

COUNTY OF HAWAII



STATE OF HAWAII

ORDINANCE NO. 08 42 BILL NO. 244

AN ORDINANCE AMENDING ORDINANCE NO. 07-170 ESTABLISHING A NEW ARTICLE RELATING TO A HAWAII COUNTY CULTURAL RESOURCES COMMISSION.

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

SECTION 1. Ordinance 07-170 is amended by amending SECTION 1 of the ordinance to read as follows:

"SECTION 1. Chapter 2 of the Hawaii County Code 1983 (2005 Edition, as amended), is amended by adding a new article to be appropriately designated and read as follows:

Article \_\_

**Hawaii County Cultural Resources Commission**

**Section \_\_.** The Council finds that preservation of historic properties enhances the educational, cultural, economic and general welfare of the County. It is deemed essential that the ~~[qualities relating to the]~~ history and culture of Hawaii County be preserved through comprehensive historic preservation planning. Implementation of chapter 6E, historic preservation, Hawaii Revised Statutes, and the Hawaii County General Plan provide a means to ~~[perpetuate the value of various cultures of which our community is comprised]~~ accomplish this outcome.

It is, ~~therefore~~, the intent of this article to provide for:

- (1) Protecting and preserving historic properties and artifacts in the County and encourage, where appropriate, their adoption for appropriate and feasible use;
- (2) Encouraging the restoration, rehabilitation and continued functional use of historic properties;
- (3) Encouraging the identification, preservation, promotion and enhancement of those historic properties which represent or reflect distinctive elements of cultural, social, economic, political and architectural history, and to encourage the designation of historic properties, thereby ensuring that our cultural and historic

- heritage will be imparted to present and future generations of residents and visitors; and
- (4) Formulating County-wide comprehensive, historic preservation policies, programs and plans.

**Section \_\_. Definitions.**

For purposes of this article, unless it is plainly evident from the context that a different meaning is intended, certain terms and words are defined as follows:

"Council" means the council of the County.

"County" means the County of Hawai'i, a political subdivision of the State.

~~["Historic properties" means any prehistoric or historic district, site, building, structure, area or object significant in the history, architecture, archaeology, or culture of the County, State and Nation, including those listed on the Hawai'i or national registers.]~~

"Department" means the planning department of the County.

"Director" means the planning director of the County.

"Historic preservation" means the research, protection, restoration, rehabilitation and interpretation of districts, sites, buildings, structures, areas or objects, significant to the history, architecture, archaeology or culture of the County, State or Nation.

"Historic properties" means any prehistoric or historic district, site, building, structure, area or object significant in the history, architecture, archaeology, or culture of the County, State and Nation, which is over 50 years old, including those listed on the Hawai'i or national registers.

"Mayor" means the mayor of the County.

"Professional" means a person with those qualifications enumerated in the code of federal regulations 36CFR61, appendix A.

"State" means the State of Hawai'i.

**Section \_\_. Commission established.**

- (a) There is established a commission to be known as the "Hawai'i County Cultural Resources Commission,"[;] hereinafter referred to as the "commission."
- (b) The commission shall consist of nine appointed members. The members shall be appointed by the mayor with the approval of the Council ~~(and a portion of them shall be chosen from)~~, with representation from some or all of the following professionals and persons with special interest in [the following disciplines]: architecture, history, archaeology, planning, architectural history, Hawaiian culture, and ethnic history and culture of Hawai'i County. The mayor shall solicit lists of two or more persons, recommended by community and professionals, such as the historic societies, architects, and the state Office of Hawaiian affairs, for consideration in making commission appointments.

Commission members should have a demonstrated interest, competence and/or knowledge in historic preservation.

- ~~[(e) A portion of commission members shall be professionals in the disciplines of history, Hawaiian culture or history, each having professional representation on the commission to the extent that such professionals are available in the community.]~~ The commission shall [also] include members from different areas of the County, who possess a knowledge and interest in local area history.
- ~~[(d)]~~(c) Commission members shall serve staggered five-year terms. Upon the initial appointment of the commission, one member shall be appointed to a term of one year, two for a term of two years, two for a term of three years, two for a term of four years, and two for a term of five years. Members initially appointed for a term of one or two years shall be eligible to succeed themselves for an additional full term.
- (d) A member may be removed upon recommendation by the mayor and the approval of the council.
- (e) No member whose term has expired shall continue to serve on the commission, except that if no successor has been appointed and confirmed, the member shall continue to serve for ninety days or until a successor is appointed and confirmed, whichever comes first.
- (f) Any vacancy occurring in the commission shall be filled for the unexpired term.
- (g) Members shall receive no compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties. Necessary expenses may be paid in advance as per diem allowance.
- (h) The affirmative vote of a majority of those present shall be sufficient to make any action valid.

#### Section \_\_. Officers and expenses.

- (a) The commission shall annually elect from its membership a [chairman] chairperson and vice [chairman] chairperson [for terms of office beginning on April 1, until March 31, of the following year].
- (b) The commission may incur such expenses as may be necessary and proper and for which appropriations have been made by the Council or any other appropriate person or agency.

#### Section \_\_. Meetings and voting.

- (a) ~~[The commission shall hold meetings at least monthly.]~~ All meetings shall be open to the public, except as may be provided by law; and any person or a representative thereof shall be entitled to appear and be heard on any matter before the commission.

- (b) Special meetings may be called by the chairman, director, or by any three members of the commission.

**Section \_\_\_\_ Powers and duties.**

- (a) The commission shall advise and assist Federal, State and County government agencies in carrying out their historic preservation responsibilities. The commission shall provide public information, education, training and technical assistance relating to the National, State and County historic preservation programs.
- (b) The commission shall initiate, accept, review and recommend to the State historic preservation officer, historic properties nominations for inclusion on the Hawai'i and National registers.
- (c) The commission shall maintain a system for the survey, inventory and nomination of historic properties and archaeological sites within the County, as well as a system of site monitoring, that is compatible with that of the State historic preservation office.
- (d) The commission shall administer the certified local government program of federal assistance for historic preservation within the County.
- (e) The commission shall provide design review for projects affecting any building or structure, site or district eligible for listing on the National or Hawai'i register of historic places and shall request and consider the State historic preservation officer's review and comment on all County undertakings, including the granting of permits. In its review, the commission shall consider the cultural significance of the site and its surroundings along with the secretary of the United States Department of the Interior's standards for rehabilitation, as amended.
- (f) The commission shall use the State Historic Preservation Plan to develop and implement a comprehensive County-wide historic preservation planning process, which includes the submitting of information pertaining to the State inventory of historic places to the State historic preservation officer.
- (g) The commission shall make recommendations to the Council for the expenditure of gifts and grants accepted by the Council for projects connected with the identification, rehabilitation, restoration and reconstruction of historic properties, the historic preservation planning process, and the promotion of exhibits and other information activities in connection therewith.
- (h) The commission shall adopt rules and regulations of procedure and conduct, pursuant to chapter 91, Hawai'i Revised Statutes.
- (i) The commission may review and comment on archaeological reports submitted as part of development proposals to various County agencies.
- (j) The commission may undertake any other action or activity necessary or appropriate towards the implementation of its powers

or duties or towards implantation of the purpose of this article. More specifically these may include, but not be limited to, the following:

- (1) Recommend new ordinances establishing special treatment districts and archaeological districts;
- (2) Review and recommend amendments to current policies and laws on the enforcement of existing codes relating to historic sites;
- (3) Continually reevaluate building code requirements and enact amendments that are more sympathetic to preservation or provide exemptions for historic properties;
- (4) Encourage the County, State, and Federal governments, and the private sector, to implement appropriate management strategies, curatorships and meaningful interpretive programs at significant historical and archaeological structures, sites, and districts; and
- (5) Assist in programs of historic preservation including presentations, films, exhibits, conferences, publications and other educational means which increase public awareness and participation in preserving the past.

