

**AN ORDINANCE AMENDING CHAPTER 25, ARTICLE 2, ARTICLE 4 AND ARTICLE 5, OF THE HAWAII COUNTY CODE 1983 (2005 EDITION, AS AMENDED), RELATING TO BED AND BREAKFAST ESTABLISHMENTS.**

**BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAII:**

**SECTION 1.** Purpose. The purpose of this ordinance is to resolve several inconsistencies within the Zoning Code regarding bed and breakfast establishments. This ordinance amends Chapter 25, Article 2 and Article 5 to clarify the zoning districts that require a use permit to allow a bed and breakfast establishment. Additionally, this ordinance amends Article 2 to delete references requiring plan approval for bed and breakfast establishments. Ordinance 00-152 had previously been approved to remove the requirement for plan approvals for bed and breakfast establishments under section 25-4-7. Lastly, Section 25-4-7 is corrected as a housekeeping item.

**SECTION 2.** Chapter 25, article 2, division 6, section 25-2-61 of the Hawai'i County Code 1983 (2005 Edition, as amended), is amended by amending subsection (a) to read as follows:

- “(a) The following uses shall be permitted within designated County zoning districts only if a use permit is obtained for the use from the commission:
- (1) Bed and breakfast establishments in RS, RA, FA, and A districts~~[-]~~, provided that the property is within the state land use urban district.
  - (2) Crematoriums, funeral homes, funeral services and mortuaries in RS, RD, RM, RCX, RA, FA, A and V districts.
  - (3) Churches, temples and synagogues, including meeting facilities for churches, temples, synagogues and other such institutions, in RS, RD, RM, RA, FA and A districts; provided that a minimum building site area of ten thousand square feet is required within the RS, RD, RM, and RA districts.
  - (4) Day care centers in RS, RD, RM, RA, FA and A districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, and RA districts.
  - (5) Golf courses and related golf course uses including golf driving ranges, golf maintenance buildings, and golf club houses in the RS, RD, RM, RCX, RA, FA, A, V, CG, CV, and O districts.

- (6) Group living facilities that exceed the criteria in subsection 25-1-5(b), paragraph (b) of the definition of "group living facility" in the RS, RD, RM, RCX, RA, FA, A, CN, CG, CV, and V districts.
- (7) Hospitals, sanitariums, old age, convalescent, nursing and rest homes, and other similar uses devoted to the care or treatment of the aged, the sick, or the infirm in the RS, RD, RM, RCX, RA, FA, A, and V districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, RCX and RA districts.
- (8) Major outdoor amusement and recreation facilities in RS, RD, RM, RCX, RA, A, CN, CG, CV, MCX, ML, MG and O districts.
- (9) Schools in RS, RD, RM, RA, FA, A, V, MCX, ML, and MG districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, and RA districts.
- (10) Telecommunication antennas and towers in RS, RD, RM, RCX, RA, FA, A, IA and O districts.
- (11) Yacht harbors and boating facilities in the RS, RD, RM, RCX, RA, V, CG, CV, MCX, ML, MG and O districts.
- (12) Wind energy facilities in the O district; provided that the property is within the state land use agricultural district.
- (13) Other unusual and reasonable uses which are not specifically permitted in any zoning district with the approval of the director and the concurrence of the council by resolution."

**SECTION 3.** Chapter 25, article 2, division 7, section 25-2-71 of the Hawai'i County Code 1983 (2005 Edition, as amended), is amended by amending subsection (c) to read as follows:

- "(c) Plan approval shall be required in all applicable districts prior to the construction or establishment of the following improvements and uses:
- ~~[(1) Bed and breakfast establishments as permitted under section 25-4-7.~~
  - ~~(2)]~~(1) Public uses, structures and buildings and community buildings, as permitted under section 25-4-11.
  - ~~[(3)]~~(2) Telecommunication antennas and towers, as permitted under section 25-4-12.
  - ~~[(4)]~~(3) Temporary real estate offices and model homes, as permitted under section 25-4-8.
  - ~~[(5)]~~(4) Utility substations, as authorized under section 25-4-11."

**SECTION 4.** Chapter 25, article 2, division 7, section 25-2-76 of the Hawai'i County Code 1983 (2005 Edition, as amended), is amended to read as follows:

**“Section 25-2-76. Action on plan approval application.**

- (a) The director may issue plan approval subject to conditions or changes in the proposal which, in the director’s opinion, are necessary to carry out and further the purposes of this chapter and the considerations contained in section 25-2-77.
- ~~[(b) The director may only issue plan approval for a bed and breakfast establishment if the proposed use meets all of the conditions contained in sections 25-2-77 and 25-4-7.~~
- (e)](b) The director may only issue plan approval for a telecommunication antenna or tower if the proposed use meets all of the conditions contained in sections 25-2-77 and 25-4-12, and if the applicant provides all verification required under section 25-2-74.
- ~~[(d)](c)~~ The director may only issue plan approval for a temporary model home or real estate office if the proposed use meets all of the conditions in section 25-2-77 and 25-4-8.
- (e)](d) The director shall render a decision to either approve or deny a plan approval application, other than for an agricultural tourism facility, within thirty days after acceptance of the application. If the director fails to render a decision within the thirty-day period, the application shall be considered approved without further certification by the director. For an agricultural tourism facility, the department shall conduct a site inspection prior to issuing plan approval, and the director shall render a decision to either approve or deny a plan approval application within sixty days after acceptance of the application. If the director fails to render a decision within the sixty-day period, the application shall be considered approved without further certification by the director.”

