

BILL NO. 134

(DRAFT 2)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 1, OF THE HAWAI‘I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO SIGN CODE VARIANCES.

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

**SECTION 1. Purpose.** The Council finds that the consideration of applications for sign variances pursuant to chapter 3, article 1, division 6, of the Code should be considered by the director of the department of public works rather than the Council. Consequently, it is the purpose of this bill to place this authority with the director of public works.

**SECTION 2.** Chapter 3, article 1, division 2, section 3-3 of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by amending paragraph (a)(9) to read as follows:

“(9) “Design commission” means [~~the Kailua Village special district design review commission~~] the appropriate board, commission, or committee established by ordinance to review the design of structures in a special district listed in chapter 25, article 7.”

**SECTION 3.** Chapter 3, article 1, division 6, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended to read as follows:

**“Division 6. Variances.**

**Section 3-22. Variances.**

- (a) In unique cases where strict enforcement of this chapter would result in unnecessary hardship or practical difficulty, and where desirable relief may be granted without detriment to the public interest, convenience, or welfare, the [~~Hawai‘i County council~~] director may grant[~~, by resolution,~~] a request for a variance from any provision of this chapter.
- (b) If the subject parcel is located in a special district with a design commission, the director shall refer the variance application to the planning director and design commission for their respective comments and recommendations. The planning director and the design commission shall each submit comments and recommendations on the proposed variance within sixty days from the date that the proposed variance is transmitted to the planning director and the design commission. Should either the planning director or the applicable design commission, or both, fail to provide comments or recommendations within the sixty-day review period, the public works director may proceed to act on the variance application as that director deems appropriate.

- ~~[(b)]~~(c) Variance applications shall be submitted upon a form designated by the director and shall include at a minimum, the following information and attachments:
- (1) The sign owner's and the property owner's name, phone number, and mailing address;
  - (2) The location, tax map key number, and zoning of the property upon which the sign is located;
  - (3) A map showing:
    - (A) The location of the sign; and
    - (B) All streets adjacent to the lot or building where the sign is located;
  - (4) A photo or drawing of the relevant sign(s);
  - (5) A citation of the code section from which a variance is requested;
  - (6) A complete copy of any sign permit application or rejection of the sign permit, if any;
  - (7) An explanation of any unique circumstances, in particular, those arising from peculiar physical conditions not ordinarily found in most districts, peculiarity of the business, or other special event or circumstance;
  - (8) An explanation of why granting the variance will not adversely affect the rights of adjacent property owners or tenants, including an explanation of alternative measures, if any, that the applicant is proposing to take in lieu of compliance with the applicable code section;
  - (9) ~~[If applicable, notice]~~ Notice of the variance application shall be mailed by the applicant to all property owners and tenants within three hundred feet of the affected property ~~[not less than twenty days prior to the initial hearing by the Hawai'i County council, and prior to the date of the hearing, the applicant shall file with the council proof of service or of good faith efforts to serve notice of the hearing on the designated property owners. Such proof may consist of certified mail receipts, affidavits, or the like;].~~ The notice shall designate a public comment period of not less than twenty days from the date of the mailing. The director shall consider proof of service, good faith efforts to serve notice, and any written comments received, as part of the application;
  - (10) An explanation of why the variance will not unreasonably violate the interest, safety, convenience, or general welfare of the public;
  - (11) An explanation of why a strict application of the terms of this chapter would work an unnecessary hardship and practical difficulty upon the applicant or the community;
  - (12) ~~[A draft resolution, that satisfies the requirements of sections 3-22 and 3-23, in both paper and electronic formats;~~
  - ~~(13)]~~ If applicable, the ~~[Kailua Village]~~ planning director's and design commission's ~~[and/or any advisory commission's]~~ written ~~[recommendation;]~~ comments and recommendations; and
  - ~~[(14)]~~ (13) Any fee(s), prescribed by this chapter.
- ~~[(e)]~~(d) Upon review of a complete application, ~~[and, if applicable,]~~ the director shall ~~[forward the application through the planning director to the Kailua Village design commission and/or any other applicable advisory commission for review and recommendation, then to the appropriate council committee for its consideration and decision]~~ render a final decision, which may be preceded by a preliminary review and recommendation, and may be appealed to the board of appeals.

**Section 3-23. Variances; criteria for granting.**


- (a) Only in situations where the following conditions exist may a variance be granted:
- (1) Granting the variance is necessitated by peculiar physical conditions not ordinarily found in most districts, because of the peculiarity of a business, or as a result of a special event or circumstance;
  - (2) Granting the variance will not adversely affect the rights of adjacent property owners or tenants;
  - (3) Granting the variance will not unreasonably violate the interest, safety, convenience, or general welfare of the public;
  - (4) A strict application of the terms of this chapter would work unnecessary hardship and practical difficulty upon the applicant or the community;
  - (5) Granting the variance will not constitute a grant of personal or special privilege inconsistent with the limitations upon other properties under identical ordinances, statutes, or rules; and
  - (6) The application is complete.
- (b) In and of itself, prior construction of a sign without a permit, regardless of the cost or value of the sign, shall not be deemed to constitute sufficient reason to grant a variance.
- ~~[(c) Council resolutions granting variance requests shall state the underlying factual basis for the council's findings that each of the requisite conditions to grant a variance has been satisfied.]~~"

**SECTION 4.** Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

**SECTION 5.** 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 6.** This ordinance shall take effect on June 1, 2020.

INTRODUCED BY:

  
\_\_\_\_\_  
COUNCIL MEMBER, COUNTY OF HAWAII

\_\_\_\_\_, Hawaii  
Date of Introduction:  
Date of 1st Reading:  
Date of 2nd Reading:  
Effective Date: