lot Line District, and a Cluster Development or a Planned Development in any district. Similarly, all provisions of the underlying zoning district apply unless there are inconsistencies, in which case the accessory dwelling provisions will prevail. Accessory dwellings are subject to a maximum gross floor area (which includes any floor area for storage, covered decks, walkways, patios, lanais and similar structures, but excluding a carport or parking space) that range from 500 square feet (on lots of 7,500 square feet to 9,999 square feet) to 1,000 square feet (on lots of 87,120 square feet or more). However, regardless of the lot size, only one ADU per lot is permitted. The accessory dwelling cannot have an interior connection to the main dwelling and, as such, it needs to have at least one separate entrance. The accessory dwelling must provide one off-street parking stall in addition to the off-street parking requirements for the main dwelling unit and a separate driveway from that of the main dwelling. Prior to an application for a building permit, written confirmation must be obtained stating that the respective public facilities (sewage disposal system, water supply, fire protection, streets, etc.) are adequate.

Unlike the County of Honolulu, the accessory dwelling provision of the County of Maui are broader since it does not require accessory dwellings to be occupied only by persons who are related by blood, marriage, or adoption to the family residing in the first dwelling. They require only one off-street parking stall, extends the construction of accessory dwellings in apartment districts, allows accessory dwellings in a wide range of lot sizes, and does not use a pre-approved map for determining the eligibility of the public facilities. In addition, contrary to the County of Honolulu, the County of Maui sets a maximum size for an accessory dwelling and prohibits the accessory dwelling from having an interior connection with the main dwelling unit.

(c) County of Kauai[3]: The County of Kauai's Comprehensive Zoning Ordinance uses the term "additional dwelling unit" instead of ohana dwelling. The zoning ordinance has two different provisions for additional dwelling units, one for those located on non-residential zoned lots and another one for those located on residential zoned lots. In either case, the provisions allow only one additional dwelling unit (attached or detached) per lot provided that all public facilities, which is to be confirmed prior to application for a building permit, are adequate; the additional dwelling unit must meet all applicable county requirements, including building height, setback, maximum lot coverage, parking, and floor area requirements; and additional dwelling units are not allowed on lots developed under a project development, or other multi-family development, or where the aggregate number of dwelling units exceeds the density allowed in the zoning district, or where prohibited by private covenants or deed restrictions. In addition, both provisions state that on lots which an additional dwelling unit is developed, no guest house shall be allowed; and, in cases that the lot has an existing guest house, it may be converted into a dwelling unit.

[3] Source: The Kauai County Code, 1987, as amended (Update by Ordinance No. 935 on December 3, 2012). Refer to Appendix A to review the entire regulation.

The County of Kauai's provisions for the additional dwelling unit, contrary to the County of Honolulu's provisions for the ohana dwelling, do not limit the use of the additional dwelling unit only by persons who are related by blood, marriage, or adoption to the family residing in the first dwelling; extend the districts where additional dwelling units may be constructed beyond the Residential, Agricultural, and Country Zoning Districts; and do not use a pre-approved map for determining the eligibility of the public facilities.

B. **ADUs in Other Jurisdictions**[4]: Other municipalities have been permitting and encouraging ADUs for a number of years, making efficient use of existing housing stock. These municipalities are using ADUs to increase the available affordable housing pool, increase the types of housing choices that renters have, provide additional income for owners, and provide accessible units for the elderly to age in place. A detailed comparison of zoning regulations in other jurisdictions is not included in this report due to the complex number of variables found in the regulations and because they have significant differences from Oahu. The key points that represent the broad scheme of all of their regulations are represented as follows:

Types of ADUs: In many municipalities, ADUs may be attached or detached from the primary dwelling unit. In addition, they can be created by converting exiting structures such as attics, basements, or garages.

Location: Most municipalities limit the construction of ADUs to either solely Residential Zoning Districts or to Residential and Multi-family Residential Zoning Districts.

ADU Size: Most municipalities set the maximum floor area of the ADU at 800 square feet.

Density: In most cases, only a single ADU per zoning lot is permitted.

Compatibility to Neighborhood: Most municipalities state that the design of the ADU be consistent with the design intent of the existing structure and the surrounding neighborhood.

Number of Off-street Parking Spaces: In most cases, the municipalities require one off-street parking space per ADU.

Infrastructure: They all require that the ADUs be permitted only in areas where there is adequate infrastructure, such as wastewater, water supply, and access roadways. In certain cases, to promote the construction of ADUs, municipalities have temporarily waived fees relating to infrastructure charges.

Owner Occupancy Requirement: Certain municipalities require that the owner occupy either the ADU or the principal dwelling unit.

Amnesty: There are few cases where municipalities have drafted a policy by which illegal ADUs may be permitted without any repercussion if a permit is obtained within a set period.

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[4] Refer to Appendix B to review the regulations, relating to ADUs, from the various municipalities from which most of the information in this section is obtained from.

In general, the regulations that other municipalities have implemented provide incentives for the construction of ADUs, which can be a beneficial alternative for the City and County of Honolulu where housing costs have risen significantly. The current ohana dwelling unit provisions are comparatively stringent. For instance, the requirement for family[5] occupancy of the ohana dwellings is not a common element of zoning regulations regulating ADUs elsewhere. Unlike the City and County of Honolulu's ohana dwelling provisions, the ADU zoning regulations of the other municipalities have led to a high construction rate of legal ADUs.

C. **Ohana and ADU Eligible Areas**[6]: Ohana dwellings are allowed only in areas that were designated ohana-eligible. As noted above, in Section IIB, following the passage of Ordinance 92-10, new ohana maps and new rules were prepared to replace the 1989 rules. Based on available data at the Department of Planning and Permitting (DPP) the last time the ohana-eligibility maps were updated was in 1998. The LUO, under "Procedures for approval of ohana dwellings" lists the procedures for designating ohana-eligible areas. If the proposed ADUs will not be limited only to family members and will be permitted only in areas that are designated ohana-eligible; then, per the DPP's Geographic Information Systems (GIS) analysis, roughly 22,424 ADUs could possibly be constructed. However, if the ADUs will be allowed throughout the island, in all Residential Districts (R-3.5, R-5, R-7.5, R-10, and R-20) with lots over 3,500 square feet, then DPP's GIS data shows that possibly 105,305 ADUs could be built. Nonetheless, it should be noted that the GIS analysis did not take into considerations many factors that might prohibit the construction of ADUs in all Residential Districts. For instance, the analysis did not take into consideration the availability of infrastructure or private covenants and deeds that might prohibit the construction of secondary units.

D. **Discussion of Council-Initiated Bill and DPP's Preferred Alternative**: The City Council, through Resolution No. 14-200, as stated in Section I of this report is proposing to amend the LUO to allow the construction of ADUs to increase the housing option that meet the needs of a wide variety of populations, including low-income households in need of affordable housing, elders seeking to age in place, and adult children; to add affordable rental housing stock without substantial government subsidies while also raising revenues through additional taxes and fees; to increase housing inventory with a low impact on neighborhood infrastructure; and to offer homeowners an additional source of income and an opportunity to increase property values while adding to the housing inventory. In addition, the Council notes that ADUs already use existing infrastructure, but due to smaller household sizes use less sewer capacity and require fewer parking spaces than new developments.

These optional housing provisions have a long history of LUO amendments. This has been a struggle of long-standing complexity, as illustrated by LUO amendment history of ohana dwelling units in Section IIB of this report. It has been a process of continual refinements toward the goal of balancing housing needs with potential land use impacts. Similarly, it should be noted that the amendment of the LUO to facilitate the construction of ADUs is part of the DPP's Housing Strategy. On September 12, 2014, the administration presented the draft "Housing Oahu: Islandwide Housing Strategy" (Strategy) to the City Council. The Strategy responds to City Council Resolution

[5] Source: LUO; "Family" means one or more persons, all related by blood, adoption, or marriage, occupying a dwelling unit or lodging unit. A family may also be defined as not more than five unrelated persons.
[6] The DPP's GIS data that indicates the possible number of ADU that could be built within the ohana-eligible areas as well as throughout the island within the Residential Districts are listed in Appendix C.

No. 13-168, CD1 to amend the unilateral agreement policy; and Resolution No. 14-28 to establish an affordable housing strategy. It was developed by the City's Office of Housing, DPP, Department of Community Services, and Department of Budget and Fiscal Services. Other City, State, private, and non-profit partners provided guidance in crafting the Strategy, and will assume key roles in implementing the Strategic Action Plan. One of the Strategy's key initiatives is increasing the supply of rental housing by updating the zoning code to allow ADUs to be added on existing residential lots. ADUs, because of their limited size, inability to be sold separately, and widespread applicability, will ensure the production of well-managed, well-located affordable rental units throughout the island. ADUs avoid creating neighborhoods segregated by income because they can be integrated with market rate housing, and constructed with diverse incomes, ages, and cultures in mind. Revising the LUO to allow for the production of ADUs, helps implement the Strategy.

However, even if the DPP agrees with the overall intent and purpose of the Council-initiated Bill A, it has provided an alternative Bill B. The key aspects of each Bill are discussed as follows:

(a) Ohana Dwellings versus ADUs: The Council-initiated bill would eliminate the LUO provisions for ohana dwellings and replace them with amended provisions for ADUs.

The DPP does not agree with this aspect of Bill A, because it would create a number of nonconforming ohana dwelling units - those built lawfully under the current ohana regulations. Therefore, instead of repealing the provisions for ohana dwellings, it would be beneficial to amend the LUO by adding a new section for ADUs under Article 5 of the LUO. As such, since in some zoning districts the size limitations on ohana dwelling units do not realistically accommodate extended family living, family members living within the same property lot would have the opportunity to build ohana dwellings, which under the current provisions does not have a maximum size limitation.

(b) Location of ADUs: Bill A states that ADUs shall be located in Residential, Country, or Agricultural Districts where wastewater, water supply, and transportation facilities are adequate to support additional density and that they should comply with all other provisions of the zoning district. However, Bill A would not permit the construction of ADUs in lots with a Zero Lot Line project, Cluster Housing project, Agricultural Cluster, Country Cluster, Planned Development Housing, R-3.5 zoning districts, or on duplex lots. Similarly, it would not permit ADUs on nonconforming lots.

While the DPP agrees that the ADUs shall abide by all other provisions of the zoning district, and be constructed only in certain locations where there is adequate wastewater, water supply, and an access roadway, it does not agree that ADUs should be prohibited on nonconforming lots or on lots with zero lot line, or R-3.5 zoning lots, or on duplex lots. As stated in Bill B, ADUs should be permitted in all residential lots (R-3.5, R-5, R-7.5, R-10, and R-20) that have an area ranging from 3,500 square feet and up. The goal of the ADUs is to increase available housing options; and, as such, prohibiting the construction of an ADU if it does not quite meet the required lot area (e.g., 5,000 square feet for a lot designated R-5) would reduce the possible number of accessory dwellings that

could be built within the City. For instance, a lot area of 5,000 square feet is as likely as a lot area of 4,999 square feet to support an ADU. In addition, the idea of ADUs is to provide additional housing without substantially altering existing neighborhoods; therefore, limiting the construction of ADUs only to residential lots will allow growth to occur by infilling existing residential neighborhoods rather than spreading development into country and agricultural districts and inducing sprawl.