**SECTION 5.** Chapter 25, article 4, division 1, section 25-4-7 of the Hawai‘i County Code 1983 (2005 Edition, as amended), is amended by amending subsection (a) to read as follows:

- “(a) Bed and breakfast establishments shall be permitted in the RD, RM, RCX, V, CN, CG, ~~and~~ CV and CDH districts. A bed and breakfast establishment may be permitted in the RS districts and RA, FA, A districts, within the State land use urban district, provided that a use permit is obtained for each such use. A special permit shall also be required for any bed and breakfast establishment located in either the State land use rural or agricultural districts.”

**SECTION 6.** Chapter 25, article 5, division 5, section 25-5-52 of the Hawai‘i County Code 1983 (2005 Edition, as amended), is amended by amending subsection (d) to read as follows:

- “(d) The following uses may be permitted in the RA district, provided that either a use permit is issued for each use if the building site is within the State land use urban district or a special permit is issued for each use if the building site is within the State land use rural district:
- (1) Bed and breakfast establishments, as permitted under section 25-4-7.
  - ~~[(1)](2)~~ Crematoriums, funeral homes, funeral services, and mortuaries.

- ~~[(2)]~~(3) Churches, temples and synagogues.
- ~~[(3)]~~(4) Day care centers.
- ~~[(4)]~~(5) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.
- ~~[(5)]~~(6) Major outdoor amusement and recreation facilities, includes stadiums, sports arenas, and other similar open air recreational uses.
- ~~[(6)]~~(7) Schools.
- ~~[(7)]~~(8) Yacht harbors and boating facilities.”

**SECTION 7.** Chapter 25, article 5, division 6, section 25-5-62 of the Hawai‘i County Code 1983 (2005 Edition, as amended), is amended by amending subsection (d) to read as follows:

“(d) The following uses may be permitted in the FA district, provided that a use permit is issued for each use if the building site is outside of the State land use agricultural district or a special permit is issued for each use if the building site is within the State land use agricultural district:

(1) Bed and breakfast establishments, as permitted under section 25-4-7.

~~[(1)]~~(2) Churches, temples and synagogues.

~~[(2)]~~(3) Crematoriums, funeral homes, funeral services, and mortuaries.

~~[(3)]~~(4) Day care centers.

~~[(4)]~~(5) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.

~~[(5)]~~(6) Major outdoor amusement and recreation facilities, includes stadiums, sports arenas, and other similar open air recreational uses.

~~[(6)]~~(7) Schools.”

**SECTION 8.** Chapter 25, article 5, division 7, section 25-5-72 of the Hawai‘i County Code 1983 (2005 Edition, as amended), is amended by amending subsection (d) to read as follows:

“(d) The following uses may be permitted in the A district, provided that a use permit is issued for each use if the building site is outside of the State land use agricultural district or a special permit is issued for each use if the building site is within the State land use agricultural district:

(1) Bed and breakfast establishments, as permitted under section 25-4-7.

~~[(1)]~~(2) Crematoriums, funeral homes, funeral services, and mortuaries.

~~[(2)]~~(3) Churches, temples and synagogues.

~~[(3)]~~(4) Day care centers.

~~[(4)]~~(5) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.

~~[(5)]~~(6) Major outdoor amusement and recreation facilities.

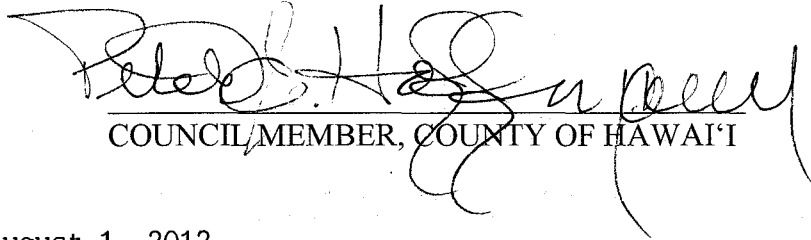
[(6)](7) Schools.”

**SECTION 9.** Material to be repealed is bracketed and stricken. Material to be added is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

**SECTION 10.** If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

**SECTION 11.** This ordinance shall take effect upon its approval.

INTRODUCED BY:

  
COUNCIL MEMBER, COUNTY OF HAWAI'I

<u>Kona</u> , Hawai'i	
Date of Introduction:	August 1, 2012
Date of 1 <sup>st</sup> Reading:	August 1, 2012
Date of 2 <sup>nd</sup> Reading:	August 15, 2012
Effective Date:	September 6, 2012

REFERENCE: Comm. 769

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

COUNTY CLERK  
COUNTY OF HAWAII

2012 SEP 11 PM 12:11

Introduced By: Pete Hoffmann  
Date Introduced: August 1, 2012  
First Reading: August 1, 2012  
Published: August 11, 2012

REMARKS: \_\_\_\_\_  
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Second Reading: August 15, 2012  
To Mayor: August 24, 2012  
Returned: September 11, 2012  
Effective: September 6, 2012  
Published: September 18, 2012

REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Blas	X			
Ford	X			
Hoffmann	X			
Ikeda	X			
Onishi	X			
Pilago	X			
Smart	X			
Yagong	X			
Yoshimoto	X			
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Blas	X			
Ford	X			
Hoffmann	X			
Ikeda	X			
Onishi	X			
Pilago	X			
Smart	X			
Yagong	X			
Yoshimoto	X			
	9	0	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:

[Signature]  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

Date AUG 28 2012

Approved/Disapproved this 6<sup>th</sup> day  
of September, 20 12

[Signature]  
MAYOR, COUNTY OF HAWAII

[Signature]  
COUNCIL CHAIRPERSON

[Signature]  
COUNTY CLERK

Bill No.: 276  
Reference: C-769/PC-60  
Ord No.: 12 124