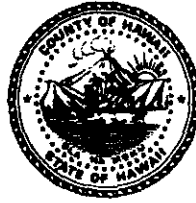


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 07 105 BILL NO. 74  
(DRAFT 3)

AN ORDINANCE AMENDING SECTION 25-8-33 (CITY OF HILO ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE-FAMILY RESIDENTIAL – 10,000 SQUARE FEET (RS-10) TO NEIGHBORHOOD COMMERCIAL – 40,000 SQUARE FEET (CN-40) AT WAIAKEA, SOUTH HILO, HAWAI'I, COVERED BY TAX MAP KEY 2-2-39:31, 57, 68 AND 69.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Section 25-8-33, Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Waiakea, South Hilo, Hawai'i, shall be Neighborhood Commercial - 40,000 square feet (CN-40):

Beginning at the southeast corner of this parcel of land, also being the southwest corner of Kekela Street on the northerly side of Puainako Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 7,790.70 feet south and 10,213.71 feet east and running by azimuths measured clockwise from true south:

Following along Puainako Street on a curve to the right with a radius of 1,223.74 feet, the chord azimuth and distance being:

1. 80° 16' 24" 230.05 feet;
2. 85° 40' 146.95 feet along Puainako Street;

Thence along Puainako Street on a curve to the right with a radius of 80.00 feet, the chord azimuth and distance being:

- |    |          |        |  |
|----|----------|--------|--|
| 3. | 130° 40' | 113.14 | feet;  |
| 4. | 175° 40' | 57.50  | feet along Kilauea Avenue;   |
| 5. | 265° 40' | 242.00 | feet along Lot 2 of Waiakea Homestead House Lots, Block 401 and the remainder of Grant 9507 to Joaquin Zacheus Jeremiah; |
| 6. | 171° 05' | 131.06 | feet along the remainder of Grant 9507 to Joaquin Zacheus Jeremiah;  |
| 7. | 265° 40' | 224.45 | feet along Lot 5-B and 5-A;  |
| 8. | 355° 40' | 246.52 | feet along Kekela Street to the point of beginning and containing an area of 88,317 Sq. Ft.                              |

All as shown on the map attached hereto, marked Exhibit "A" and by reference made part hereof.

SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code 1983 (2005 Edition), the County Council finds the following conditions are:

- (1) Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or
  - (2) Reasonably conceived to fulfill needs directly emanating from the land use proposed with respect to:
    - (A) Protection of the public from the potentially deleterious effects of the proposed use, or
    - (B) Fulfillment of the need for public service demands created by the proposed use.
- A. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. The required water commitment payment shall be submitted to the Department of

Water Supply in accordance with the "Water Commitment Guidelines Policy" within 180 days from the effective date of this ordinance.

- C. Construction of the proposed improvements shall be completed within five (5) years from the effective date of this ordinance. This time period shall include securing Final Plan Approval from the Planning Director in accordance with the Zoning Code. Plans shall identify proposed structure(s), fire protection measures, access roadway, driveway and parking stalls. Landscaping shall be indicated on the plans for the purpose of mitigating any potential adverse noise or visual impacts to adjoining parcels. Landscaping shall be provided in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements), Chapter 25 (Zoning Code), Hawaii County Code. Landscaping shall include rock walls or fences on the northern boundaries, as agreed upon between the applicant and owners of lands adjacent to such northern boundaries, as may be evidenced by any written agreements in existence as of the effective date of this rezoning.
- D. The applicant shall secure Final Consolidation Approval of parcels 31, 57, 68 and 69 within one year from the effective date of this ordinance.
- E. A Traffic Impact Analysis Report (TIAR) shall be submitted to the Department of Transportation Highways Division, through the Hawaii District Office for review and shall be approved prior to the issuance of Final Plan Approval. A copy of the TIAR shall also be submitted to the Planning Director.
- F. No project access from Kekela Street shall be allowed except for delivery vehicles. Access for delivery vehicles may be allowed by the planning director, in consultation with the director of public works, only if the use can be limited to

delivery vehicles, excluding the general public. Access to the project site, if any, from Kekela Street shall conform to Chapter 22 (County Streets) of the Hawaii County Code.