(c) Size: Bill A does not limit the maximum size of an ADU but restricts it to the maximum building area of the underlying districts' development standards.

The DPP does not agree with the lack of size limits proposed by Bill A. The size and bulk of residential structures in some neighborhoods are already a source of concern. The goal of ADUs is to provide an additional dwelling unit that is accessory and incidental to the principal dwelling unit; and, as such, it should be subordinate to the existing principal structure. Establishing a maximum size limit of 400 square feet (for lots ranging between 3,500 square feet and 4,999 square feet) and 800 square feet (for lots of 5,000 square feet and up) would be considered a balanced approach; that is, given that in other jurisdictions, as shown in Section IIIB, the maximum size limit of an ADU is 800 square feet and because it will keep the ADU as an incidental structure to the principal dwelling unit. In addition, aside from helping maintain neighborhood character, it will establish a single, uniform size standard while keeping the rental cost of the ADUs affordable.

(d) Parking: Bill A notes that the off-street parking requirement for ADUs should be based on the number of bedrooms. That is, a studio or one bedroom ADU will require a single off-street parking; whereas, if it has two or more bedrooms it will require two off-street parking spaces.

Contrary to Bill A's proposal, the DPP's alternative proposal is to require just one off-street parking space per ADU (in addition to the required off-street parking for the primary dwelling unit); unless, when the ADU is located within a one-half mile radius of a planned Honolulu Rail Transit Project station. Requiring off-street parking stalls based on the number of bedrooms would be difficult to implement and enforce. The LUO does not have a definition for a bedroom. Similarly, not requiring off-street parking stalls for ADUs that are located within a convenient walking distance of the transit station, would help reduce the reliance on automobiles. Moreover, Bill B proposes to amend the LUO to allow ADUs to provide compact stalls (rather than standard sized stalls) and to permit tandem parking.

(e) Deed Restrictions: Both Bill A and Bill B require that the owner for the lot state that neither the owner or owners will submit the lot on which the ADU will be located, or any portion thereof, to a condominium property regime to separate the ownership of an ADU from its primary dwelling. Such a requirement will assure that the ADUs will remain as affordable rental units; a priority need as identified in the 2014 draft Islandwide Housing Strategy. In addition, this requirement will deter investors from buying lots with ADUs and selling each unit separately at a higher price.

However, Bill B further requires that the deed should state that:

(1) Either the ADU or the primary residential unit be occupied by the property owner or owners or persons who are related by blood, marriage, or adoption to the owner or owners except in unforeseen hardship circumstances (i.e., active military deployment, serious illness). The idea is to place a certain level of responsibility on the property owner who will be renting the ADU. If the property owner will be living on site sharing common property grounds, then the homeowner will be meticulous when selecting renters; and consequently, indirectly assuring that the tenant will be compatible with the neighbors.

(2) The ADU shall be limited to the approved size. Such a requirement will insure that the size of the ADU will always remain as approved even if the property will be sold.

(3) Since ADUs will not be able to be sold, when rented, it shall be used only for long-term rentals exceeding three months and not as vacation rentals. Such a requirement will accomplish the intended goal of increasing available affordable rental units for people that reside on Oahu, rather than as short-term vacation rentals. Similarly, it will insure that the neighborhood character remains unaltered.

(4) The deed restriction shall lapse upon removal of the ADU, and that all declarations are binding upon any successor in ownership of the property. These requirements will insure that the deed will always be in place assuring that the ADUs will be operating as intended as long as the ADU is on site.

It should also be noted that both of the proposed bills would have the following LUO provisions:

(a) Family: Both bills remove the family occupancy requirement. The requirement for family occupancy is not a common element of zoning regulations regulating ADUs elsewhere. Similarly, requiring that only family members occupy ADUs does not address the need for increasing and providing affordable rental units. In addition, it is not always the case that there is a family member that will be occupying the ADU.

(b) Type of ADU: Both bills allow ADUs to be attached or detached from the primary dwelling unit. An ADU, aside from new construction, may be created through conversion of a legally established existing structure, attic, or basement, subject to meeting all the LUO provision relating to ADUs. Such a provision will ease the construction of different types of ADUs within property lots that have different site restrictions and configurations. Accordingly, Bill B amends the Residential District Development Standards by allowing two-family detached and duplex units on R-10 and R-20 Residential Districts.

(c) Infrastructure: Both bills require that ADUs be built only in areas where there is adequate infrastructure. This requirement will insure that new ADUs will not be constructed unless all appropriate agencies have reviewed and confirmed the

suitability of all infrastructures; and therefore, insuring that a burden will not be placed on the neighborhood.

Furthermore, the DPP's alternative bill has the following additional LUO provisions:

(a) Number of ADUs per Zoning Lot: Bill B allows only one ADU or an ohana dwelling unit, or a guesthouse, or a second dwelling unit per lot. The goal is to minimize and manage the density of the residential districts; i.e., only allow ADUs with just one dwelling unit on the lot.

(b) Occupancy: DPP's bill requires that the ADU or the primary residential unit be occupied by the property owner or owners or persons who are related by blood, marriage, or adoption to the owner or owners, or owner or owners designated authorized representative except in unforeseen hardship circumstances (i.e., active military deployment, serious illness). If the property owner will be living on site, then the homeowner will be selective when choosing possible tenants. Possible disruptions by the tenant could be as much of a nuisance to the property owner as to the neighbors. Thus, such a requirement will help insure that the neighborhood character will not be disrupted.

(c) Legalization and Conversion of Existing Structures: Bill B would allow the conversion of existing structures that were legally built prior to the adoption of the provision relating to the ADUs and do not quite meet all the new requirements for ADUs through a zoning adjustment process. That is, if a legally built existing accessory structure exceeds the permitted maximum floor area and/or cannot provide the required off-street parking, then the director of the DPP, after finding that the request is reasonable and there are no other viable alternatives to reduce the existing floor area or accommodate the required off-street parking, may permit the establishment of the ADU. However, in cases where the existing structure was constructed without a building permit, then the Applicant has to get an after-the-fact permit; and any adjustments to the structure should conform with the ADU regulations as listed in the LUO and any other additional adopted policies. These provisions would aid in increasing the number of available rental units.

(d) Tracking of ADUs: Bill B would require that the DPP be notified when ADUs are removed. Such a requirement will allow the DPP to keep track of the number of available rental units within the residential districts and administer related LUO provisions.

In general, the alternative bill proposed by the DPP (Bill B) is less stringent than the Council-initiated Bill A. Given that, Bill A merely replaces the provisions for the ohana dwellings with ADUs; it will be subject to the procedures and rules of the ohana dwellings. For instance, the ohana dwelling rules emphasize the use of ohana-eligible areas when determining whether a second dwelling unit may be permitted. Such a requirement is redundant since the regulations relating to ADUs require that ADUs be permitted only if it is proven that there will be adequate infrastructure to support both the primary residence and the ADU.

It should also be noted that the current ohana regulations have not really succeeded in increasing the number of ohana dwelling units built. The total number of building permits issued for ohana dwelling units on Oahu within a ten-year period (2001 to 2011) averaged 116[7] or about 10 per year. This is an indication that the ohana dwelling provisions have not been effective in creating affordable rental units. Therefore, if as proposed by Council, the ADUs will more or less have the same provisions as the ohana dwelling units, then the goal of increasing the number of affordable rental units will not be fulfilled. In order to create an incentive for the construction of ADUs, as proposed by Bill B, the provisions should be less stringent and easy to understand, implement, and enforce.

E. **Future Related Amendments Regarding ADUs**: In order to ease the construction of ADUs and consequently increase the number of available affordable rental units, further amendments should be undertaken. The DPP acknowledges that the zoning ordinance is not the only hurdle that prohibits the construction of ADUs. Probably easing some of the following regulations, in the near future, might aid in increasing the number of ADUs constructed:

(a) Fee Waivers: Since the ADUs are supposed to be affordable rental units, some of the costs and fees associated with establishing an ADU should be waived or reduced. Some of the fees that can be waived are associated with the one-time wastewater system facility connection charges, monthly sewer service charges, and water charges.

(b) Building and Electrical Codes: Two of the obstacles that hinder the conversion of existing structures to ADUs are certain building and electrical code requirements. Given that most of the existing structures were built prior to the adoption of the current building and electrical codes, converting them to ADUs would require conforming to current code requirements, which could be costly. As such, Chapter 16 (Building Code) and Chapter 17 (Electrical Code) of the Revised Ordinances of Honolulu 1990, as amended, should be amended to allow the conversion of existing structures to accessory dwellings with the least amount of expenses without compromising the safety of the future tenant of the ADU.

Additionally, the DPP is considering providing a design guideline booklet that would summarize the regulations relating to ADUs and ease, and streamline the construction of ADUs.

IV. Recommendation

A. **Resolution No. 14-200**: The DPP concurs with the intent of the Council-initiated bill to amend the LUO to allow ADUs, which can be defined as "second dwelling units, including separate kitchen, bedrooms and bathroom facilities, attached or detached from the primary dwelling unit on the zoning lot". The DPP acknowledges that ADUs would increase the number of affordable rental housing stock and alleviate the housing shortage without substantially impacting existing neighborhoods.

[7] Source: DPP's research query of Posse building permits on May 11, 2011.

However, the DPP does not support and is not recommending approval of Bill A, as initiated by the City Council via Resolution No. 14-200; instead, it recommends adoption of the proposed alternative Bill B, which sets new provisions for ADUs instead of replacing the regulations of ohana dwelling units with ADUs. The proposal by City Council would generate a large number of nonconforming ohana dwelling units. ADUs are similar but not synonymous with ohana dwelling units, which are more restrictive. The key difference, as stated in both Bill A and Bill B, ADUs are not restricted only to family members but can be rented to anyone.

In addition, Bill B is more comprehensive as it provides provisions to maintain the character of the neighborhood, to monitor density, to convert existing structures to ADUs, and to maintain the openness of the Country and Agricultural Districts. Similarly, DPP's alternative bill proposes regulations that are easy to understand and enforce; therefore, facilitate the construction of ADUs throughout the island within all Residential Districts.

Attachments

APPENDICES

APPENDIX A

HAWAII COUNTY

Article 6. Optional Development Regulations.

Division 1. Planned Unit Development (P.U.D.).

Section 25-6-1. Purpose.
Section 25-6-2. Minimum land area required.
Section 25-6-3. Application for P.U.D. permit; requirements.
Section 25-6-4. Notice of action on P.U.D. application.
Section 25-6-5. Procedure for processing application when use not permitted in district.
Section 25-6-6. Actions by director on P.U.D. permit applications.
Section 25-6-7. Reserved.
Section 25-6-8. Reserved.
Section 25-6-9. Reserved.
Section 25-6-10. Criteria for granting a P.U.D. permit.
Section 25-6-11. Height exceptions authorized.
Section 25-6-12. Approval of variances, use permits and plan approvals issued under P.U.D. permit.
Section 25-6-13. Effect of P.U.D. permit on other zoning provisions.
Section 25-6-14. Time extensions and amendments.
Section 25-6-15. Appeals.

