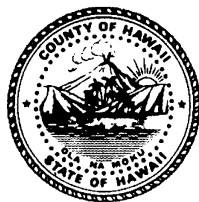


COUNTY OF HAWAI‘I



STATE OF HAWAI‘I

ORDINANCE NO. 19 90 BILL NO. 85

AN ORDINANCE AMENDING ORDINANCE NO. 07 105 WHICH RECLASSIFIED LANDS FROM SINGLE-FAMILY RESIDENTIAL – 10,000 SQUARE FEET (RS-10) TO NEIGHBORHOOD COMMERCIAL – 40,000 SQUARE FEET (CN-40) AT WAIĀKEA, SOUTH HILO, HAWAI‘I, COVERED BY TAX MAP KEY 2-2-039:031, 057, 068 AND 069.

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

**SECTION 1.** Section 2 of Ordinance No. 07 105 is amended as follows:

“SECTION 2. In accordance with Section 25-2-44, Hawai‘i County Code 1983 ~~[(2005 Edition)]~~ (2016 Edition, as amended), 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.]~~ The applicant is responsible for maintaining

valid water commitments to support the proposed use until such time that required water facilities charges are paid in full in accordance with Rule 5 of the Department of Water Supply's Rules and Regulations.

- C. Construction of the proposed [~~improvements~~] project or other use permitted in the zoning district shall be completed within five (5) years from the effective date of this amended 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), Hawai'i 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~~] amended ordinance.
- 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.~~] To accommodate for the implementation of the State's Puainako Street realignment and improvement project, a future road widening strip of approximately (ten) 10 feet of additional right-of-way along the western property boundary and along the northeasterly curb return at the intersection of Kīlauea Avenue and Puainako Street and a future road widening strip of an additional right-of-way, varying between zero (0) to ten (10) feet, along the property's Puainako Street frontage to provide a minimum 70-foot road right-of-way as measured from the Puainako Street centerline, shall be delineated on plans submitted for Plan Approval. All building setbacks shall be taken from the future road widening strip. Upon

the request of the State Department of Transportation, the applicant, it's successors or assigns shall subdivided the land encumbered by the future road widening and shall dedicate it to the State at no cost.

- E. A Traffic Impact Analysis Report (TIAR) shall be submitted to the Department of Transportation Highways Division, through the Hawai'i District Office and to Department of Public Works – Traffic Division 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. The applicant shall construct any improvements required by the State Department of Transportation and County Department of Public Works – Traffic Division prior to the issuance of Certificate of Occupancy.
- F. [~~No project a~~] Access to the project site from Kekela Street shall be allowed [~~except~~] for the general public and 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~~] and shall conform to Chapter 22 (County Streets) of the Hawai'i County Code.
- G. Access to the [~~project site~~] subject parcel from Puainako Street shall be limited to a single driveway access with 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)] (4), t~~ 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 number of off-street parking spaces for this project shall ~~[initially]~~ be ~~[123]~~ 57 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 Hawai'i 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.]~~ In the unlikely event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division. Subsequent work shall proceed upon an archaeological clearance from 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, 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 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~~] \$9,430.86 per multiple family residential unit (~~[\$10,368.57]~~ \$14,969.92 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~~] \$4,657.97 per multiple family residential unit (~~[\$4,999.91]~~ \$7,087.11 per single family residential unit) to the County to support park and recreational improvements and facilities;
  2. [~~\$103.73~~] \$147.03 per multiple family residential unit (~~[\$241.20]~~ \$341.89 per single family residential unit) to the County to support police facilities;

3. ~~[\$319.07]~~ \$452.27 per multiple family residential unit (~~[\$476.39]~~ \$675.26 per single family residential unit) to the County to support fire facilities;
4. ~~[\$142.21]~~ \$201.58 per multiple family residential unit (~~[\$208.57]~~ \$295.64 per single family residential unit) to the County to support solid waste facilities; and
5. ~~[\$2,806.46]~~ \$3,978.01 per multiple family residential unit (~~[\$4,442.50]~~ \$6,297.02 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]~~ 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.
- 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]~~ this amended 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 2.** Material to be repealed is bracketed and stricken. New material is underscored.

**SECTION 3.** Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does 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 severable.

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

INTRODUCED BY:

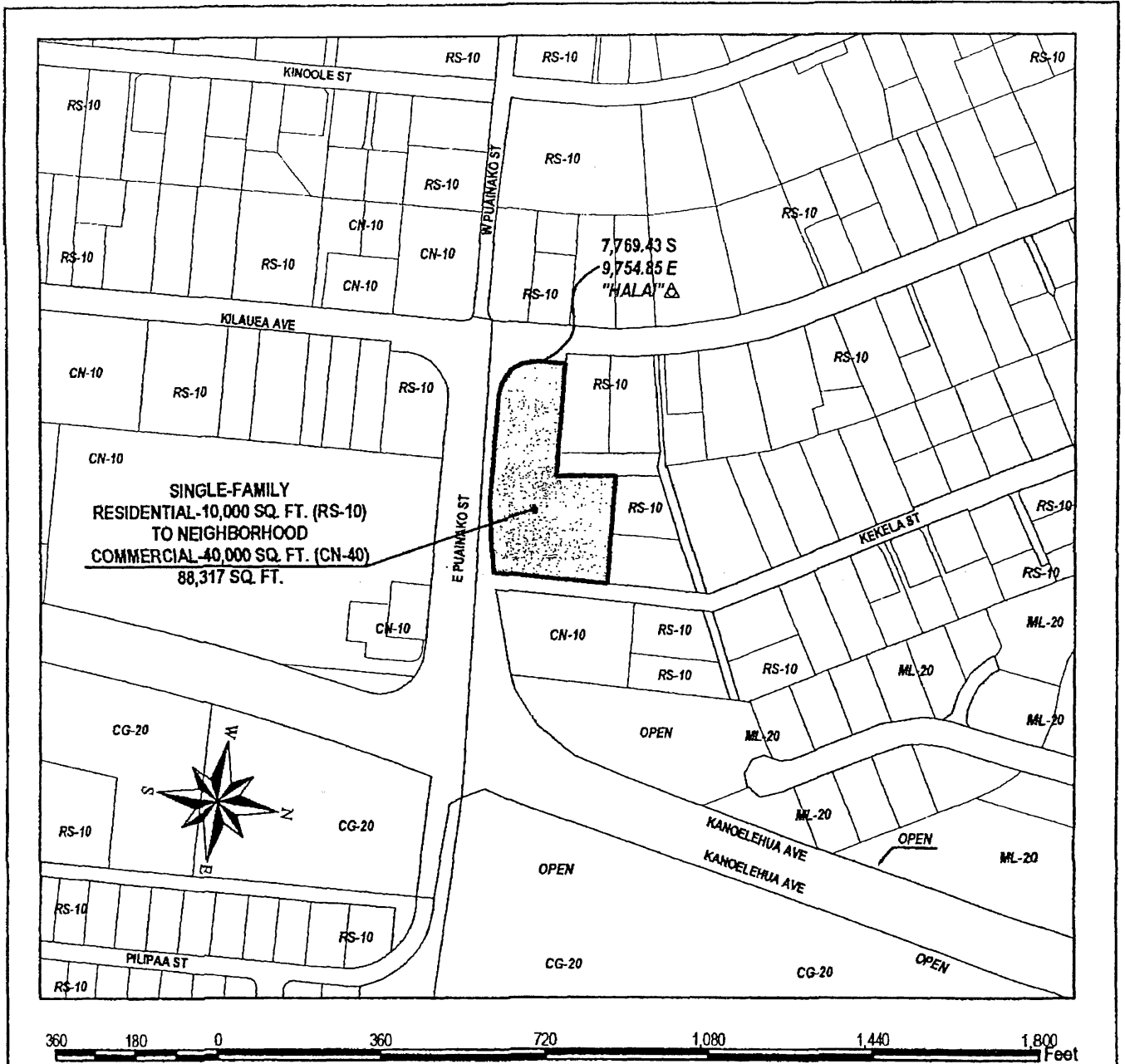
  
COUNCIL MEMBER, COUNTY OF HAWAI'I

    Hilo    , Hawai'i

Date of Introduction: July 24, 2019  
Date of 1st Reading: July 24, 2019  
Date of 2nd Reading: August 7, 2019  
Effective Date: August 21, 2019

REFERENCE Comm.     337





# 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

TMK: 2-2-039:031, 057, 068, 069

Date: December 27, 2006

EXHIBIT "A"

(Ginger Patch, DP, LLC:1214)

FOR REFERENCE ONLY

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

COUNTY CLERK  
 COUNTY OF HAWAII

2019 AUG 21 PM 3: 48

Introduced By: Ashley L. Kierkiewicz (B/R)  
 Date Introduced: July 24, 2019  
 First Reading: July 24, 2019  
 Published: August 3, 2019

REMARKS: \_\_\_\_\_  
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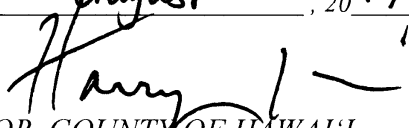
Second Reading: August 7, 2019  
 To Mayor: August 15, 2019  
 Returned: August 21, 2019  
 Effective: August 21, 2019  
 Published: August 31, 2019

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Kaneali'i-Kleinfelder	X			
Kierkiewicz	X			
Lee Loy	X			
Poindexter	X			
Richards	X			
Villegas	X			
	9	0	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Kaneali'i-Kleinfelder	X			
Kierkiewicz	X			
Lee Loy	X			
Poindexter	X			
Richards	X			
Villegas	X			
	9	0	0	0

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

Approved Disapproved this 21st day  
 of August, 2019  
  
 MAYOR, COUNTY OF HAWAII

  
 COUNCIL CHAIRPERSON  
  
 COUNTY CLERK

Bill No.: 85  
 Reference: C-337/PC-26  
 Ord No.: 19 90