- G. Access to the project site from Puainako Street shall be limited to right-in, right-out movements only, and shall meet with the approval of the Department of Transportation. The applicant shall construct any improvements on Puainako Street as required by the Department of Transportation. These improvements shall include extending the existing paved and striped pedestrian walkway from Kekela St. to Kilauea Ave.
- H. Notwithstanding Section 25-4-51(a)(3), the project shall provide a minimum of one parking space for each 160 square feet of gross floor area for commercial uses, or the requirements of Section 25-4-51, whichever is greater. The minimum off-street parking spaces for this project shall initially be 123 spaces.
- I. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and the recommended drainage system shall be constructed, meeting the approval of the Department of Public Works, prior to the issuance of a Certificate of Occupancy.
- J. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
- K. All earthwork activity shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawaii County Code.

- L. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources – State Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
  
- M. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawaii County Code relating to Affordable Housing Policy. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to Final Plan Approval or Final Subdivision Approval, whichever is applicable.
  
- N. If the applicant, successors, or assigns develop residential units on the subject property, the applicant shall make its fair share contribution to mitigate the potential regional impacts of the property with respect to parks and recreation, fire, police, solid waste disposal facilities and roads. The fair share contribution shall become due and payable prior to receipt of Final Plan Approval. The fair share contribution for each lot shall be based on the actual number of residential units developed. The fair share contribution in a form of cash, land, facilities or any combination thereof shall be determined by the County Council. The fair share contribution may be adjusted annually beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall have a maximum combined value of **\$6,653.40** per multiple family residential unit (**\$10,368.57** per single family residential unit). The total amount shall be determined with the

actual number of units according to the calculation and payment provisions set forth in this condition. The fair share contribution per multiple family residential unit (single family residential units) shall be allocated as follows:

1. **\$3,281.93** per multiple family residential unit (**\$4,999.91** per single family residential unit) to the County to support park and recreational improvements and facilities;
2. **\$103.73** per multiple family residential unit (**\$241.20** per single family residential unit) to the County to support police facilities;
3. **\$319.07** per multiple family residential unit (**\$476.39** per single family residential unit) to the County to support fire facilities;
4. **\$142.21** per multiple family residential unit (**\$208.57** per single family residential unit) to the County to support solid waste facilities; and
5. **\$2,806.46** per multiple family residential unit (**\$4,442.50** per single family residential unit) to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the applicant may contribute land and/or construct improvements/facilities related to parks and recreation, fire, police, solid waste disposal facilities and roads within the region impacted by the proposed development, subject to the review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the County Council.

- O. Should the Council adopt an Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
  
- P. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
  
- Q. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of the ordinance. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval have been satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.
  
- R. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:
  - 1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
  
  - 2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  
  - 3. Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone.


4. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
  
5. If the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action.

Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the subject area to its original or more appropriate designation.