Division 2. Cluster Plan Development (C.P.D.).

Section 25-6-20. Purpose.
Section 25-6-21. Minimum land area required.
Section 25-6-22. Application for C.P.D.
Section 25-6-23. Computation of maximum number of lots.
Section 25-6-24. Minimum lot size in C.P.D.
Section 25-6-25. Common land in a C.P.D.
Section 25-6-26. Appeal of a C.P.D. decision.

Division 3. Ohana Dwellings.

Section 25-6-30. General provisions, applicability.
Section 25-6-31. Eligibility for ohana dwelling permit.
Section 25-6-32. Prohibited areas.
Section 25-6-33. Designation of the ohana dwelling unit.
Section 25-6-34. Height limit.
Section 25-6-35. Minimum building site area and yards.
Section 25-6-36. Guest houses.
Section 25-6-37. Off-street parking spaces.
Section 25-6-38. Variances prohibited.
Section 25-6-39. Application for ohana dwelling permit; requirements.
Section 25-6-39.1. Action on ohana dwelling permit.
Section 25-6-39.2. Building permit for an ohana dwelling.
Section 25-6-39.3. Nontransferability of permit.
Section 25-6-39.4. Pending applications.
Section 25-6-39.5. Illegally constructed ohana dwellings.
Section 25-6-39.6. Revocation of an ohana dwelling permit.
Section 25-6-39.7. Appeals.

Chapter 25

ZONING

Article 1. General Provisions.

Section 25-1-1. Title.

The provisions of this chapter, inclusive of any amendments, shall be known as the zoning code.
(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-1-2. Scope, purposes and applicability.

(a) This chapter shall be applied and administered within the framework of the general plan which is a long-range, comprehensive, general plan prepared to guide the overall future development of the County.
(b) For the purpose of promoting health, safety, morals, or the general welfare of the County, this chapter regulates and restricts the height, size of buildings, and other structures, the percentage of a building site that may be occupied, off-street parking, setbacks, size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Should any conflict between this chapter and other parts of the Code exist, this chapter shall prevail.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-1-3. Severability.

If any portion of this chapter, or its application to any person or circumstance, shall be held unconstitutional or invalid because it violates any provision of the County Charter or for any other reason, the remainder of the chapter and the application of such portion to other persons or circumstances shall not be affected thereby.
(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-1-4. Adoption of rules.

The director and the commission may, as appropriate, each adopt rules, in accordance with chapter 91, Hawai'i Revised Statutes, for the purpose of implementing the provisions of this chapter.
(1996, Ord. No. 96-160, sec. 2; ratified and amended April 6, 1999.)

Section 25-1-5. Definitions.

(a) Building construction and development terms that are not defined in this chapter shall be given their respective definitions as found in the building code (chapter 5).
(b) The following words and phrases, unless the context otherwise requires, are defined as follows:

"Accessory building" means a building, no more than twenty feet in height, detached from and subordinate to a main building or main use on the same building site and used for the purposes customarily incidental to those of the main building or use.

"Accessory use" means a use which is customarily associated with and subordinate to the main or principal use and which is located on the same building site as the main or principal use.

"Adult day care home" means a private residence, approved by the state, providing supportive and protective care, without overnight accommodations, to a limited number of adult disabled or aged persons. The term shall not include day care centers for elderly, disabled and aged persons as defined by chapter 346, part IV, Hawai'i Revised Statutes, as amended.

"Agricultural activities" means income producing activities or uses as characterized by the cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber; and farming or ranching activities or uses related to animal husbandry, aquaculture, or game and fish propagation.

Section 25-6-25. Common land in a C.P.D.

(a) The location, extent and purpose of common land proposed to be set aside for open space or for recreational use within any C.P.D. must be approved by the director. A private recreational use such as a golf course or a swimming pool, which use is limited to the owners or occupants of building sites located within the C.P.D. may be approved as common land. Other uses or sites which may qualify as common land include historic buildings or sites, parks and parkway areas, ornamental parks, extensive areas with tree cover, land along usable shoreline areas, and low land along streams or areas of rough terrain where such areas are extensive and have natural features worthy of preservation and are usable for normal recreational pursuits.

(b) The method of maintenance of common land for open space or recreational use shall be approved by the director.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-26. Appeal of a C.P.D. decision.

Within thirty days after the date of the director's written decision regarding a C.P.D., any person aggrieved by the decision may appeal the director's action to the board of appeals in accordance with this chapter.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Division 3. Ohana Dwellings.

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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-31. Eligibility for ohana dwelling permit.

(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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999; Am. 2001, Ord. No. 01-108, sec. 1.)

Section 25-6-32. Prohibited areas.

Ohana dwelling units shall be prohibited in the following areas:

(a) Any building site within the State land use conservation district;

(b) 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) 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 transient vacation units;

(e) Any building site which is the subject of an approved variance from the provisions of this chapter or chapter 23 (subdivisions);

(f) Any building site on which the construction of an ohana dwelling or a second dwelling unit is specifically prohibited by a change of zone ordinance.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-33. Designation of the ohana 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 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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-35. Minimum building site area and yards.

(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) The minimum front, rear, and side yard requirements for a detached ohana dwelling unit shall be the minimum yard requirements for the zoning district in which the building site is situated plus an additional five feet.

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

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-36. Guest houses.

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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

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

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

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-38. Variances prohibited.

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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-39. Application for ohana dwelling permit; requirements.

(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.

(1996, Ord. No. 96-160, sec. 2; ratified and amended April 6, 1999.)

Section 25-6-39.1. Action on ohana dwelling permit.

(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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

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

(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.

(d) 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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-39.3. Nontransferability of permit.

(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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999; Am. 2001, Ord. No. 01-108, sec. 1.)

Section 25-6-39.4. Pending applications.

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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-39.5. Illegally constructed ohana dwellings.

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 enjoinment of the unlawful ohana dwelling shall immediately be commenced in accordance with this chapter.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-39.6. Revocation of an ohana dwelling permit.

(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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999; Am. 2001, Ord. No. 01-108, sec. 1; Am. 2011, Ord. No. 11-103, sec. 13.)

Section 25-6-39.7. Appeals.

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.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Division 4. Project Districts (PD).

Section 25-6-40. Purpose and applicability.

The project district (PD) development is intended to provide for a flexible and creative planning approach rather than specific land use designations, for quality developments. It will also allow for flexibility in location of specific uses and mixes of structural alternatives. The planning approach would establish a continuity in land uses and designs while providing for a comprehensive network of infrastructural facilities and systems. A variety of uses as well as open space, parks, and other project uses are intended to be in accord with each individual project district objective. A project district is an amendment to this chapter which changes the district boundaries in accordance with the individual project district.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-41. Criteria for establishing a project district.

A project district may be established as an amendment to this chapter whenever the public necessity and convenience and the general welfare require that a comprehensive planning approach for an area should be adopted in order to establish a continuity in land uses and designs while providing a comprehensive network of infrastructural facilities and systems. In addition, a project district may only be established if the proposed district:

(1) Is consistent with the intent and purpose of this chapter and the County general plan; and

(2) Will not result in a substantial adverse impact upon the surrounding area, community or region.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-42. Minimum land area required.

The minimum land area required for a project district shall be fifty acres.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-6-43. Permitted uses.

Any uses permitted either directly or conditionally in the RS, RD, RM, RCX, CN, CG, CV or V districts shall be permitted in a project district; provided, that each of the proposed uses and the overall densities for residential and hotel uses shall be contained in a master plan for the project district and in the project district enabling ordinance.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

MAUI COUNTY

19.04.040 - Definitions.

When used in title 19 of this code, unless the context clearly indicates a different meaning, for the purposes of title 19, the following words and terms shall be defined as follows:

"Accessory building" means a portion of the main building or a detached subordinate building located on the same lot, the use of which is appropriate, subordinate and customarily incidental to that of the main building or to the main use of the land.

"Accessory building or structure" means a structure detached from a principal building on the same zoning lot which is customarily incidental and subordinate to the principal building or use and not used for human habitation.

"Accessory dwelling" means an attached or detached dwelling unit which is incidental or subordinate to the main or principal dwelling on a lot.

"Accessory use" means a use of land or of a building or portion thereof which is customarily incidental and subordinate to the principal use of the land or building and located on the same zoning lot as the principal use.

"Administrator" means the person who holds the office of director and/or executive secretary or authorized representative of the appropriate planning commission.

"Agricultural land conservation" means the planting of soil-nourishing plants and trees to achieve soil conservation and environmental benefits, including but not limited to soil nourishment, prevention of soil erosion, improvement of air quality, and habitat restoration.

"Agricultural Lands of Importance to the State of Hawaii (ALISH)" means the agricultural land classification system adopted by the State of Hawaii, board of agriculture. This system identifies those lands of the state which are of agricultural importance, and categorizes them according to specific criteria.

"Agricultural lease" means a contract renting a portion of a lot within the agricultural district for a specified period or for a period determinable at the will of either lessor or lessee in consideration of rent or other compensation.

"Agricultural products" means cultivated or raised plant, animal, or marine life that has been harvested for consumption, including but not limited to coffee; feed and forage; floriculture and nursery products; grain; herbs and roots; sugar cane; fruits and nuts; vegetables and melons; honey; eggs; dairy; cattle, pigs, sheep, poultry; marine life; and fiber for clothing and building material. This does not include processed products.

(Ord. No. 4049, § 1, 2013; Ord. No. 4048, § 1, 2013; Ord. No. 4026, § 4, 2013; Ord. No. 3975, § 1, 2012; Ord. No. 3941, § 3, 2012; Ord. No. 3884, §§ 1, 2, 2011; Ord. No. 3848, § 1, 2011; Ord. No. 3824, § 1, 2011; Ord. No. 3681, § 2, 2009; Ord. No. 3662, §§ 1—4, 2009; Ord. No. 3661, § 3, 2009; Ord. No. 3611, § 1, 2008; Ord. 3525 § 1, 2008; Ord. 3364 § 1, 2006; Ord. 3138 § 2, 2003; Ord. 2749 § 2, 1998; Ord. 2628 § 3, 1997: Ord. 2609 § 2, 1997; Ord. 2585 § 3, 1997: Ord. 2583 § 2, 1997; Ord. 2538 § 1, 1997; Ord. 2135 § 3, 1992; Ord. 2052 §§ 1, 2, 1991; Ord. 2031 § 2 (part), 1991: Ord. 2026 §§ 1—4, 1991: Ord. 2012 § 1, 1991; Ord. 1797 §§ 1—6, 1989: Ord. 1629 § 1, 1987: Ord. 1278 §§ 1—3, 1982: Ord. 1134 § 2, 1981: prior code § 8-1.2)

Chapter 19.35 - ACCESSORY DWELLINGS

Sections:

19.35.010 - Generally.

19.35.020 - Maximum gross floor area.

The limitations and requirements of this chapter shall apply to any accessory dwelling.

A. Any person who wishes to construct, or in any manner otherwise establish, an accessory dwelling shall apply for a building permit therefor in accordance with this chapter.

