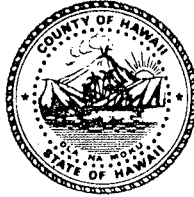


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 169
ORDINANCE NO. 09 161

AN ORDINANCE AMENDING THE HAWAI'I COUNTY GENERAL PLAN, AS ADOPTED BY ORDINANCE NO. 05-25, AS AMENDED, RELATING TO THE CONVERSION FROM A SINGLE PLANNING COMMISSION TO WINDWARD AND LEEWARD PLANNING COMMISSIONS.

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

SECTION 1. Ordinance No. 05-25, as amended, is amended by amending section 15.1, relating to Community Development Plans, to read as follows:

“15.1 COMMUNITY DEVELOPMENT PLANS

The Community Development Plans are intended to be the forum for community input into managing growth and coordinating the delivery of government services to the community. The Community Development Plans will translate the broad General Plan statements to specific actions as they apply to specific geographical areas.

A Community Development Plan should direct physical development and public improvements within a specific area. The Community development Plan may contain detailed land use and zoning guide maps, plans for roadways, drainage, parks, and other infrastructure and public facilities, architectural design guidelines, planning for watersheds and other natural features, and any other matters relating to the planning area.

The Planning Director or Council may initiate a Community Development Plan. Each Community Development Plan shall have a steering committee composed of members appointed by the mayor and confirmed by the council. The members shall be broadly representative of the affected communities.

The steering committee shall work in conjunction with the Planning Department and with any professional consultants hired to assist in the preparation of the plan. The exact boundaries of the planning area may be determined during the preparation of the plan.

It is not mandatory that there be a Community Development Plan for each region. Although the previous General Plan called for Community Development Plans, in the thirty years since the enactment of the first General Plan, only one Community Development Plan has been enacted by ordinance, one by County Council Resolution, and two by Planning Commission Resolution. Time, cost, the

degree of effort, and, in some cases, the inability to achieve a sufficient consensus, has been the limiting factors.

The need for a Community Development Plan for a particular area should be assessed considering a number of factors, including how much is public infrastructure challenged by recent or anticipated growth and whether there are significant efforts to change the zoning and land use in the area.

After the steering committee has recommended approval of the Community Development Plan, it shall be forwarded to ~~[the Planning Commission]~~ either the Windward or Leeward Planning Commission, or both meeting as a joint commission as provided for in the Hawai'i County Charter, for [its] review and recommendation to the County Council. The County Council may modify or amend the Community Development Plan before enacting it by ordinance, but it shall give the steering committee and the designated Planning Commission, or joint commission, as the case may be, an opportunity to review and comment upon substantive amendments and modifications before final adoption of the plan.

In the process of creating the Community Development Plan, it may be determined that the General Plan should be amended. The Planning Director or County Council may initiate amendments to the General Plan, and the steering committee may recommend amendments, that would be enacted at the same time as the Community Development Plan, or as a follow-up to the Community Development Plan. If there is a direct conflict between the Community Development Plan and the General Plan, the General Plan shall be controlling.

The Community Development Plans shall focus on action. The courses of action specified in each element of the General Plan need greater detail and need to be coordinated by district. The Community Development Plans shall identify appropriate governmental actions that include:

- Regulatory actions. Regulations rely on government's police power to control what people can and cannot do in the interest of the public's health, safety, or welfare. The County administers and enforces various regulations to control land use. These regulations include the zoning code, subdivision code, flood control code, grading code, sign code, and building code. The County also administers requirements imposed by the Federal and State governments, such as the Coastal Zone Management Act and the State Land Use Law. The Community Development Plans shall recommend amendments as appropriate to the codes, maps, or administration and enforcement.

- Incentive measures. Where regulatory controls are the government's "sticks", incentives are the "carrots" to encourage certain actions. Too often, regulation is the solution. Regulation can be restrictive, reactive, and divisive. Incentive measures, on the other hand, can invite creative "win-win" solutions.

Examples of incentive measures include property tax exemptions such as for agricultural or native forest dedications, expedited permit processing, density bonuses, and discounted facility fees. Community Development Plans shall consider appropriate incentive measures to achieve various objectives, as applicable.

- Acquisition actions. Where significant resources are located on private property, it may be more appropriate for government to purchase the development rights or fee simple title rather than to severely regulate the owner's use of the property. Obviously, purchasing in reaction to development proposals is expensive. The Community Development Plans shall identify acquisition priorities, as appropriate, and seek means to leverage financing by working creatively with the landowner, other levels of government, land trusts, and/or nonprofit groups.

