

# Resolution

No. 22-184

## REFERRING TO THE PLANNING COMMISSIONS A PROPOSED BILL RELATING TO AGRICULTURAL LAND USE FOR HOUSING

WHEREAS, the Council is considering a proposed bill to provide greater housing opportunities for farm owners and workers, and reduce inconsistencies and gaps in the various criteria and requirements in the Agricultural Zoning District; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended ("Charter"), require that the appropriate planning commissions review proposed land use ordinances and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, RELATING TO AGRICULTURAL LAND USE FOR HOUSING," a copy of which is attached as Exhibit "1," to the Lānaʻi Planning Commission, Maui Planning Commission, and Molokaʻi Planning Commission for appropriate action, in accordance with Charter Sections 8.8.4 and 8.8.6;
2. That it respectfully requests that the Lānaʻi, Maui, and Molokaʻi Planning Commissions transmit their findings and recommendations to the Council as expeditiously as possible; and
3. That certified copies of this Resolution be transmitted to the Mayor, the Planning Director, and the Lānaʻi, Maui, and Molokaʻi Planning Commissions.

INTRODUCED BY:

Yuki Lei Sugimura  
YUKI LEI K. SUGIMURA

APPROVED AS TO FORM  
AND LEGALITY

Ronnn  
Deputy Corporation Counsel  
County of Maui

## **Exhibit "1"**

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, RELATING TO AGRICULTURAL LAND USE FOR HOUSING

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The purpose of this Ordinance is to provide greater housing opportunities for farm owners and workers, and reduce inconsistencies and gaps in the various criteria and requirements in the Agricultural Zoning District.

SECTION 2. Section 19.04.040, Maui County Code, is amended by amending the definition of “animal and livestock raising” to read as follows:

““Animal and livestock raising” means facilities and activities associated with the breeding and raising of live animals such as dairy cows, poultry, hogs, beef cattle, sheep, horses, bees, dogs, and other domesticated animals. [This does not include small-scale animal keeping.]”

SECTION 3. Section 19.04.040, Maui County Code, is amended by amending the definition of “farm labor dwelling” to read as follows:

““Farm labor dwelling” means a dwelling [or lodging] unit that is used exclusively by agricultural employees employed [full-time or seasonally in the County, and that is located on a] by the farm [and is ancillary and secondary to agriculture.] or ranch on which the farm labor dwelling is located. Immediate family members of the agricultural employee may also reside with the employee in the farm labor dwelling.

SECTION 4. Section 19.04.040, Maui County Code, is amended by repealing the definition of “small-scale animal-keeping.”

["Small-scale animal-keeping" means the keeping of dogs, cats, birds, rabbits, fowl, and similar type animals for noncommercial and domestic use. This also includes the keeping, grazing, and raising of pigs, goats, chickens, horses, cows, sheep, and similar type animals for noncommercial and domestic use in the agricultural and rural districts.]

SECTION 5. Section 19.30A.050, Maui County Code, is amended to read as follows:

**"19.30A.050 Permitted uses.** The following uses and structures are permitted in the agricultural district, subject to compliance with all other applicable laws:

A. Principal uses.

1. Agriculture.
2. Agricultural land conservation[.], as demonstrated by county, state, or federal agency certification.
3. Agricultural parks, in accordance with chapter 171, Hawai'i Revised Statutes.
4. Animal and livestock raising, including animal feed lots, and sales yards.
5. Private agricultural parks.
6. Minor utility facilities as defined in section 19.04.040.
7. Retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance; this does not include zipline, canopy, and bungee jumping commercial operations that may be incorporated into the restoration of a historic site, which require a conditional permit under chapter 19.40.
8. Solar energy facilities, as defined in section 19.04.040, and subject to the restrictions of chapter 205, Hawai'i Revised Statutes, that are less than fifteen acres, occupy no more than 35 percent of the lot, and are compatible with existing agricultural uses; except that land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E need not be compatible with existing agricultural uses.
9. Police stations, fire stations, and community centers that are owned or operated by government agencies and that support and protect agriculture, though they do not need to serve agriculture exclusively.