B. All provisions of the county zoning district, or state land use district as the case may be, in which the accessory dwelling is proposed to be constructed shall apply, except the provisions on the number of dwelling units permitted on a lot and except as the provisions of such district may be inconsistent with the provisions applicable to accessory dwellings. To the extent of such inconsistency, if any, the accessory dwelling provisions shall prevail.

C. The provisions of this chapter shall apply to any lots in the following county zoning and state land use districts:

1. Residential district;
2. Apartment district;
3. Hotel district;
4. Interim zoning district;
5. State land use rural district.

No accessory dwelling shall be placed or constructed on any lot located in any district other than the districts specified in this subsection.

D. Notwithstanding the provisions of subsection C of this section, the provisions of this chapter shall not apply to any lot within a duplex zone, R-O zero lot line residential district zone, R-O zero lot line district, a cluster housing development, or a planned development in any district. No accessory dwelling shall be permitted on any such lot.

(Ord. 2135 § 4, 1992: Ord. 2026 § 6, 1991: Ord. 1269 § 7 (part), 1982)

19.35.020 - Maximum gross floor area.

The maximum gross floor area of an accessory dwelling shall be determined as follows:

Lot Area (in sq. ft.)	Maximum Gross Covered Floor Area*
7,500 to 9,999	500 square feet
10,000 to 21,779	600 square feet
21,780 to 43,559	700 square feet
43,560 to 87,119	800 square feet
87,120 or more	1000 square feet

* (Including any storage, covered decks, walkways, patios, lanais and similar structures but excluding a carport or parking space).

(Ord. 1269 § 7 (part), 1982)

19.35.030 - Separate entrance.

An accessory dwelling shall have at least one separate entrance.

(Ord. 1269 § 7 (part), 1982)

19.35.040 - No interior connection.

An accessory dwelling shall not have an interior connection to the main dwelling.

(Ord. 1269 § 7 (part), 1982)

19.35.050 - One accessory dwelling per lot.

No more than one accessory dwelling shall be permitted on a single lot regardless of the size of the lot.

(Ord. 1269 § 7 (part), 1982)

19.35.060 - Maximum cumulative area of open decks, etc.

An accessory dwelling may have uncovered open decks, walkways, patios, lanais or similar structures, subject to the following:

A. The uncovered open decks, walkways, patios, lanais or similar structures shall not exceed the following respective cumulative total

areas:

Lot Area (in sq. ft.)	Maximum Cumulative Floor Area* (in sq. ft.)
7,500 to 9,999	200
10,000 to 21,779	240
21,780 to 43,559	280
43,560 to 87,119	320
87,120 or more	400

* (Cumulative floor area of uncovered open decks, walkways, patios, lanais or similar structures).

(Ord. 1269 § 7 (part), 1982)

19.35.070 - Off-street parking required.

An accessory dwelling shall have a carport or other off-street parking space. The carport shall be a single-car carport not exceeding a total floor area of two hundred forty square feet. Where the first dwelling unit on any lot complies with all provisions applicable to accessory dwellings, only one carport or off-street parking space shall be required; provided, that if a main dwelling unit is constructed, such main dwelling unit shall have at least two parking spaces or a carport for two cars in addition to the parking for the accessory dwelling.

(Ord. 1269 § 7 (part), 1982)

19.35.080 - Driveway.

An accessory dwelling may have a separate driveway from that of the main dwelling, provided that all driveway requirements are met. In addition to any other requirements, a minimum of ten feet between the lot boundary and any building on the property shall be required for such separate driveway.

(Ord. 1269 § 7 (part), 1982)

19.35.090 - Public facilities required.

The following public facilities are required to service the lot:

A. Adequacy of sewage disposal system. This shall be secured in writing from the department of public works for public sewage systems and the state of Hawaii department of health for cesspools, septic tanks and private sewage systems;

B. Adequacy of water supply. This shall be secured in writing from the department of water supply;

C. Adequacy of fire protection for all lots served by private streets. This shall be secured in writing from the department of fire control;

D. Adequacy of street. The lot must have direct access to a street which has a minimum paved roadway width of sixteen feet and which the director of public works determines to be adequate for the proposed construction.

(Ord. 1269 § 7 (part), 1982)

19.35.100 - Public facilities clearance.

Public facilities clearance may be obtained prior to application for building permit. Forms for public facilities clearance will be available at the land use and codes administration, department of public works. The forms shall be submitted with and attached to the building permit application. Where complete plans and specifications are submitted for building permit application processing, the public facilities clearance form and the building permit will be processed concurrently. In all other cases, the forms shall be processed prior to submitting the building permit application.

(Ord. 1269 § 7 (part), 1982)

KAUAI COUNTY

Sec. 8-12.7 Soils Districts (S-SO)
Sec. 8-12.8 Tsunami Districts (S-TS)

Article 13. Non-Conforming Structures And Uses
Sec. 8-13.1 Non-Conforming Buildings And Structures
Sec. 8-13.2 Non-Conforming Uses
Sec. 8-13.3 Uses, Structures And Lots For Which Permits Were Issued Prior To The Adoption Of This Ordinance

Article 14. Kaua'i Historic Preservation Review Commission
Sec. 8-14.1 Purpose
Sec. 8-14.2 Kaua'i Historic Preservation Review Commission
Sec. 8-14.3 Powers And Duties Of The Historic Preservation Review Commission
Sec. 8-14.4 Meetings
Sec. 8-14.5 Accounting And Funding

Article 15 Additional Dwelling Unit
Sec. 8-15.1 Additional Dwelling Unit On Other Than Residentially Zoned Lots
Sec. 8-15.2 Additional Dwelling Unit On Residentially Zoned Lots

Article 16 RESERVED

Article 17. Time Sharing And Transient Vacation Rentals
Sec. 8-17.1 Limitations on Location
Sec. 8-17.2 Permitted Time Share Locations
Sec. 8-17.3 Permitted Locations For Transient Vacation Rentals
Sec. 8-17.4 Time Sharing In Projects Located Within Visitor Destination Areas And Hotels In Resort Or Commercial Districts
Sec. 8-17.5 Existing Uses
Sec. 8-17.6 Penalty
Sec. 8-17.7 Amendments To Visitor Destination Areas Designations

Article 18 RESERVED

Article 19 RESERVED

Article 20 RESERVED

Article 22 RESERVED

Article 23 RESERVED

Article 24 RESERVED

Article 25 RESERVED

District shall be considered together with the County Agriculture District for the purpose of determining parcel acreage to apply subdivision standards.

(e) Nothing in this Chapter shall regulate the placement, design and construction of utility poles, towers and transmission lines by a public utility company as defined in Section 269-1, H.R.S., provided, that the poles and towers shall be no higher than twenty (20) feet above the height limits for structures applicable in the Use District in which the poles and towers are constructed.

(f) Nothing in this Chapter shall regulate the minimum size of lots in a subdivision which are to be used for government or public utility facilities. The creation of such lots shall be in compliance with the provisions of Chapter 9, County Subdivision Ordinance, of the Code.

(g) Nothing in this Chapter shall prohibit the use of factory built housing or trailer homes as permitted dwellings, buildings or structures for the purpose of human habitation or occupancy within the various Use Districts provided that all such factory built housing and trailer homes must first:

(1) Meet all applicable development standards, density limitation and other such requirements for the particular Use District;

(2) Be permanently affixed to the ground;

(3) Have had their wheels and axles, if any, removed;

(4) If licensed pursuant to Hawai'i Revised Statutes Chapter 249, have been registered as a stored vehicle in accordance with Hawai'i Revised Statutes Section 249-5;

(5) Meet the standards and requirements contained in Section 12-4.4 of Chapter 12, Building Code; and

(6) Meet all other applicable governmental rules, regulations, ordinances, statutes and laws.

(h) Recreational trailers may be used as temporary dwellings for travel, recreational or vacation purposes in accordance with Chapter 16 (Recreational Trailer Camps) of Title 11, Administrative Rules, Department of Health, State of Hawai'i, or any other State or County laws, ordinances or rules relating to the use of public or private lands, parks or camp grounds for camping or recreational purposes. Except as provided herein, no recreational trailer shall be used as a dwelling or building for the purpose of human habitation or occupancy.

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

(c) The HPR Commission, through the Planning Department, shall have the right to receive public and private funds and to hold and spend such funds for the purpose of implementing this Article. Funds received from outside sources shall not replace appropriated governmental sources. Any and all funds received may be used to compensate the Planning Department for any services it may perform for the HPR Commission.

(d) Should the Federal Historic Preservation Grant program be terminated, the HPR Commission and this Article may be repealed by the County Council pursuant to proper procedure, unless substitute State or County funds can be secured to continue the program.

ARTICLE 15. ADDITIONAL DWELLING UNIT

Sec. 8-15.1 Additional Dwelling Unit On Other Than Residentially Zoned Lots.

(a) Additional Dwelling Unit. Notwithstanding other provisions to the contrary, for any lot where only one single-family residential dwelling or farm dwelling is a generally permitted use or is allowed through a use permit, one additional single-family residential dwelling unit (attached or detached) or farm dwelling may be developed, provided:

(1) All applicable county requirements, not inconsistent with Section 46-4(c), Hawai'i Revised Statutes and the county's zoning provisions applicable to residential use are met, including but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were re-zoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the residential district requirement.

(2) The provisions of this subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standard and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.

(5) Facilities clearance may be obtained prior to application for building permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the building permit application. Where complete plans and specifications are submitted for building permit application processing, the submission of the facilities clearance form shall be attached with the building permit and processed concurrently.

(6) Nothing contained in this section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any lot.

(b) Expiration. Section 8-15.1(a) is hereby repealed December 31, 2006. No building permit shall be granted for an additional dwelling unit under this Section 8-15.1(a) after such repeal date.

(c) Upon expiration of Sec. 8-15.1(a), any additional dwelling unit built pursuant to a valid building permit obtained under Sec. 8-15.1(a) shall thereafter be considered a conforming structure and use, notwithstanding Article 13 of the Comprehensive Zoning Ordinance relating to non-conforming structures and uses.

(d) Notwithstanding the expiration of Section 8-15.1(a), and subject to compliance with all applicable legal requirements and conditions, a building permit for an additional dwelling unit shall be granted for a lot in existence as of December 31, 2006 which, up to December 31, 2006, was eligible to apply for an additional dwelling unit under Section 8-15.1(a) and for which an ADU Facilities Clearance Form is certified as complete by the Planning Director as of June 15, 2007 or for which an ADU Facilities Clearance form was signed by the authorized employees of all agencies or departments listed in the ADU Facilities Clearance Form and submitted with a building permit application prior to November 22, 2006, provided that:

(1) The term "lot in existence as of December 31, 2006," as used in Section 8-15.1(d) shall not apply to any lot created by the relocation of a kuleana lot by consolidation and resubdivision pursuant to the provisions of Chapter 9, Kaua'i County Code 1987, as amended ("Subdivision Ordinance"), where such consolidation and resubdivision occurs after December 31, 2006.

