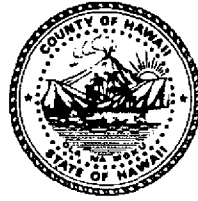


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 391
Draft 2

ORDINANCE NO. 09 18

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 MULTIPLE FAMILY RESIDENTIAL – 1,500 SQUARE FEET (RM-1.5) AT WAIĀKEA, SOUTH HILO, HAWAI'I, COVERED BY TAX MAP KEY 2-4-001:116.

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 Waiākea, South Hilo, Hawai'i, shall be Multiple Family Residential – 1,500 square feet (RM-1.5):

Beginning at the north corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HĀLAI" being 5,285.13 feet South and 7,371.84 feet East and running by azimuths measured clockwise from True South:

- | | | | |
|----|----------|--------|--|
| 1. | 328° 10' | 580.80 | feet along Parcel 1 of County approved subdivision # 3857; |
| 2. | 58° 10' | 300.00 | feet along Parcel 1 of County approved subdivision # 3857; |
| 3. | 148° 10' | 580.80 | feet along Parcel 1 of County approved subdivision # 3857; |
| 4. | 238° 10' | 300.00 | feet along the southeast side of Kāwili Street to the point of beginning and containing an area of 4.00 acres. |

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, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations as recommended by a professional engineer, licensed in the State of Hawai'i, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within 180 days from the effective date of this ordinance.
- C. Construction of the proposed development shall be completed within five (5) years from the effective date of this ordinance. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). The applicant shall comply with landscaping requirements for RM zoning.

- D. Prior to Final Plan Approval the applicant shall meet with representatives of Waiākea High School to determine an adequate physical barrier. If agreement cannot be reached, the Planning Director shall determine the barrier. The physical barrier shall be installed prior to issuance of a Certificate of Occupancy.
- E. All driveway connections to Kāwili Street shall conform to Chapter 22, County Streets, of the Hawai'i County Code.
- F. The applicant shall provide (ingress and egress) access improvements within Kāwili Street as required by the Department of Public Works, which may include, but not be limited to, turning lanes or vehicle refuge areas.
- G. The applicant shall provide full improvements to the entire frontage along Kāwili Street consisting of, but not limited to, pavement widening with concrete curb, gutter and sidewalk, drainage improvements, and any required utility relocation, meeting with the approval of the Department of Public Works.
- H. The applicant shall also install street lights and traffic controls as required by the Traffic Division, Department of Public Works. The applicant shall be responsible for the design, purchase, and installation of such devices.
- I. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
- J. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
- K. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to issuance of a construction permit. Any recommended drainage improvements, if required, shall be constructed

meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.

- L. All earthwork activity, including grading and grubbing, shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
- M. During construction the applicant shall comply with the Department of Health's regulations for noise, dust and storm water runoff.
- N. The applicant shall complete and submit to the Department of Environmental Management a wastewater flow contribution report for the proposed development within 180 days from the effective date of this ordinance. Should the sewer system on Kāwili Street require upgrading due to development of the property, the applicant shall bear the cost of the upgrade.
- O. The applicant shall install sewer lines within the development to connect with the County's sewer system, meeting with the approval of the Department of Environmental Management, prior to the issuance of a Certificate of Occupancy.
- P. 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 **\$7,383.36** per multiple family residential unit (**\$11,506.13** 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. **\$3,642.00** per multiple family residential unit (**\$5,548.46** per single family residential unit) to the County to support park and recreational improvements and facilities;
2. **\$115.11** per multiple family residential unit (**\$267.66** per single family residential unit) to the County to support police facilities;
3. **\$354.08** per multiple family residential unit (**\$528.66** per single family residential unit) to the County to support fire facilities;
4. **\$157.81** per multiple family residential unit (**\$231.45** per single family residential unit) to the County to support solid waste facilities; and
5. **\$3,114.36** per multiple family residential unit (**\$4,929.90** 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. The requirements of Conditions G and H and any off-site infrastructure drainage improvements shall be credited against the road and traffic improvements fair share contribution.

- Q. Should the Council adopt a 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.