B. Accessory uses. Uses that are incidental or subordinate to, or customarily used in conjunction with, a permitted principal use[,]  
may be conducted on the same lot as an ongoing permitted

principal use or may be conducted on another lot that is part of and contiguous or adjacent to the same active agriculture operation that has an ongoing permitted principal use and is under the same ownership lease, license, or other land tenure instrument, as follows:

1. Two farm dwellings per lot, one of which [must not exceed one thousand square feet of developable area] is subject to the following criteria:

a. The dwelling must not exceed one thousand five hundred square feet of covered floor area. For the purposes of this subsection, "covered floor area" includes any covered storage and excludes the following:

i. Attached garages and carports that do not exceed five hundred square feet, are used only for vehicle storage and parking, and are situated under the same roofline as the farm dwelling.

ii. Parking spaces and garages, including areas within the parking spaces and garages that contain laundry facilities and utility equipment, such as water heaters.

iii. Covered walkways or landings up to four-feet wide under eaves or overhangs that are not part of an uncovered open deck, patio, lanai, or similar structure.

b. The dwelling may have up to four hundred square feet of uncovered open decks, walkways, patios, lanai, or similar structures

c. May have up to four hundred square feet of covered decks, walkways, patios, lanai, or similar structures.

2. One farm labor dwelling [per] on lots that are between two and five acres, and two farm labor dwellings on lots that are greater than five acres [of lot area.], if the lot is not subject to a condominium property regime under chapter 514A or chapter 514B, Hawai'i Revised Statutes. [On the island of Maui, the] The owner or lessee of the lot [shall] must meet [two] three of the following [three] four criteria:

a. Provide proof of at least [~~\$35,000~~] \$10,000 of gross sales of agricultural products per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as [shown by state general excise tax forms and federal form 1040 Schedule F filings.] verified by state or federal tax records or by certification of a public accountant licensed in the state of Hawai'i.

b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system.

c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production[.] and current Farm Service Agency number from the United States Department of Agriculture; the implementation of the farm plan must be confirmed by the planning director or director of agriculture.

d. Demonstrate that at least 51 percent of the usable area of the property is dedicated to agricultural use for real property tax purposes, which must be confirmed by the director of finance, or provide confirmation from the director of agriculture that at least 51 percent of the usable area of the property is being use for agricultural purposes.

[On the islands of Molokai and Lanai, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050(B)(2)(a) and 19.30A.050(B)(2)(b).]

Farm labor dwellings that do not meet three of the above criteria may be approved in accordance with 19.30A.060. The department may require that the owner of a farm labor dwelling annually certify that the farm labor dwelling meets the requirements of this chapter.

3. A maximum of two commercial agricultural structures per lot, subject to parking requirements of chapter 19.36B[.], if 51 percent of the usable area of the property is dedicated for agricultural use for real property tax purposes, which must be confirmed by the director of finance.

a. The commercial agricultural structure registration must be suspended if the commercial agricultural structure's use violates any provision of the comprehensive zoning ordinance until the violation is remedied.

b. The commercial agricultural structure registration must be terminated:

i. Upon the request of its holder;

ii. If the planning director determines any county, state, or federal taxes arising from the use are delinquent;

iii. If the director of finance confirms that 51 percent of the usable area of the property

is no longer dedicated for agricultural use for real property tax purposes;

iv. Upon the termination of the real property tax classification as agriculture or other real property tax classification that includes agricultural use; or

v. Upon the termination of the general excise tax license for the agricultural activities.

4. Storage, wholesale, and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products, and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County.

5. Processing of agricultural products, the majority of which are grown in the County.

6. Energy systems, small-scale[.]; energy storage systems; telecommunications and broadcasting antennae forty feet or less in height, in accordance with state and federal laws.

[7. Small-scale animal-keeping.]

[8.] 7. Animal hospitals and animal board facilities; if conducted on the island of Moloka'i, such uses must have been approved by the Moloka'i planning commission as conforming to the intent of this chapter.

[9.] 8. Riding academies; if conducted on the island of Moloka'i, such uses must have been approved by the Moloka'i planning commission as conforming to the intent of this chapter.

[10.] 9. Open land recreation as follows: surf and other ocean contests; hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeos and rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours, excluding zipline, canopy, and bungee jumping conducted for commercial purposes; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes on the island of Moloka'i, such uses must have been approved by the Moloka'i planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection, subsection 19.30A.060(A)(7), or chapter 19.40 of this title[.]

are prohibited; certain open land recreation uses or structures may also be required to obtain a special permit in accordance with chapter 205, Hawai'i Revised Statutes.

