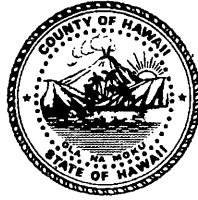


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. **22 101** BILL NO. 199

AN ORDINANCE AMENDING ORDINANCE NO. 17 24 WHICH AMENDED ORDINANCE NO. 12 111 WHICH AMENDED ORDINANCE NO. 99 116 WHICH AMENDED ORDINANCE NO. 96 159 WHICH AMENDED SECTION 25-8-33 (CITY OF HILO ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED) (formerly referred to as Section 25-114, City of Hilo Zone Map, Article 3, Chapter 25, Zoning Code), BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE-FAMILY RESIDENTIAL – 10,000 SQUARE FEET (RS-10) TO NEIGHBORHOOD COMMERCIAL – 7,500 SQUARE FEET (CN-7.5) AT WAIĀKEA, SOUTH HILO, HAWAI'I, COVERED BY TAX MAP KEY: 2-2-044:031, 032, 035, AND 037.

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

**SECTION 1.** Section 2 of Ordinance No. 17 24 is amended as follows:

“SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code 1983 (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. Prior to the issuance of a water commitment by the Department of Water Supply (DWS), the applicant(s) shall submit the anticipated maximum daily water usage calculations as prepared by a professional engineer licensed in the State of Hawai'i to the DWS. A water commitment deposit shall be paid to the DWS prior to the issuance of Final Plan Approval in accordance with Rule 5 of the Department of Water Supply's Rules and Regulations. The applicant shall construct all water system improvements as required by the Department of Water Supply to meet needs of the proposed development, which may include, but not be limited to additional service lateral(s), additional water meter(s), and reduced pressure type backflow prevention assemblies.
- C. Final Subdivision Approval of the proposed consolidation/resubdivision of the subject property shall be secured within five (5) years from the effective date of this amended ordinance. The subdivision plans shall delineate a 10-foot wide road widening strip along the Kahaopea Street frontage.
- D. In conjunction with the submittal of plans for subdivision review or plan approval review, a master plan for the subject property shall be filed with the Planning Director. Final Plan Approval for the subject property and related improvements shall also be secured from the Planning Director. Plans to be submitted for final subdivision approval or final plan approval shall also comply with the approved master plan and all conditions of approval set forth in this ordinance. The purpose of the master plan is to provide comprehensive principles and guidelines for the commercial and residential development within the subject property in order to assure that the development is compatible with the surrounding area. The master plan shall include, but not be limited to, standards and guidelines relative to open space, architecture building controls (appearance, siting, heights, building

materials, signs, etc.), terrain, topography, off-street parking, landscaping, setbacks from property lines and buildings, lot coverage ratio, etc. and enforcement procedures. A Landscaping Plan, in accordance with Planning Department's Rule 17 shall also be submitted to include landscaping along property boundaries, for the purpose of mitigating any potential adverse noise and visual impacts to adjoining parcels and the intersection. Multiple-family residential structures shall be designed to be in keeping with the single family residential character of the surrounding area.

- E. If required by the Planning Director, an updated Traffic Impact Analysis Report shall be submitted for review and approval by the Department of Public Works and the Department of Transportation (DOT) prior to the submittal of plans for subdivision review. Prior to the issuance of the certificate of occupancy for any portion of the subject property, the applicant shall be responsible for constructing and/or paying for its pro rata share of intersection improvements at the intersection of Kanoelehua Avenue and Kahaopea Street subject to the traffic mitigation measures required by the Traffic Impact Analysis Report for the subject property meeting with the approval of the Department of Public Works and Department of Transportation, should the proposed intersection improvements not be commenced by the DOT.
- F. A Solid Waste Management Plan for the subject property shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
- G. If required by the Department of Public Works, the applicant shall construct any necessary drainage improvements meeting with the approval of the Department of Public Works and obtain a FEMA Letter of Map Revision (LOMR) prior to the issuance of Final Subdivision Approval or a Certificate of Occupancy for any development within the subject properties which is adjacent to or affected by such

drainage improvements. This requirement can be satisfied by the applicant entering into an agreement with the County providing assurance of satisfactory and timely completion of required drainage improvements, and secured with a surety bond pursuant to the requirements of the Hawaii County Code Chapter 23 (Subdivision). The surety bond shall not be released by the Planning Department, in whole or in part, until a LOMR has been approved by FEMA.