(2) All applicable county requirements not inconsistent with Section 46-4(c), Hawai'i Revised Statutes, and the county's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were re-zoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the residential district requirement.

(3) The provisions of this subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district, or

where additional dwelling units are specifically prohibited by zoning ordinance.

(4) For lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into an additional dwelling unit, but no additional guest house may be constructed.

(5) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water (including, but not limited to. source. transmission, and storage lines/facilities) shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface at the time of application for a building permit, there exist funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy" (as may be amended from time to time), for those roads which are considered substandard.

(6) An ADU Facilities Clearance Form as prescribed by the Planning Director shall be completed prior to application for a building permit and shall be submitted with the building permit application. Completion of the ADU Facilities Clearance form shall not guarantee the issuance of a building permit. All requirements and conditions on the completed ADU Facilities Clearance Form shall be met prior to issuance of a building permit based on legal requirements at the time of building permit

issuance. The Planning Director shall certify the ADU Facilities Clearance Form as complete, only if every signature blank on the form has been signed by the respective department or agency, and the applicant has signed an affidavit prescribed by the Planning Director verifying 1) that there is no restriction or covenant applicable in any deed, lease, or other recorded document which prohibits the construction or placement of an additional dwelling unit on the applicable lot, and 2) that the applicant understands that completion of an ADU Facilities Clearance Form does not guarantee or vest any right to a building permit, and that all conditions and requirements in existence at the time of building permit application shall be met before a building permit can be issued. The Planning Department shall keep a record of all ADU Facilities Clearance Forms that are issued and shall retain the original affidavits and the original ADU Facilities Clearance Forms that are certified as complete by the Department.

(7) Nothing contained in this section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any lot.

(8) Notwithstanding any law to the contrary, no building permit for an additional dwelling unit shall be issued pursuant to this Section after December 15, 2014.

Sec. 8-15.2 Additional Dwelling Unit On Residentially Zoned Lots.

(a) Notwithstanding other provisions to the contrary, for any residentially-zoned lot where only one single-family residential dwelling is permitted, one additional single-family residential dwelling unit (attached or detached) may be developed, provided:

(1) All applicable county requirements, not inconsistent with Section 46-4(c), Hawai'i Revised Statutes and the County's zoning provisions applicable to residential use are met, including but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(2) The provisions of this subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For residentially-zoned lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.

(5) Facilities clearance may be obtained prior to application for building permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the building permit application. Where complete plans and specifications are submitted for building permit application processing, the submission of the facilities clearance form will be attached with the building permit and processed concurrently.

(6) Nothing contained in this section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any residential lot.

ARTICLE 16. RESERVED

APPENDIX B

CITY OF PORTLAND

CHAPTER 33.205
ACCESSORY DWELLING UNITS

(Amended by: Ord. No. 171879, effective 2/2/98; Ord. No. 174263, effective 4/15/00; Ord. No. 175837, effective 9/7/01; Ord. Nos. 175965 and 176333, effective 7/1/02; Ord. No. 178172, effective 3/5/04; Ord. No. 178509, effective 7/16/04; Ord. No. 178927, effective 12/31/04; Ord. No. 179845, effective 1/20/06; Ord. No. 183598, effective 4/24/10; Ord. No. , effective 8/29/14; Ord. No. 186736, effective 8/29/14.)

Sections:

33.205.010 Purpose
33.205.020 Where These Regulations Apply
33.205.030 Design Standards
33.205.040 Density

33.205.010 Purpose

Accessory dwelling units are allowed in certain situations to:

- Create new housing units while respecting the look and scale of single-dwelling development;
- Increase the housing stock of existing neighborhoods in a manner that is less intense than alternatives;
- Allow more efficient use of existing housing stock and infrastructure;
- Provide a mix of housing that responds to changing family needs and smaller households;
- Provide a means for residents, particularly seniors, single parents, and families with grown children, to remain in their homes and neighborhoods, and obtain extra income, security, companionship and services; and
- Provide a broader range of accessible and more affordable housing.

33.205.020 Where These Regulations Apply

An accessory dwelling unit may be added to a house, attached house, or manufactured home in an R zone, except for attached houses in the R20 through R5 zones that were built using the regulations of 33.110.240.E, Duplexes and Attached Houses on Corners.

33.205.030 Design Standards

A. Purpose. Standards for creating accessory dwelling units address the following purposes:

- Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;
- Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;
- Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and
- Provide adequate flexibility to site buildings so that they fit the topography of sites.

B. Generally. The design standards for accessory dwelling units are stated in this section. If not addressed in this section, the base zone development standards apply.

C. Requirements for all accessory dwelling units. All accessory dwelling units must meet the following:

1. Creation. An accessory dwelling unit may only be created through the following methods:

   a. Converting existing living area, attic, basement or garage;

   b. Adding floor area;

   c. Constructing a detached accessory dwelling unit on a site with an existing house, attached house, or manufactured home; or

   d. Constructing a new house, attached house, or manufactured home with an internal or detached accessory dwelling unit.

2. Number of residents. The total number of individuals that reside in both units may not exceed the number that is allowed for a household.

3. Other uses.

   a. Type B home occupation. An accessory dwelling unit is prohibited on a site with a Type B home occupation.

   b. Type A accessory short-term rental. An accessory dwelling unit is allowed on a site with a Type A accessory short-term rental.

   c. Type B accessory short-term rental. An accessory dwelling unit is allowed on a site with a Type B accessory short-term rental if the accessory dwelling unit meets the standards of Paragraph 33.815.040.B.1.

4. Location of entrances. Only one entrance may be located on the facade of the house, attached house, or manufactured home facing the street, unless the house, attached house, or manufactured home contained additional entrances before the accessory dwelling unit was created. An exception to this regulation is entrances that do not have access from the ground such as entrances from balconies or decks.

5. Parking. No additional parking is required for the accessory dwelling unit. Existing required parking for the house, attached house, or manufactured home must be maintained or replaced on-site.

6. Maximum size. The size of the accessory dwelling unit may be no more than 75 percent of the living area of the primary dwelling unit or 800 square feet, whichever is less. The measurements are based on what the square footage of the primary dwelling unit and accessory dwelling unit will be after the accessory dwelling unit is created.

7. Exterior finish materials. The exterior finish material must be the same or visually match in type, size and placement, the exterior finish material of the house, attached house, or manufactured home.

8. Roof pitch. The roof pitch must be the same as the predominant roof pitch of the house, attached house, or manufactured home.

9. Trim. Trim must be the same in type, size, and location as the trim used on the house, attached house, or manufactured home.

10. Windows. Windows must match those in the house, attached house, or manufactured home in proportion (relationship of width to height) and

orientation (horizontal or vertical). This standard does not apply when it conflicts with building code regulations.

11. Eaves. Eaves must meet one of the following:

    a. The eaves must project from the building walls the same distance as the eaves on the house, attached house, or manufactured home;

    b. The eaves must project from the building walls at least 1 foot on all elevations; or

    c. If the house, attached house, or manufactured home has no eaves, no eaves are required on the accessory dwelling unit.

D. Additional requirements for detached accessory dwelling units. Detached accessory dwelling units must meet the following.

1. Setbacks. The accessory dwelling unit must be at least:

    a. 60 feet from the front lot line; or

    b. 6 feet behind the house, attached house, or manufactured home.

2. Height. The maximum height allowed for a detached accessory dwelling unit is 18 feet.

3. Bulk limitation. The building coverage for the detached accessory dwelling unit may not be larger than the building coverage of the house, attached house, or manufactured home. The combined building coverage of all detached accessory structures may not exceed 15 percent of the total area of the site.

4. Conversion of existing detached accessory structures.

    a. In RF through R2.5 zones, conversion of an existing detached accessory structure that is in a front building setback required by Table 110-3 is not allowed. Conversion of an existing detached accessory structure that is in a rear or side building setback is allowed as provided by Subsection 33.110.250.C, Setbacks.

    b. In R3 through IR zones, conversion of an existing detached accessory structure that is in a front building setback required by Table 120-3 is not allowed. Conversion of an existing detached accessory structure that is in a rear or side building setback is allowed as provided by Subsection 33.120.280.C, Setbacks

    c. If the accessory dwelling unit is proposed for an existing detached accessory structure that meets any of the standards of Paragraphs C.7 through C.11 and Paragraphs D.2 and D.3, alterations that will move the structure out of conformance with the standards that are met are not allowed;

    d. If the accessory dwelling unit is proposed for an existing detached accessory structure that does not meet one or more of the standards of Paragraphs C.7 through C.11, the structure is exempt from the standard it does not meet. If any floor area is added to the detached accessory structure, the entire structure must meet the standards of Paragraphs C.7 through C.11.

33.205.040 Density
In the single-dwelling zones, accessory dwelling units are not included in the minimum or maximum density calculations for a site. In all other zones, accessory dwelling units are included in the minimum density calculations, but are not included in the maximum density calculations.

CITY OF SANTA CRUZ

PLANNING DEPARTMENT
Housing & Community Development Division
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ADU ZONING REGULATIONS

TITLE 24 ZONING ORDINANCE OF THE CITY OF SANTA CRUZ
CHAPTER 24.16 PART 2

24.16.100 Purpose.

The ordinance codified in this part provides for accessory dwelling units in certain areas and on lots developed or proposed to be developed with single-family dwellings. Such accessory dwellings are allowed because they can contribute needed housing to the community's housing stock. Thus, it is found that accessory units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities that are compatible with single-family development.

To ensure that accessory units will conform to General Plan policy the following regulations are established.
(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.120 Locations Permitted.

Accessory dwelling units are permitted in the following zones on lots of 5000 square feet or more:

1. RS-5A, RS-10A
2. RS-1A, RS-2A
3. R-1-10
4. R-1-7
5. R-1-56.R-L, R-T(A), (B), and (D).

(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.130 Permit Procedures.

The following accessory dwelling units shall be principally permitted uses within the zoning districts specified in Section 24.16.120 and subject to the development standards in Section 24.16.160.

1. Any accessory dwelling unit meeting the same development standards as permitted for the main building in the zoning district, whether attached or detached from the main dwelling.

2. Any single story accessory dwelling unit.

Any accessory dwelling unit not meeting the requirements above shall be conditionally permitted uses within the zoning districts specified in Section 24.16.120 and shall be permitted by administrative use permit at a public hearing before the zoning administrator, subject to the findings per Section 24.16.150 and the development standards in Section 24.16.160.
(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.150 Findings Required for Conditionally Permitted Accessory Dwelling Units.

Before approval or modified approval of an application for an accessory dwelling unit, the decision making body shall find that:

1. Exterior design of the accessory unit is compatible with the existing residence on the lot through architectural use of building forms, height, construction materials, colors, landscaping, and other methods that conform to acceptable construction practices.

2. The exterior design is in harmony with, and maintains the scale of, the neighborhood.

3. The accessory unit does not result in excessive noise, traffic or parking congestion.

4. The property fronts on an adequate water main and sewer line each with the capacity to serve the additional accessory unit.

5. The site plan provides adequate open space and landscaping that is useful for both the accessory dwelling unit and the primary residence. Open space and landscaping provides for privacy and screening of adjacent properties.