[11.] 10. Except on Moloka'i, bed and breakfast homes permitted under chapter 19.64 [that are:

a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 Schedule F filings; or

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A or chapter 514B, Hawai'i Revised Statutes:

i. The lot was created prior to November 1, 2008.

ii. The lot is comprised of five acres or less.

iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawai'i Revised Statutes; or

c. Located in sites listed on the State of Hawai'i Register of Historic Places or the National Register of Historic Places.], if at least 51 percent of the usable area of the lot is in active agriculture and is consistent with chapter 205, Hawai'i Revised Statutes. No more than one bed and breakfast home permit may be approved for any lot, including lots that are subject to a condominium property regime under chapter 514A or chapter 514B, Hawai'i Revised Statutes.

[12. Short-term rental homes permitted under chapter 19.65, except that an approved farm plan has been fully implemented and is consistent with chapter 205, Hawai'i Revised Statutes.]

11. One swimming pool per lot that can have one shade structure without any walls.

[13.] 12. Parks for public use, not including golf courses, and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds.

[14.] 13. Family child care homes as defined in section 46-15.35(b), Hawai'i Revised Statutes, and adult family boarding homes and care homes as defined in section 46-15.3, Hawai'i Revised Statutes, that are registered in



accordance with chapter 346, Hawai'i Revised Statutes, and located in a legally permitted farm dwelling.

[15.] 14. Other uses that primarily support a permitted principal use; however, the uses must be approved by the appropriate planning commission as conforming to the intent of this chapter."

SECTION 6. Section 19.30A.060, Maui County Code, is amended to read as follows:

**"Section 19.30A.060 Special uses.** A. The following uses and structures are permitted in the agricultural district if a special use permit, as provided in section 19.510.070, is obtained; except that if a use described in this section also requires a special permit as provided in chapter 205, Hawai'i Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the special permit [shall] must fulfill the requirements of this section:

1. Additional farm dwellings beyond those permitted by subsection 19.30A.050(B)(1).
2. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050(B)(2).
3. Commercial agricultural structures that do not meet the standards and restrictions of this chapter.
4. Public and quasi-public institutions that are necessary for agricultural practices.
5. Major utility facilities as defined in section 19.04.040.
6. Telecommunications and broadcasting [antenna.] antennae greater than forty feet in height.
7. Open land recreation uses, structures, or facilities that do not meet the criteria of subsection [19.30A.050(B)(10)] 19.30A.050(B)(9), including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, skateboarding, rollerblading, playing fields, rappelling, except rappelling within five hundred feet of a waterfall, and accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit as provided in section 205-6, Hawai'i Revised Statutes. The following uses or structures are prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, golf driving ranges; and on Moloka'i, commercial zipline, canopy, rappelling, and bungee jumping.
8. Cemeteries, crematories, and mausoleums.
9. Churches and religious institutions.
10. Mining and resource extraction.

11. Landfills.
12. Solar energy facilities that are greater than fifteen acres.
13. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050(B)(2).
14. Short-term rental homes permitted under chapter 19.65, if at least 51 percent of the usable area of the lot is in active agriculture and is dedicated to agricultural use for real property tax purposes, which must be confirmed by the director of finance, and is consistent with chapter 205, Hawai'i Revised Statutes. No more than one short-term rental home permit may be approved for any lot, including lots that are subject to a condominium property regime under chapter 514A or chapter 514B, Hawai'i Revised Statutes."

SECTION 7. Section 19.30A.090, Maui County Code, is amended to read as follows:

**"19.30A.090 Substandard agricultural lots.** Substandard agricultural lots existing prior to the enactment of the ordinance codified in this chapter [shall be] are subject to the following standards:

A. Lots less than two acres but equal to or greater than one-half acre [shall be subject to the yard and building height standards as set forth for lots of such area in section 19.29.020, Maui County Code, and shall be] are exempt from the maximum developable area restriction of subsection [19.30A.030.D] 19.30A.030(D); and

B. Lots less than one-half acre [shall be] are subject to the yard and building height standards [as set forth for lots of such area] in sections 19.08.050 and 19.08.060, Maui County Code, and [shall be] are exempt from the maximum developable area restriction of subsection [19.30A.030.D] 19.30A.030(D)."

SECTION 8. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 9. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

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INTRODUCED BY:

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YUKI LEI K. SUGIMURA