SECTION 3. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

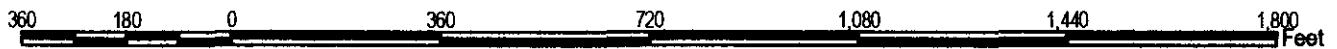
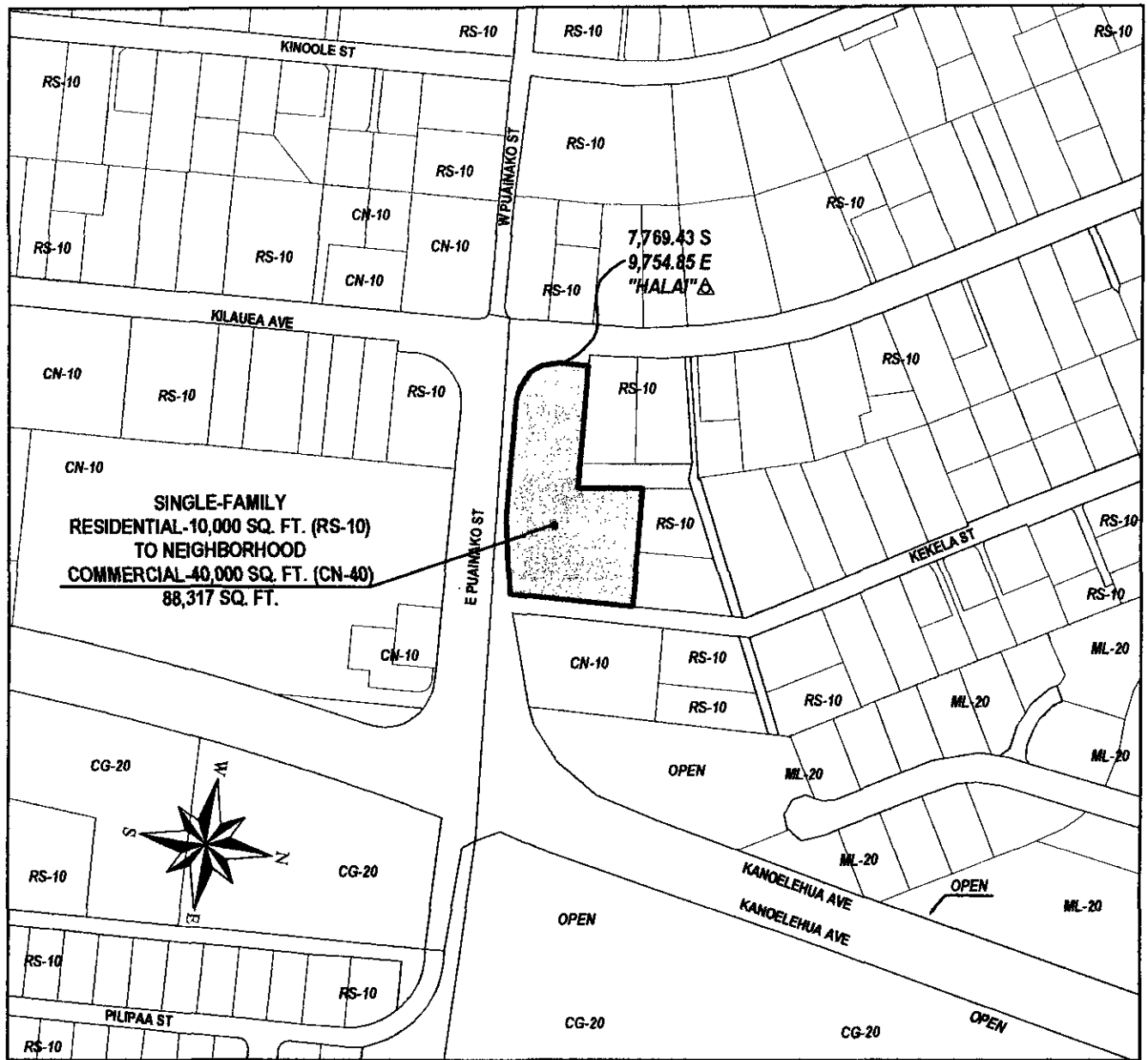
SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:

  
\_\_\_\_\_  
COUNCIL MEMBER, COUNTY OF HAWAI'I

Kona, Hawai'i  
Date of Introduction: June 1, 2007  
Date of 1<sup>st</sup> Reading: June 1, 2007  
Date of 2<sup>nd</sup> Reading: July 25, 2007  
Effective Date: August 14, 2007





# AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-33 (CITY OF HILO ZONE MAP)  
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE  
 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION  
 FROM SINGLE-FAMILY RESIDENTIAL-10,000 SQ. FT. (RS-10)  
 TO NEIGHBORHOOD COMMERCIAL-40,000 SQ. FT. (CN-40)  
 AT WAIAKEA, SOUTH HILO, HAWAII

PREPARED BY: PLANNING DEPARTMENT  
 COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK  
County of Hawai'i  
Kona, Hawai'i

(Draft 2)

Introduced By: Brenda Ford  
Date Introduced: June 1, 2007  
First Reading: June 1, 2007  
Published: June 9, 2007

REMARKS: \_\_\_\_\_  
June 20, 2007 - Amended to Draft 3  
and held over pursuant to Council  
Rule 25(e); July 10, 2007 - Postponed  
to July 25, 2007 Council Meeting

Second Reading: July 25, 2007  
To Mayor: August 2, 2007  
Returned: August 14, 2007  
Effective: August 14, 2007  
Published: August 24, 2007

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford		X		
Higa			X	
Hoffmann	X			
Ikeda	X			
Jacobson	X			
Naeole	X			
Pilago	X			
Yagong	X			
Yoshimoto	X			
	7	1	1	0

(Draft 3)

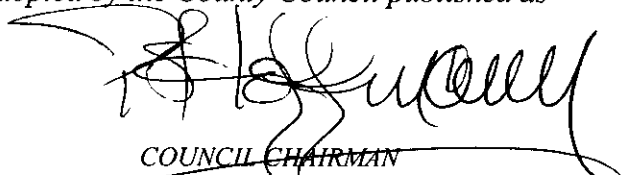
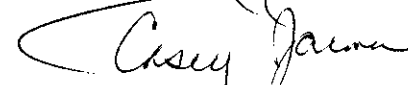
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford		X		
Higa	X			
Hoffmann		X		
Ikeda	X			
Jacobson		X		
Naeole	X			
Pilago		X		
Yagong	X			
Yoshimoto	X			
	5	4	0	0