6. The location and design of the accessory unit maintains a compatible relationship to adjacent properties and does not significantly impact the privacy, light, air, solar access or parking of adjacent properties.

7. The one and one-half to two-story structure generally limits the major access stairs, decks, entry doors, and major windows to the walls facing the primary residence, or to the alley if applicable. Windows that impact the privacy of the neighboring side or rear yard have been minimized. The design of the accessory unit shall relate to the design of the primary residence and shall not visually dominate it or the surrounding properties.

8. The site plan shall be consistent with physical development policies of the General Plan, any required or optional element of the General Plan, any area plan or specific plan or other city policy for physical development. If located in the Coastal Zone, a site plan shall also be consistent with policies of the Local Coastal Program.

9. The orientation and location of buildings, structures, open spaces and other features of the site plan are such that they maintain natural resources including heritage or significant trees and shrubs to the extent feasible and minimize alteration of natural land forms. Building profiles, location and orientation relate to natural land forms.

10. The site plan is situated and designed to protect views along the ocean and of scenic coastal areas. Where appropriate and feasible, the site plan restores and enhances the visual quality of visually degraded areas.

11. The site plan incorporates water-conservation features where possible, including in the design of types of landscaping and in the design of water-using fixtures. In addition, water restricting shower heads and faucets are used, as well as water-saving toilets utilizing less than three gallons per flush.
(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.160 Design and Development Standards.

All accessory dwelling units must conform to the following standards:

1. Parking. One parking space shall be provided on-site for each studio and one bedroom accessory unit. Two parking spaces shall be provided on site for each two bedroom accessory unit. Parking for the accessory unit is in addition to the required parking for the primary residence. (See Section 24.16.180 for parking incentives.)

2. Unit Size. The floor area for accessory units shall not exceed five hundred square feet for lots between 5000 and 7500 square feet. If a lot exceeds 7500 square feet, an accessory unit may be up to 640 square feet and, for lots in excess of 10,000 square feet, a unit may be up to 800 square feet. In no case may any combination of buildings occupy more than thirty percent of the required rear yard for the district in which it is located, except for units which face an alley, as noted below. Accessory units that utilize alternative green construction methods that cause the exterior wall thickness to be greater than normal shall have the unit square footage size measured similar to the interior square footage of a traditional frame house.

3. Existing Development on Lot. A single-family dwelling exists on the lot or will be constructed in conjunction with the accessory unit.

4. Number of Accessory Units Per Parcel. Only one accessory dwelling unit shall be allowed for each parcel.

5. Setbacks for Detached Accessory Dwelling Units. The side-yard and rear-yard setback for detached single story structures containing an accessory dwelling unit shall not be less than three feet in accordance with the Uniform Building Code, and the distance between buildings on the same lot must be a minimum of 10 feet. Accessory units higher than one story shall provide side yard setbacks of five feet and rear yard setbacks of ten feet. If any portion of an accessory dwelling unit is located in front of the main building, then the front and sideyard setbacks shall be the same as a main building in the zoning district. Accessory dwelling units are not eligible for variances to setbacks.

6. Setbacks for Attached Accessory Dwelling Units. Attached accessory dwelling units shall meet the same setbacks as a main building in the zoning district.

7. Other Code Requirements. The accessory unit shall meet the requirements of the Uniform Building Code.

8. Occupancy. The property owner must occupy either the primary or accessory dwelling.

9. Building Height and Stories.

   a. A one story detached accessory dwelling unit shall be no more than thirteen feet in height.

   b. A one and one-half to two story detached accessory dwelling shall be no more than twenty-two feet in height measured to the roof peak.

   c. An attached accessory unit may occupy a first or second story of a main residence if it is designed as an integral part of the main residence and meets the setbacks required for the main residence.

   d. If the design of the main dwelling has special roof features that should be matched on the detached accessory unit, the maximum building height of the accessory dwelling unit may be exceeded to include such similar special roof features subject to review and approval of the Zoning Administrator.

10. Alley Orientation. When an accessory dwelling unit is adjacent to an alley, every effort shall be made to orient the accessory dwelling unit toward the alley with the front access door and windows facing the alley. Parking provided off the alley shall maintain a twenty-four foot back out which includes the alley. Fences shall be three feet six inches along the alley. However, higher fencing up to six feet can be considered in unusual design circumstances subject to review and approval of the Zoning Administrator.

11. Design. The design of the accessory unit shall relate to the design of the primary residence by use of the similar exterior wall materials, window types, door and window trims, roofing materials and roof pitch.

12. Large Home Design Permit. The square footage of an attached or detached accessory unit shall be counted with the square footage of the single family home in determining whether a large home design permit is required.

13. Open Space and Landscaping: The site plan shall provide open space and landscaping that are useful for both the accessory dwelling unit and the primary residence. Landscaping shall provide for the privacy and screening of adjacent properties.

14. The following standards apply to accessory dwelling units located outside the standard side and rear yard setbacks for the district.

    The entrance to the accessory unit shall face the interior of the lot unless the accessory unit is directly accessible from an alley or a public street.

    Windows which face an adjoining residential property shall be designed to protect the privacy of neighbors; alternatively, fencing or landscaping shall be required to provide screening.

15. A notice of application shall be sent to the immediately adjoining neighbors.

(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.170 Deed Restrictions.

Before obtaining a building permit for an accessory dwelling unit the property owner shall file with the county recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:

1. The accessory unit shall not be sold separately.

2. The unit is restricted to the approved size.

3. The use permit for the accessory unit shall be in effect only so long as either the main residence, or the accessory unit, is occupied by the owner of record as the principal residence.

4. The above declarations are binding upon any successor in ownership of the property; lack of compliance shall be cause for code enforcement and/or revoking the conditional use permit.

5. The deed restrictions shall lapse upon removal of the accessory unit.

(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

26.16.180 Zoning Incentives.

The following incentives are to encourage construction of accessory dwelling units.

1. Affordability Requirements for Fee Waivers. Accessory units proposed to be rented at affordable rents as established by the city, may have development fees waived per Part 4 of Chapter 24.16 of the Zoning Ordinance. Existing accessory dwelling units shall be relieved of the affordability condition upon payment of fees in the amount previously waived as a result of affordability requirements, subject to an annual CPI increase commencing with the date of application for Building Permit.

2. Covered Parking. The covered parking requirement for the primary residence shall not apply if an accessory dwelling unit is provided.
3. Front or Exterior Yard Parking. Three parking spaces may be provided in the front or exterior yard setback under this incentive with the parking design subject to approval of the Zoning Administrator. The maximum impervious surfaces devoted to the parking area shall be no greater than the existing driveway surfaces at time of application. Not more than 50% of the front yard width shall be allowed to be parking area.

4. Tandem Parking. For a parcel with a permitted accessory dwelling unit, required parking spaces for the primary residence and the accessory dwelling unit may be provided in tandem on a driveway. A tandem arrangement consists of one car behind the other. No more than three total cars in tandem may be counted towards meeting the parking requirement.

5. Alley Presence. If an accessory dwelling unit faces an alley as noted in the design standards in this chapter, the limitations on rear yard coverage as specified in Section 24.16.160 (2) and/or Section 24.12.140 (5) do not apply.

(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.300 Units Eligible for Fee Waivers.

Developments involving residential units affordable to low or very-low income households may apply for a waiver of the following development fees:

1. Sewer and water connection fees for units affordable to low and very low income households.

2. Planning application and planning plan check fees for projects that are one hundred percent affordable to low and very-low income households.

3. Building permit and plan check fees for units affordable to very-low income households.

4. Park land and open space dedication in-lieu fee for units affordable to very low income households.

5. Parking deficiency fee for units affordable to very-low income households.

6. Fire fees for those units affordable to very-low income households.

(Ord. 93-51 § 6, 1993).

24.16.310 Procedure for Waiver of Fees.

A fee waiver supplemental application shall be submitted at the time an application for a project with affordable units is submitted to the city.

(Ord. 93-51 § 6, 1993)

MARIN COUNTY

CHAPTER 22.56 – SECOND UNIT PERMITS

Sections:

22.56.010 – Purpose of Chapter
22.56.020 – Applicability
22.56.030 – Application Filing, Processing, and Review
22.56.040 – Decision and Findings for Existing Second Units
22.56.050 – Decision and Findings for New Second Units

22.56.010 – Purpose of Chapter

This Chapter establishes a procedure to allow new second units and to legalize second units that pre-existed policies and standards that regulate second units.

22.56.020 – Applicability

The provisions of this Section shall apply to single-family and multifamily residential zoning districts, including the R1, R-2, RA, RR, RE, RSP, C-R1, C-R2, C-RA, C-RSP, C-RSPS, A, A2, ARP, C-ARP, RMP, and C-RMP districts in the unincorporated portions of the County. Second Units shall comply with Section 22.32.140 (Residential Second Units).

22.56.030 – Application Filing, Processing, and Review

A. **Filing.** Application for a Second Unit Permit shall be submitted, filed, and processed in compliance with and in the manner described for ministerial planning permit applications in Chapter 22.40 (Application Filing and Processing, Fees).

B. **Project review procedure.** Each Second Unit Permit application shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of this Chapter, and the findings specified for new or existing second units. If a discretionary permit related to the second unit development is required, findings of consistency with the Countywide Plan and applicable community plan shall be made as part of the approval of the discretionary permit. Once a decision has been rendered on a second unit application, notice of that decision shall be referred to any special districts or County agencies that provide services to the subject property.

C. **Action on Second Unit Permit.** The Director shall act upon the Second Unit Permit after any discretionary permits related to the development have been issued and any appeals related to those discretionary permits have been acted upon.

22.56.040 – Decision and Findings for Existing Second Units

A second unit existing prior to March 27, 1987, or the effective dates of resolutions establishing Second Unit Use Permit standards in specific communities (September 29, 1983 in Bolinas, January 10, 1984 in the Tamalpais area, and June 25, 1985 in Stinson Beach), may be approved through a Second Unit Permit as an existing second unit. The Director may only approve or conditionally approve an application for an existing second unit if all of the following findings are made:

A. The second unit is located on the same lot on which the owner of record maintains a primary residence. The following exceptions apply to this finding:

The owner-occupancy requirement does not apply to existing second units in the communities of Bolinas and Inverness. In the Tamalpais Area, a property owner of an existing second unit may request an exemption from the owner-occupancy requirement for a period of two years for good cause such as temporary job transfer or settlement of an estate that involves the property. Public notice shall be given prior to a decision of exemption. The exemption may be extended for up to two years at a time subject to new public noticing for each exemption. Exemptions may be granted without public hearing.

B. The second unit meets all Design Characteristics standards listed in Section 22.32.140.C of this Development Code.

C. The lot on which the second unit is located shall have a minimum of one off-street parking space assigned to a studio or one-bedroom second unit or two off-street parking spaces assigned to a two-or-more-bedroom second unit. Off-street parking spaces assigned to the second unit shall be independently accessible and shall be in addition to those required for the primary residence. This finding shall be waived upon approval of a parking exception by the Department of Public Works.

D. The second unit is the only additional dwelling unit on the lot.

E. The second unit complies with the applicable requirements of the current edition of the California Residential Code (Part 2.5, Title 24, CCR).

F. If the lot is not served by a local sanitary district, adequate on-site sewage disposal will be available in compliance with County and State regulations.

G. If the lot is not served by a local water district, adequate well water supplies exist to serve the existing second unit in compliance with County and State regulations.

Supplemental Findings. The following supplemental findings shall be made to approve or conditionally approve an existing second unit in the Tamalpais and Inverness Community Plan Areas:

H. In the Tamalpais area the lot on which the existing second unit is located is at least the minimum lot size requirement of the zoning or 7,500 square feet, whichever is less restrictive. In the Inverness area, the lot on which the existing second unit is located is at least 7,500 square feet in size.

I. In the Tamalpais Area, the floor area of the existing second unit shall not exceed 750 square feet.

22.56.050 – Decision and Findings for New Second Units

As used in this chapter, a new second unit is either a unit that is proposed to be established or a unit that was established after March 27, 1987, or the effective dates of resolutions establishing Second Unit Use Permit standards in specific communities (September 29, 1983 in Bolinas, January 10, 1984 in the Tamalpais area, and June 25, 1985 in Stinson Beach). The Director may only approve or conditionally approve an application for a new second unit if all of the following findings are made:

A. The second unit would be located on the same lot on which the owner of record maintains a primary residence. The following exceptions apply to this finding:

The owner-occupancy requirement does not apply to second units in the communities of Bolinas and Inverness. In the Tamalpais Area, a property owner of a second unit may request an exemption from the owner-occupancy requirement for a period of two years for good cause such as temporary job transfer or settlement of an estate that involves the property. Public notice shall be given prior to a decision of exemption. The exemption may be extended for up to two years at a time subject to new public noticing for each exemption. Exemptions may be granted without public hearing.

B. The second unit meets all Design Characteristics standards listed in Section 22.32.140.C of this Development Code.

C. The lot on which the second unit would be located meets the minimum building site area requirements of the zoning district in which it is located. The slope ordinance shall apply in determining the minimum lot size, where appropriate. The minimum building site area requirements of the governing zoning and the slope ordinance shall be waived in those cases where the second unit is created within the footprint of an existing structure on the site. This finding shall be waived upon approval of Design Review for the Second Unit and the following exceptions apply to this finding:

In Stinson Beach, new detached second units are only permitted on lots of one acre or more, subject to Design Review. In Bolinas, the lot must meet the minimum building site area requirements of the zoning district in which it is located unless it is ½ acre or larger. In Bolinas, there is no minimum lot size requirement if the new second unit is located within the existing residence. In the Tamalpais and Inverness areas, the lot must be at least 7,500 square feet in size.

D. The second unit would be the only additional dwelling unit on the lot.

E. The second unit would meet all applicable building codes adopted by the County.

F. If the lot is not served by a local sanitary district, adequate on-site sewage disposal will be available in compliance with County and State regulations.

G. If the lot is not served by a local water district, adequate well water supplies exist to serve the second unit in compliance with County and State regulations.

H. The addition of a second unit would incorporate materials, colors, and building forms that are compatible with the existing residence on the property. This finding shall be waived upon approval of Design Review for the Second Unit.

I. The floor area of a second unit shall not exceed 750 square feet. If the second unit would be within a detached building, then all of the floor area of the detached building shall be counted toward the 750 square foot area limit.

J. The lot on which the second unit would be located shall have a minimum of one off-street parking space assigned to a studio or one-bedroom second unit or two off-street parking spaces assigned to a two-or-more-bedroom second unit. Off-street parking spaces assigned to the second unit shall be independently accessible and shall be in addition to those required for the primary

residence, in compliance with Title 24 standards. This finding shall be waived upon approval of a parking exception by the Department of Public Works.

K. A second unit shall be allowed only where the street providing access to the site is of the minimum width necessary to allow for the safe passage of emergency vehicles, as determined by the Department of Public Works. In Inverness, no second units are permitted in the portion of the Paradise Ranch Estates Subdivision that accesses Sir Francis Drake Boulevard via Drakes View Drive due to concerns regarding road safety and emergency access.

L. A second unit shall be located outside of the Stream Conservation Area and identified Wetland Conservation Areas except under the following circumstances: (1) the unit is created within an existing authorized primary or accessory structure through the alteration of existing floor area without increasing the cubical contents of the structure (with the exception of minor dormers, bay windows, and stairwells); and (2) no site disturbance related to the provision of parking and access improvements or other construction encroaches into a Stream Conservation Area or Wetland Conservation Areas.

Supplemental Findings. The following supplemental findings shall be made to approve or conditionally approve a residential second unit within the Kentfield/Greenbrae, Kent Woodlands, and Sleepy Hollow Community Plan areas, and nearby unincorporated communities within the Sir Francis Drake Boulevard traffic corridor that extend to the westerly limit of the City Centered corridor.

M. The development of second dwelling units shall be permitted on a ministerial basis within existing structures where they do not increase the number of existing bedrooms on the property.

N. On properties within one-quarter mile of an established bus or other transit route operated by a public transportation agency, the development of second units which result in additional bedrooms on the property, or which expand the cubical contents of existing development may be considered through a discretionary Design Review process pursuant to Chapter 22.42 (Design Review).

O. Second units which result in additional bedrooms on the property, or which expand the cubical contents of existing development shall not be permitted on properties further than one-quarter mile from an established bus or other transit route.

CITY OF VANCOUVER

Chapter 20.810

ACCESSORY DWELLING UNITS

Sections:

20.810.010 Purpose
20.810.020 Applicability.
20.810.030 Development Standards.
20.810.040 Submission Requirements
20.810.050 Conversions of Existing Accessory Structures.
20.810.060 Owner Occupancy

Section 20.810.010 Purpose

Purpose. The purpose of these code provisions for accessory dwelling units (ADUs) is to: (1) provide homeowners with flexibility in establishing separate living quarters within or adjacent to their homes for the purpose of caring for elderly parents, providing housing for their children, companionship, security, services or other purposes; (2) increase the supply of affordable housing units within the community; and (3) ensure that the development of accessory dwelling units does not cause unanticipated impacts on the character or stability of single-family neighborhoods.
(M-3643, Added, 01/26/2004)

Section 20.810.020 Applicability.

A. Accessory dwelling unit applicability. ADUs shall be allowed as limited uses in all residential zoning districts (R-2, R-4, R-6, R-9, R-18, R-22, R-30, and R-35) if in compliance with all of the development standards contained in Section 20.810.030 VMC below. ADUs shall not be allowed in association with existing single-family dwellings located within non-residential zoning districts.

B. Approval process. A proposed ADU shall be reviewed by means of a Type I procedure, pursuant to Section 20.210.040 VMC, subject to the development standards contained in Section 20.810.030 VMC below. An ADU use is not subject to Site Plan Review.
(M-3931, Amended, 11/02/2009, Sec 25-Effective 12/2/2009; M-3643, Added, 01/26/2004)

Section 20.810.030 Development Standards.

Development standards for accessory dwelling units. An ADU shall comply with the following standards:

A. Configuration. An ADU may be located either within, attached to, or detached from the primary structure.

B. Density. Only one ADU may be created in conjunction with each single-family residence.

C. Minimum lot size. An ADU shall not be established on any parcel smaller than 4,500 square feet.

D. Maximum unit size. The gross floor area, calculated from finished wall to finished wall, of an existing structure, an addition, or new detached structure, converted to, or constructed for the purpose of creating an ADU shall not exceed 40 % of the gross floor area of the primary single family structure, not including garage and/or detached accessory buildings or 800 square feet (whichever is less).

E. Minimum unit size. The gross floor area of an ADU shall not be less than 300 square feet even if this exceeds the maximum requirement in (D) above, or as otherwise established by the requirements of the City Adopted Building Code.

F. Setbacks and lot coverage. Additions to existing structures, or the construction of new detached structures, associated with the establishment of an ADU shall not exceed the allowable lot coverage or encroach into required setbacks as prescribed in the underlying zone. The applicable setbacks shall be the same as those prescribed for the primary structure, not those prescribed for detached accessory structures.

G. Scale and visual subordination. The ADU shall be visually subordinate to the primary unit. Specifically, new detached structures, or additions to existing structures, created for the purpose of establishing ADU, shall not comprise more than 40 % of the total front elevation of visible structure, including the combined ADU and primary unit. This standard does not apply for internal conversions of existing structures.

H. Parking. Additional on-site parking of one space is required in conjunction with the establishment of an ADU. The off-street parking requirements set forth in Chapter 20.945 shall be maintained for the primary residence.

I. Design and appearance. An ADU, either attached or detached, shall be consistent in design and appearance with the primary structure. Specifically, the roof pitch, siding materials, color and window treatment of the ADU shall be the same as the primary structure.

J. Construction standards. The design and construction of the ADU shall conform to all applicable standards in the building, plumbing, electrical, mechanical, fire, health and any other applicable codes.

K. Accessibility. To encourage the development of housing units for people with disabilities, the Building Official may allow reasonable deviation from the stated requirements to install features that facilitate accessibility. Such facilities shall be in conformance with the City Adopted Building Code.
(M-3959, Amended, 07/19/2010, Sec 38-Effective 8/19/2010; M-3701, Amended, 05/02/2005, Sec 24; M-3643, Added, 01/26/2004)

Section 20.810.040 Submission Requirements

The following information shall be submitted as part of an application for review:

A. Application. Completed and signed application provided by the Planning Official.

B. Fee. Fee pursuant to VMC 20.180.

C. Site plan. To-scale site plan showing the exact location of the primary residence and any accessory structures, parking, landscaping and setbacks.

D. Floor plan. Floor plan, drawn to scale, of entire house and accessory unit within the primary residence or within free-standing accessory structure.

E. Elevations. Elevations drawn to scale, of the accessory unit within the primary residence or within free-standing accessory structure.

F. Covenant. Signed covenant by which the owner affirms that he/she will occupy either the primary residence or ADU pursuant to VMC 20.810.060.

G. Design Plan. Plans showing how ADU will be consistent in design with existing structures, specifically, siding materials, roof pitch, color and window design.
(M-3643, Added, 01/26/2004)

Section 20.810.050 Conversions of Existing Accessory Structures.

A.A. Conversions of an existing structure. An existing garage structure or other outbuilding may be converted to an ADU provided that the structure complies with established setback standards for a primary structure, not accessory structure, as prescribed in the underlying zone, applicable building codes, and all other standards of this section, except the roof pitch and siding requirements described in VMC 20.810.030(I) above. Conversion of such garage shall not result in the elimination of the requirement of one legal on-site parking space to serve the single family residence.

B.B. Off-street parking requirements. The off-street parking requirements for the primary residence shall be provided for elsewhere on the site in conformance with the setback, paving and other development standards described in VMC 20.945 Parking and Loading.
(M-3701, Amended, 05/02/2005, Sec 25; M-3663, Amended, 08/02/2004, Sec 20; M-3643, Added, 01/26/2004)

Section 20.810.060 Owner Occupancy

A. Declaring owner occupancy. Prior to issuance of a building permit or certificate of occupancy establishing an ADU, the applicant shall record a deed restriction (Covenant) in the Clark County Auditor's Office a certification by the owner under oath in a form prescribed and approved by the Planning Official that one of the dwelling units is and will continue to be occupied by the owner of the property as the owner's principal and permanent residence for as long as the other unit is being rented or otherwise occupied.

B. Owner occupancy residence requirement. The owner shall maintain residency for at least 6 months out of the year, and at no time receive rent for, or otherwise allow to be occupied, the owner-occupied unit if absent for the remainder of the year. Falsely certifying owner occupancy shall be considered a violation of the Zoning Ordinance and is subject to the enforcement actions described in VMC 20.140.
(M-3643, Added, 01/26/2004)

APPENDIX C

Possible number of accessory dwelling units that could be built within the ohana-eligible areas:

ZONING DISTRICT	NUMBER OF ELIGIBLE PARCELS
Restricted Agricultural (AG-1)	116
General Agricultural (AG-2)	553
Country (C)	1,027
Residential (R-5)	12,963
Residential (R-7.5)	4,782
Residential (R-10)	2,982
Residential (R-20)	1
TOTAL	**22,424**

The following are the parameters that were used to obtain the possible accessory dwelling units that could be built within the ohana eligible areas:

1. Parcels were selected from the ohana-eligible areas, broken down by zoning; and then, weeded out by maximum and minimum lot size requirements;

2. From that remainder, clusters, planned development housing, one dwelling limitations, zero-lot line and duplex parcels were subtracted; and

3. For the finale, the parcels that had approved building permits for an ohana unit were removed leaving 22,424 parcels eligible.

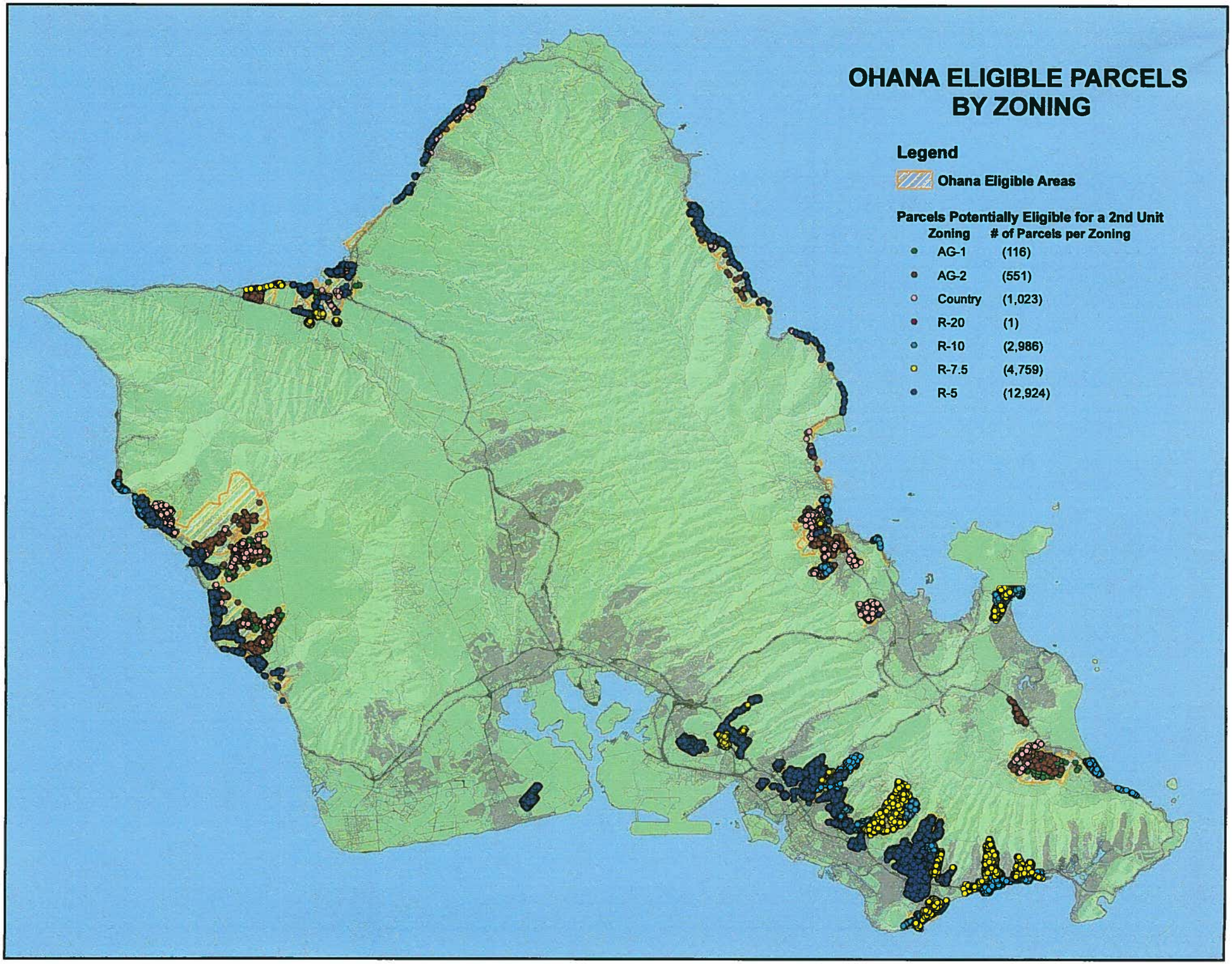
Possible number of accessory dwelling units that could be built within all Residential Districts throughout Oahu:

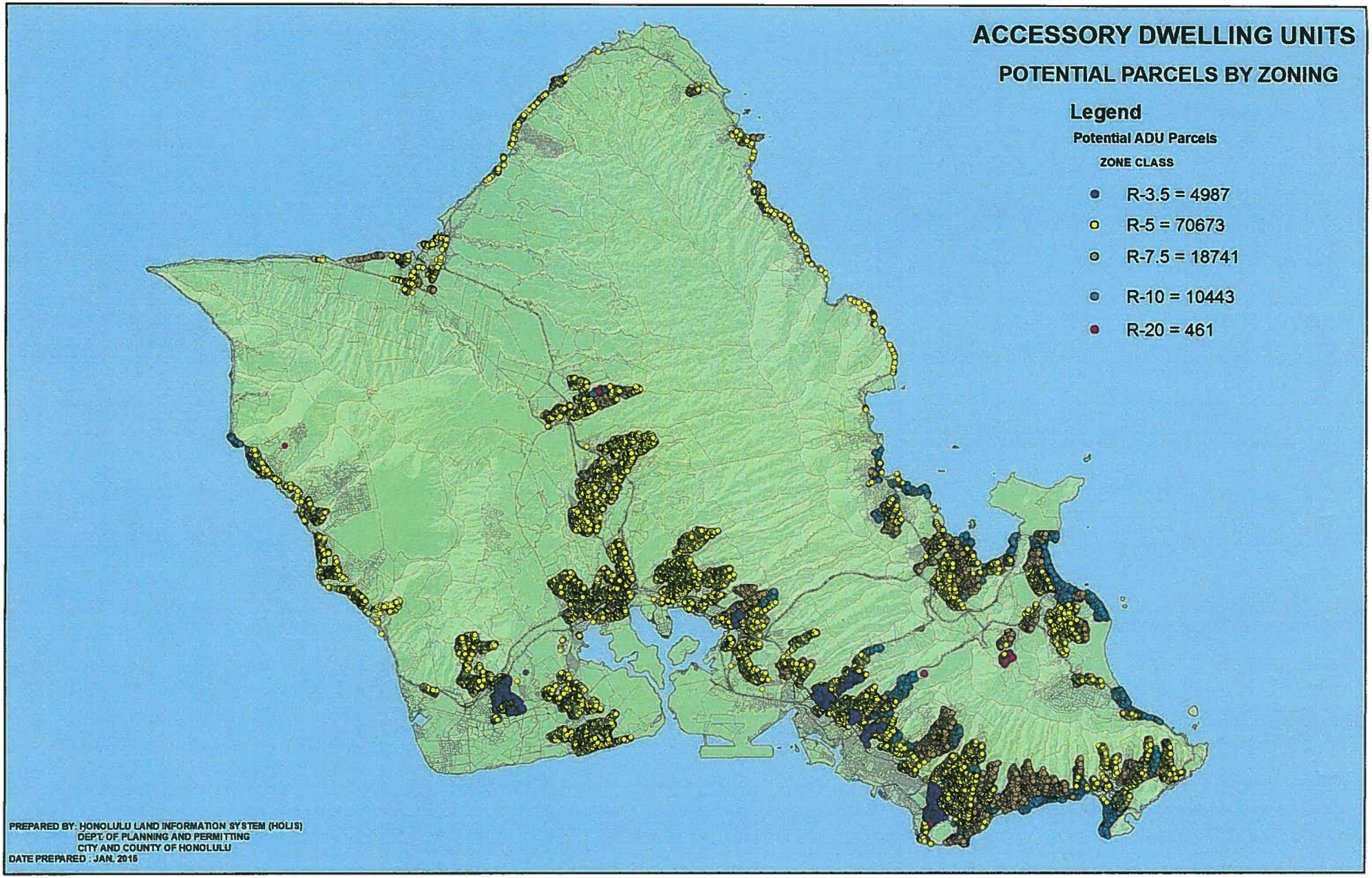
ZONING DISTRICT	NUMBER OF ELIGIBLE PARCELS
Residential (R-3.5)	4,987
Residential (R-5)	70,673
Residential (R-7.5)	18,741
Residential (R-10)	10,443
Residential (R-20)	461
TOTAL	**105,305**

The following are the parameters that were used to obtain the possible accessory dwelling units that could be built within all Residential Districts throughout the island:

1. First, all the residential lots in the R-3.5, R-5, R-7.5, R-10 and R-20 Districts throughout the island were selected;

2. From that, the following were subtracted:
   i. The number of lots that have a lot size (area) less than 3,500 square feet were subtracted;
   ii. The number of lots that already have a legally permitted second dwelling unit (ohana dwelling or otherwise);
   iii. The number of lots that have a lot size (area) greater than or equal to twice the minimum lot size for the underlying residential zoning district; and
   iv. Clusters, planned developments housing, and duplex lots or any other lots that cannot have a second dwelling on the lot.


OHANA ELIGIBLE PARCELS
BY ZONING
Legend
Ohana Eligible Areas
Parcels Potentially Eligible for a 2nd Unit
Zoning # of Parcels per Zoning
AG-1 (116)
AG-2 (551)
Country (1,023)
R-20 (1)
R-10 (2,986)
R-7.5 (4,759)
R-5 (12,924)


ACCESSORY DWELLING UNITS
POTENTIAL PARCELS BY ZONING
Legend
Potential ADU Parcels
ZONE CLASS
R-3.5 = 4987
R-5 = 70673
R-7.5 = 18741
R-10 = 10443
R-20 = 461
PREPARED BY: HONOLULU LAND INFORMATION SYSTEM (HOLIS)
DEPT. OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
DATE PREPARED : JAN. 2015