- R. 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, Hawai'i 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 for any new multiple-family or duplex residential structures or prior to issuance of additional single-family residential building permits. This requirement, however, shall not apply to any and all units on the subject property that are planned to be rented to individuals or family-students attending the University of Hawai'i at Hilo ('UHH') system and other institutions of higher learning within the City of Hilo, including employees directly associated, such as faculty members, with the UHH and its resources; provided, however, that prior to issuance of Final Plan Approval, developer shall have entered into an agreement with the County of Hawai'i, in a form approved by the Administrator of the Office of Housing Community Development, that 1) encourages the development and sustained operations of rental housing facilities for students and educational purposes and 2) provides for the rental use, as described herein, of these units for a minimum period of twenty (20) years after a minimum start up period and appropriate penalties, including compliance with the prevailing requirements of Chapter 11.
- S. 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 Resource – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

- T. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

- U. 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 to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

- V. 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 Director may initiate rezoning of the 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.

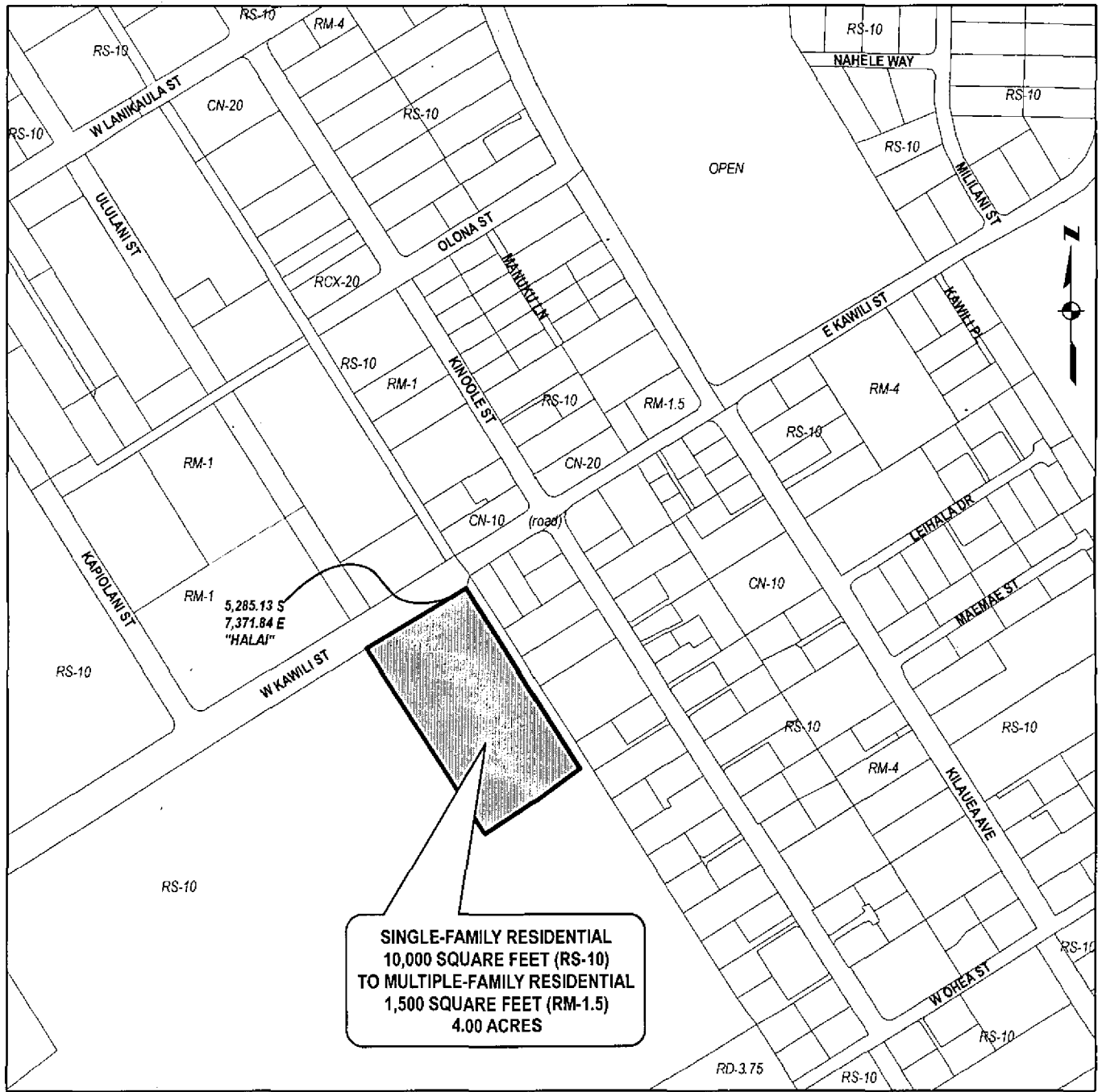
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