*I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.*

APPROVED AS TO  
FORM AND LEGALITY:

  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

Date \_\_\_\_\_

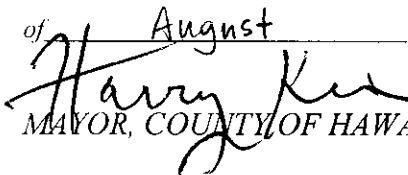
  
COUNCIL CHAIRMAN  
  
COUNTY CLERK

Bill No.: 74 (Draft 3)

Reference: C-255.6/PC-31

Ord No.: **07 105**

Approved/Disapproved this 14<sup>th</sup> day  
of August, 2007

  
MAYOR, COUNTY OF HAWAII

**Ordinances Numbered 07-105, 07-106, 07-107, 07-108, & 07-109**

I hereby certify that the following Ordinances passed second and final reading at the meeting of the County Council on July 25, 2007, by vote, as listed below:

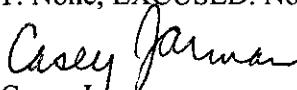
**Ordinance 07-105 (Bill 74, Draft 3):** An Ordinance Amending Section 25-8-33 (City of Hilo Zone Map), Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), by Changing the District Classification from Single-Family Residential – 10,000 Square Feet (RS-10) to Neighborhood Commercial – 40,000 Square Feet (CN-40) at Waiakea, South Hilo, Hawai'i, Covered by Tax Map Key 2-2-39:31, 57, 68 and 69. AYES: Council Members Higa, Ikeda, Naeole, Yagong, and Yoshimoto – 5; NOES: Council Members Ford, Jacobson, Pilago, and Chair Hoffmann – 4; ABSENT: None; EXCUSED: None.

**Ordinance 07-106 (Bill 82, Draft 3):** An Ordinance Amending Ordinance No. 02-21, which Amended Ordinance No. 98-87, which Amended Ordinance No. 90-008, and which Reclassified Lands from Agricultural – 20 Acre (A-20a) to Agricultural – 3 Acre (A-3a) at Kahua 1<sup>st</sup>, North Kohala, Hawai'i, Covered by Tax Map Key 5-9-007:007. AYES: Council Members Ford, Higa, Ikeda, Jacobson, Naeole, Pilago, Yagong, Yoshimoto, and Chairman Hoffmann – 9; NOES: None; ABSENT: None; EXCUSED: None.

**Ordinance 07-107 (Bill 106, Draft 4):** An Ordinance Amending Chapter 19, Article 1 (Administration), Section 19-2, and Article 7 (Tax Maps; Valuations), Section 19-53, of the Hawai'i County Code 1983 (2005 Edition), as Amended, Relating to Affordable Rental Housing Classification. AYES: Council Members Ford, Higa, Ikeda, Jacobson, Naeole, Pilago, Yagong, Yoshimoto, and Chairman Hoffmann – 9; NOES: None; ABSENT: None; EXCUSED: None.

**Ordinance 07-108 (Bill 110):** An Ordinance Amending Section 25-8-33 (City of Hilo Zone Map), Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), by Changing the District Classification from Agricultural 1-Acre (A-1a) to Neighborhood Commercial – 20,000 Square Feet (CN-20) at Ponahawai, South Hilo, Hawai'i, Covered by Tax Map Key 2-3-037:011. AYES: Council Members Ford, Higa, Ikeda, Jacobson, Naeole, Pilago, Yagong, Yoshimoto, and Chairman Hoffmann – 9; NOES: None; ABSENT: None; EXCUSED: None.

**Ordinance 07-109 (Bill 115):** An Ordinance Amending Chapter 11 (Housing Code) of the Hawai'i County Code 1983 (1995 Edition), as Amended by Ordinance 05-23, by Amending Sections 11-3 (5) to Require Affordable Units to be the Primary Residence of a Buyer or Renter and 11-5 (C) to Ensure that Developers Maintain Affordability and Compliance with Resale Restrictions. AYES: Council Members Ford, Higa, Ikeda, Jacobson, Naeole, Pilago, Yagong, Yoshimoto, and Chairman Hoffmann – 9; NOES: None; ABSENT: None; EXCUSED: None.

  
Casey Jarman  
County Clerk

(Hawai'i Tribune-Herald – August 24, 2007)  
(West Hawai'i Today – August 24, 2007)

**Note:** The original Digest/Affidavit is attached to Ordinance No. 07-105.