**Section \_\_. Nominations to the Hawai'i or national register of historic places.**

- (a) Any person or organization including the commission may submit nominations to the Hawai'i or National register by submitting a completed nomination form to the State historic preservation officer.
- (b) The commission shall hold a public hearing after receiving notification from the State historic preservation officer of nominated historic properties [with] within the County. At least ten days prior to the hearing, notice of the date, time, place and purpose of such hearing shall be published in a newspaper of general circulation in the County. Oral or written testimony concerning the significance of the proposed nomination shall be taken at the public hearing from any person.
- (c) The commission shall forward its report to the mayor within forty-five days after receiving notice from the State historic preservation officer. The report shall include findings on whether the property meets the criteria for nomination and a recommendation that the State historic preservation officer either nominate or reject the proposed nomination.
- (d) The mayor shall have fifteen days after receiving the report of the commission to send this report and a recommendation to the State historic preservation officer. The mayor's recommendation may, but need not, concur with the recommendation contained in the commission's report.

- (c) A determination by the commission and mayor that the application for nomination does not meet nomination criteria is not a final administrative decision. Appeals must be filed with the State historic preservation officer in writing, within thirty days after the nomination has been denied.

**Section \_\_. Guidelines.**

The following documents on file in the planning department shall be used as ~~[a guide]~~ guidance in matters pertaining to the review functions of the commission:

- (1) "Hawai'i County General Plan" and any adopted community development plans for the island.
- (2) "State historic preservation plan" prepared by the State of Hawai'i department of land and natural resources.
- (3) "Historic Preservation Program Guidelines" prepared by the National Park Service.
- (4) "Office of Hawaiian Affairs Guidelines for the Consideration of Traditional Native Hawaiian Values in Historic Preservation Review," dated 1988.
- (5) Other reports, plans, studies, issue papers and memos as may be adopted by the commission.

**Section \_\_. Administration.**

The director shall appoint a professional from the disciplines of planning, archaeology, architecture, architectural history, Hawaiian culture, history or historic preservation, to serve as the liaison with the State historic preservation office pertaining to matters which deal with the purpose and intent of this article. ~~[Said]~~ The liaison may be an employee of the planning department or a member of the commission. The director shall provide technical, clerical, administrative functions, and any other duties delegated by the commission."

SECTION 2. Ordinance 07-170 is amended by amending SECTION 4 of the ordinance to read as follows:

"SECTION 4. This ordinance shall take effect ~~[July 1, 2008]~~ January 1, 2009."

SECTION 3. Severability. 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.

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

SECTION 5. This ordinance shall take effect upon its approval.

INTRODUCED BY:

  
COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: March 12, 2008  
Date of 1st Reading: March 12, 2008  
Date of 2nd Reading: March 25, 2008  
Effective Date: April 11, 2008

REFERENCE: Comm. 1013

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

Introduced By: Emily Naeole  
Date Introduced: March 12, 2008  
First Reading: March 12, 2008  
Published: N/A

REMARKS: \_\_\_\_\_  
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Second Reading: March 25, 2008  
To Mayor: April 3, 2008  
Returned: April 11, 2008  
Effective: April 11, 2008  
Published: April 19, 2008

REMARKS: \_\_\_\_\_  
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RECEIVED

| ROLL CALL VOTE |      |      |     |    |
|----------------|------|------|-----|----|
|                | AYES | NOES | ABS | EX |
| Ford           | X    |      |     |    |
| Higa           | X    |      | X   |    |
| Hoffmann       | X    |      |     |    |
| Ikeda          | X    |      |     |    |
| Jacobson       | X    |      |     |    |
| Naeole         | X    |      |     |    |
| Pilago         | X    |      |     |    |
| Yagong         | X    |      |     |    |
| Yoshimoto      | X    |      |     |    |
|                | 8    | 0    | 1   | 0  |

| ROLL CALL VOTE |      |      |     |    |
|----------------|------|------|-----|----|
|                | AYES | NOES | ABS | EX |
| Ford           | X    |      |     |    |
| Higa           | X    |      |     |    |
| Hoffmann       | X    |      |     |    |
| Ikeda          | X    |      |     |    |
| Jacobson       | X    |      |     |    |
| Naeole         | X    |      |     |    |
| Pilago         | 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:

Casey Gorman  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

Date APR - 1 2008

Peter J. Hoffmann  
COUNCIL CHAIRMAN

Casey Gorman  
COUNTY CLERK

Bill No.: 244  
Reference: C-1013/PC-73  
Ord No.: 08 42

Approved/Disapproved this 11<sup>th</sup> day

of April, 2008

Harry Keim  
MAYOR, COUNTY OF HAWAII