- Capital budgeting actions. The County annually prepares a capital improvements budget where public facility projects (new construction or major repairs) are identified. The budget is accompanied by a six-year capital improvements program (CIP). The CIP process is explained in more detail below. The Community Development Plans shall identify and prioritize public facility projects important to the community. The CIP shall take into consideration the recommendations in the Community Development Plans, recognizing that the CIP must reconcile competing interests for a limited amount of funds.

- Programs. Certain community needs do not necessarily require land or a new facility, but rather a focused commitment of time and money towards achieving specific objectives. These operational projects are referred to as programs. Examples include an after-school youth program, neighborhood watch program, or mediation training program. Too often, resources are diverted to studies that could be more effectively used for pilot programs that actually try to achieve results and provide lessons through action. Community Development Plans shall identify desired programs and the community's role in planning and implementing the programs.

- Development/Redevelopment. In very special situations, it may be appropriate for government to take the lead and act as developer either singly or as a public/private partnership. These situations arise when the private market fails to address certain needs, such as very low income housing, or when the situation is quite large-scale, complex, and especially requires government's power of eminent domain to assemble land for redevelopment. Community Development Plans shall identify desired projects for public development or redevelopment, and shall coordinate input from appropriate agencies such as the Office of Housing and Community Development or the U.S. Department of Housing and Urban Development."

SECTION 2. Ordinance No. 05-25, as amended, is amended by amending section 16.1, relating to Comprehensive Review of Amendments to the County of Hawai'i General Plan, to read as follows:

“16.1 COMPREHENSIVE REVIEW

- (1) The Planning Director shall initiate a comprehensive review of the General Plan and prepare a set of recommended amendments for ~~[review]~~ independent review by the ~~[Planning Commission]~~ Windward and Leeward Planning Commissions and then adoption by the County Council. The recommended amendments shall be submitted to the County Council not more than ten years after the date of adoption of the previous amendments resulting from a comprehensive review.
- (2) The Planning Director shall give notice of the comprehensive review to the County Council, ~~[Planning Commission,]~~ Windward and Leeward Planning Commissions, and the general public. The notice shall state:
 - (a) The general scope of review;
 - (b) The opportunity for the County Council, ~~[Planning Commission]~~ Windward and Leeward Planning Commissions, and the general public to provide their comments and suggestions to the Planning Director; and
 - (c) The initiation date, general sequence of events, and time for completion of the review period.
- (3) The Planning Director shall establish a deadline for Council-initiated amendments during the comprehensive review which shall be not less than 120 days after the initial notice under section 16.1(2). The County Council may initiate such amendments by resolution.
- (4) The Planning Director shall conduct public workshops on amendments proposed by the Planning Director and by the County Council.
- (5) The public shall be afforded 21 days from the date of the last public workshop to provide comments to the Planning Director.
- (6) The Planning Director shall then submit the amendments proposed by the Planning Director and by the County Council to the ~~[Planning Commission for its review and recommendation]~~ Windward and Leeward Planning Commissions for their independent review and separate recommendations within 30 days after the public deadline to submit comments to the Planning Director. The Planning Director shall make a recommendation on any Council-initiated amendments.
- (7) The Planning Director shall notify a property owner of a proposed amendment that would redesignate its property to Open or Conservation, unless the property is already designated Conservation by the State Land Use Commission. Notice shall be given not less than 21 days before the first Windward or Leeward Planning Commission hearing on the proposed amendment.
- (8) The ~~[Planning Commission]~~ Windward and Leeward Planning Commissions shall conduct and complete ~~[its review]~~ their independent review on the proposed amendments to the General Plan, and shall both submit ~~[its]~~ their separate recommendations, within 150 days from the date of receipt of the proposed amendments from the Planning Director.
- (9) The ~~[Planning Commission]~~ Windward and Leeward Planning Commissions shall each recommend approval of the proposed amendments, in whole or in part, recommend

changes, or recommend the rejection of the proposal for changes to the General Plan. If ~~[the Planning Commission]~~ either fails to act on a proposed amendment within the required period, it shall be deemed a negative recommendation from that planning commission only. If both fail to act on a proposed amendment within the required period, such failure to act shall be deemed a negative recommendation from both planning commissions.