- H. Prior to securing final subdivision approval or the issuance of certificate of occupancy for the subject property, whichever occurs first, the south side of Kahaopea Street shall be improved and widened with the construction of curb, gutter and sidewalk improvements (with pavement widening and transitions) fronting the subject property between Kanoelehua Avenue and the access road to the subject property meeting with the approval of the Department of Public Works and shall be dedicated to the County upon its request. The applicant shall be responsible for any utility relocation and the design, purchase, and installation of streetlights and traffic control devices as may be required by the Traffic Division, Department of Public Works. For the area fronting the subject property between the access road and the eastern boundary, these or other improvements may be required by the Department of Public Works provided that no major drainage structures, such as a bridge or culvert, are required by such improvements.
  
- I. Accesses to the property and all roadways within the subject property shall meet with the requirements and approval of the Planning Director, upon consultation with the Department of Public Works and/or the State Department of Transportation. Access to the subject property shall be by the way of the Awapuhi Street extension or an alternate access point as agreed upon by the Planning Director, upon consultation with the Department of Public Works and/or State Department of Transportation. Access to Kahaopea Street shall conform to Chapter 22, County Streets, of the Hawai'i County Code.

- J. The method of sewage disposal shall meet with the requirements of the State Department of Health.
- K. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
- L. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activity.
- M. All earthwork activity, including grubbing and grading, shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
- N. Construction activities must comply with the provisions of Hawai'i Administrative Rules, Chapter 11-46, "Community Noise Control."
- O. 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-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.
- P. If the applicant, successors, or assigns develop residential units or lots on the subject properties, the applicant, successors, or assigns shall make its fair share contribution to mitigate the potential regional impacts of the development 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 Subdivision Approval or Final Plan Approval, whichever is applicable. The fair share contribution shall be based on the actual number of residential units

or lots 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 [~~\$8,754.58~~] **\$10,033.83** per multiple family residential unit (~~[\$13,672.20]~~ **\$15,636.59** per single family residential unit). The total amount shall be determined by the actual number of units or lots 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. [~~\$4,318.39~~] **\$4,949.40** per multiple family residential unit (~~[\$6,608.08]~~ **\$7,540.24** per single family residential unit) to the County to support park and recreational improvements and facilities;
2. [~~\$136.48~~] **\$156.43** per multiple family residential unit (~~[\$317.37]~~ **\$363.74** per single family residential unit) to the County to support police facilities;
3. [~~\$419.84~~] **\$481.18** per multiple family residential unit (~~[\$626.84]~~ **\$718.44** per single family residential unit) to the County to support fire facilities;
4. [~~\$187.12~~] **\$214.47** per multiple family residential unit (~~[\$274.44]~~ **\$314.54** per single family residential unit) to the County to support solid waste facilities; and

5. [~~\$3,692.75~~] \$4,232.35 per multiple family residential unit (~~[\$5,845.47]~~ \$6,699.63 per single family residential unit) to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the applicant, successors or assigns 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 cost of providing and constructing the improvements required in Condition E, I and J shall be credited against the sum specified in Condition Q(5) for road and traffic improvements. If an assisted living facility is constructed, there will be minimal impact on road and park improvements when compared with single-family or multiple-family homes that could be constructed under the current CN-7.5 zoning district. In recognition of this and the public interest in providing assisted living facilities, the fair share contribution for roads and parks shall not apply, and the remaining fair share contributions shall be imposed.

- Q. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the 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 Subdivision Approval or Final Plan Approval, whichever is applicable.

- S. The applicant, successors or assigns shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- T. ~~[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. Further, 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.]~~ 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).

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.