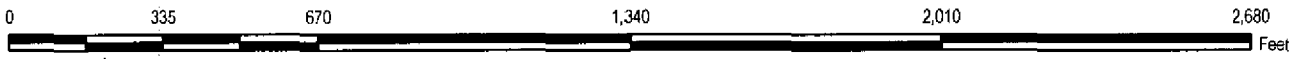
Hilo, Hawaii

Date of Introduction: November 21, 2008
Date of 1st Reading: January 23, 2009
Date of 2nd Reading: February 4, 2009
Effective Date: February 18, 2009

REFERENCE: Comm. 90.1



SINGLE-FAMILY RESIDENTIAL
 10,000 SQUARE FEET (RS-10)
 TO MULTIPLE-FAMILY RESIDENTIAL
 1,500 SQUARE FEET (RM-1.5)
 4.00 ACRES



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 SQUARE FEET (RS-10)
 TO MULTIPLE-FAMILY RESIDENTIAL 1,500 SQUARE FEET (RM-1.5)
 AT WAIAKEA, SOUTH HILO, HAWAII**

MAP PREPARED BY:
 COUNTY OF HAWAII, PLANNING DEPARTMENT

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

RECEIVED

(Draft 2)

2009 FEB 19 8 10 42

Introduced By: Donald Ikeda
 Date Introduced: November 21, 2008
 First Reading: January 23, 2009
 Published: January 31, 2009

REMARKS:

November 21, 2008 - Postponed
December 17, 2008 - Postponed
January 7, 2009 - Postponed

Second Reading: February 4, 2009
 To Mayor: February 12, 2009
 Returned: February 19, 2009
 Effective: February 18, 2009
 Published: February 26, 2009

REMARKS:

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann		X		
Ikeda	X			
Naeole	X			
Onishi	X			
Yagong			X	
Yoshimoto	X			
	7	1	1	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell			X	
Hoffmann		X		
Ikeda	X			
Naeole	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
	7	1	1	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:

Ag D. Self
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date FEB 13 2009

[Signature]
 COUNCIL CHAIRPERSON

[Signature]
 COUNTY CLERK

Bill No.: 391 (Draft 2) (2006-2008)

Reference: C-90.1/PC-102

Ord No.: 09 18

Approved/Disapproved this 18th day

of January, 2009

[Signature]
 MAYOR, COUNTY OF HAWAII

Ordinances Numbered 09-18, 09-19, 09-20, & 09-21

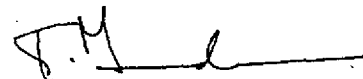
I hereby certify that the following Ordinances passed second and final reading at the meeting of the County Council on February 4, 2009, by vote, as listed below:

Ordinance 09-18 (Bill 391, Draft 2) (2006-2008): 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 Multiple Family Residential – 1,500 Square Feet (RM-1.5) at Waiakea, South Hilo, Hawai'i, Covered by Tax Map Key 2-4-001:116. AYES: Council Members Enriques, Ford, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 7; NOES: Council Member Hoffmann – 1; ABSENT: Council Member Greenwell – 1; EXCUSED: None.

Ordinance 09-19 (Bill 11): An Ordinance to Amend Ordinance No. 08-78, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2009. AYES: Council Members Enriques, Ford, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Greenwell – 1; EXCUSED: None.

Ordinance 09-20 (Bill 12): An Ordinance Amending Ordinance No. 04-59 of the County of Hawai'i, as Heretofore Amended by Ordinance No. 04-154, Pertaining to the Issuance of General Obligation Bonds for the Purpose of Financing Various Public Improvements Described Therein. AYES: Council Members Enriques, Ford, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Greenwell – 1; EXCUSED: None.

Ordinance 09-21 (Bill 13): An Ordinance to Amend Ordinance No. 08-78, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2009. AYES: Council Members Enriques, Ford, Hoffmann, Ikeda, Naeole, Onishi, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Greenwell – 1; EXCUSED: None.



Kenneth G. Goodenow
County Clerk

(Hawai'i Tribune-Herald – February 26, 2009)
(West Hawai'i Today – February 26, 2009)

Note: The original Digest/Affidavit is attached to Ordinance 09-18.