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

**SECTION 2.** Material to be deleted 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.

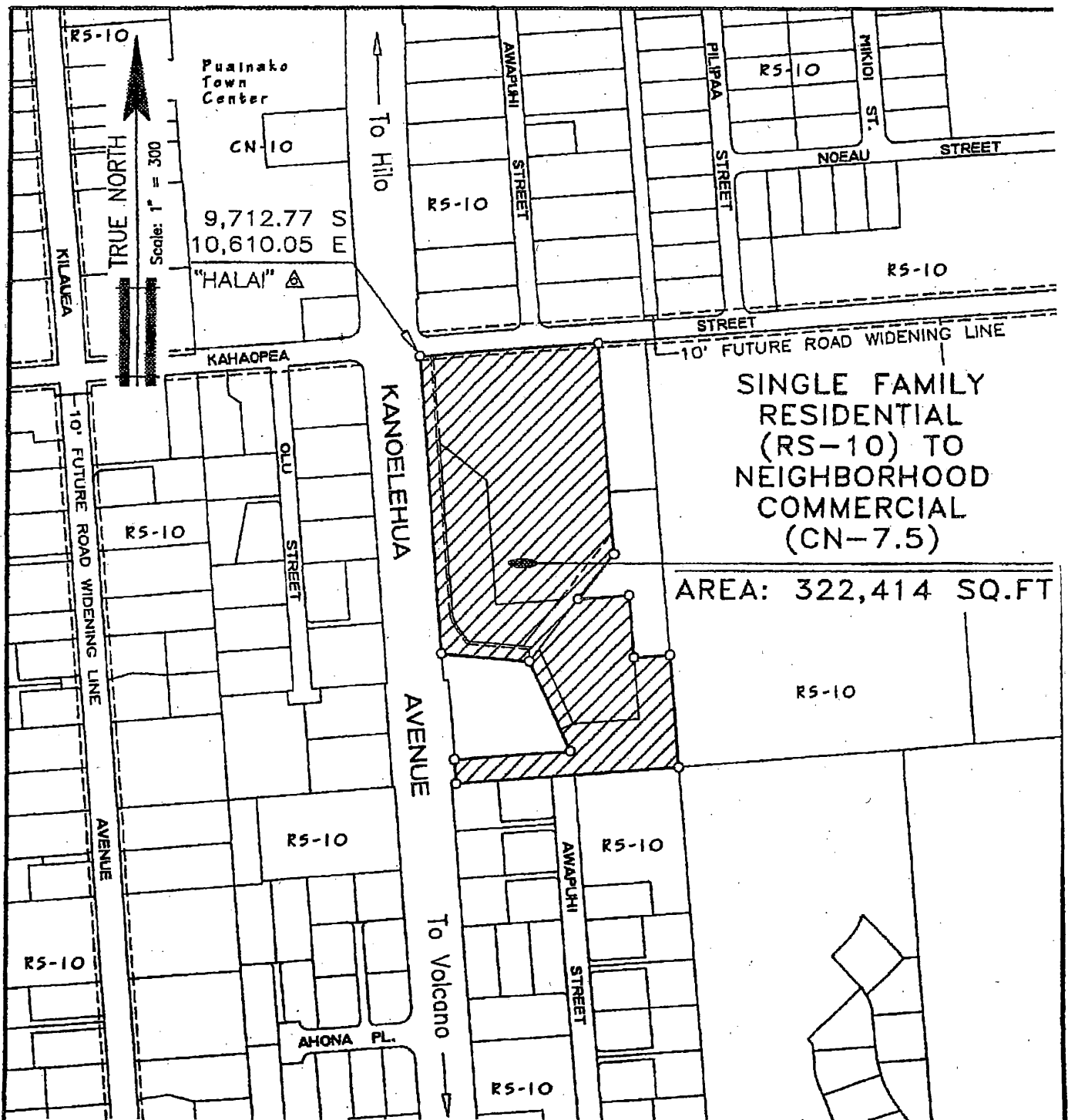
**SECTION 4.** This ordinance shall take effect upon its approval.

INTRODUCED BY:

  
COUNCIL MEMBER, COUNTY OF HAWAI'I

           Kona           , Hawai'i  
Date of Introduction: September 7, 2022  
Date of 1st Reading: September 7, 2022  
Date of 2nd Reading: September 21, 2022  
Effective Date: October 4, 2022

REFERENCE Comm. 922



## AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-114 (CITY OF HILO ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE FAMILY RESIDENTIAL (RS-10) TO NEIGHBORHOOD COMMERCIAL (CN-7.5) AT WAIAKEA, SOUTH HILO, HAWAII.

PREPARED BY : PLANNING DEPARTMENT  
COUNTY OF HAWAII

TMK: 2-2-44: 3,31,32,35 and 37

OCTOBER 15, 1996

EXHIBIT "A"

FOR REFERENCE ONLY

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

COUNTY CLERK  
 COUNTY OF HAWAII

2022 OCT -4 PM 4:06

Introduced By: Ashley L. Kierkiewicz (B/R)  
 Date Introduced: September 7, 2022  
 First Reading: September 7, 2022  
 Published: September 16, 2022

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
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Second Reading: September 21, 2022  
 To Mayor: September 29, 2022  
 Returned: October 4, 2022  
 Effective: October 4, 2022  
 Published: October 21, 2022

REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung			X	
David	X			
Inaba			X	
Kāneali'i-Kleinfelder		X		
Kierkiewicz	X			
Kimball	X			
Lee Loy	X			
Richards	X			
Villegas		X		
	5	2	2	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Inaba	X			
Kāneali'i-Kleinfelder		X		
Kierkiewicz			X	
Kimball	X			
Lee Loy			X	
Richards	X			
Villegas		X		
	5	2	2	0

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

  
 COUNCIL CHAIRPERSON

  
 COUNTY CLERK

Approved/Disapproved this 4<sup>th</sup> day  
 of October, 2022

  
 MAYOR, COUNTY OF HAWAII

Bill No.: 199  
 Reference: C-922/PC-75  
 Ord No.: **22 101**