- (10) The County Council shall review the amendments submitted and the ~~[recommendation]~~ separate recommendations of the ~~[Planning Commission]~~ Windward and Leeward Planning Commissions and adopt an amended General Plan. The County Council may make modifications, deletions, or additions to the proposed amendments as it may deem necessary, within the general intent and subject matter of the proposed amendments, in accordance with its rules of procedure. However, any County Council change to a proposed amendment which substantially changes the general intent or subject matter of the proposed amendment, such as newly adding or deleting a goal, policy, or course of action, or standard, or a map amendment which changes a land use designation of a parcel, shall be considered an entirely new proposed amendment. Such a new amendment proposed at this stage shall not be processed as part of the ongoing comprehensive review, but shall be processed as a new interim amendment pursuant to Section 16.2.”

SECTION 3. Ordinance No. 05-25, as amended, is amended by amending section 16.2, relating to Interim Amendments to the County of Hawai‘i General Plan, to read as follows:

“16.2 INTERIM AMENDMENTS

- (1) The County Council may initiate interim amendments to the General Plan at any time, except during the comprehensive review pursuant to the following procedures:
- (a) The County Council may, by resolution, request the Planning Director and ~~[Planning Commission]~~ Windward and Leeward Planning Commissions to independently review and make ~~[a recommendation]~~ separate recommendations on a proposed amendment.
 - (b) The Planning Director shall have 60 days or a longer period, as may be agreed to by the County Council, to submit a recommendation on the proposal to the ~~[Planning Commission for its review and recommendation.]~~ Windward and Leeward Planning Commissions for their independent review and separate recommendations. The Planning Director’s recommendation may include suggested changes consistent with the general intent of the proposed amendment, and the Planning Director shall, if requested by County Council, prepare a draft ordinance to implement the proposed amendment.
 - (c) The Planning Director shall notify a property owner of a proposed amendment that would redesignate its property to Open or Conservation, unless the property is already designated Conservation by the State Land Use Commission. Notice shall be given not less than 21 days before the first Windward or Leeward Planning Commission hearing on the proposed amendment.
 - (d) ~~[The Planning Commission]~~ Each planning commission shall consider the proposed amendment at no less than two meetings, and shall make ~~[its recommendation]~~ their

separate recommendations on the proposed amendment to the County Council within 60 days from [its] their receipt of the Planning Director's recommendation.

- (e) If ~~[the Planning Commission]~~ either planning commission fails to act within the required period, it shall be deemed a negative recommendation~~[-]~~ from that planning commission only. If both planning commissions fail to act on a proposed amendment within the required period, such failure to act shall be deemed a negative recommendation from both planning commissions.
 - (f) The County Council may make modifications, deletions, or additions to the proposed amendments as it may deem necessary, within the general intent and subject matter of the proposed amendments, in accordance with its rules of procedure. However, any County Council change to a proposed amendment which substantially changes the general intent or subject matter of the proposed amendment, such as newly adding or deleting a goal, policy, or course of action, or standard, or a map amendment which changes a land use designation of a parcel, shall be considered an entirely new proposed amendment and submitted to the Planning Director and ~~[Planning Commission]~~ the Windward and Leeward Planning Commissions for their review and ~~[recommendation:-]~~ recommendations.
- (2) Planning Director
- (a) The Planning Director may initiate an interim amendment to the General Plan at any time other than during the comprehensive review.
 - (b) The Planning Director shall conduct a workshop on the proposed amendment prior to submitting it to the ~~[Planning Commission:-]~~ Windward and Leeward Planning Commissions.
 - (c) The Planning Director shall submit the proposed amendment to the ~~[Planning Commission for its review and recommendation:-]~~ Windward and Leeward Planning Commissions for their independent review and separate recommendations.
 - (d) The Planning Director shall notify a property owner of a proposed amendment that would redesignate its property to Open or Conservation, unless the property is already designated Conservation by the State Land Use Commission. Notice shall be given not less than 21 days before the first Windward or Leeward Planning Commission hearing on the proposed amendment.
 - (e) ~~[The Planning Commission]~~ Each planning commission shall conduct and complete its independent review on the proposed amendments to the General Plan, and shall submit its separate recommendations, within 120 days from the date of receipt of the proposed amendments. If ~~[the Planning Commission]~~ either planning commission fails to act within the required period, it shall be deemed a negative recommendation~~[-]~~ from that planning commission only. If both planning commissions fail to act on a proposed amendment within the required period, such failure to act shall be deemed a negative recommendation from both planning commissions.

- (f) The County Council may make modifications, deletions, or additions to the proposed amendments as it may deem necessary, within the general intent and subject matter of the proposed amendments, in accordance with its rules of procedure. However, any County Council change to a proposed amendment which substantially changes the general intent or subject matter of the proposed amendment, such as newly adding or deleting a goal, policy, or course of action, or standard, or a map amendment which changes a land use designation of a parcel, shall be considered an entirely new proposed amendment and processed as a new interim amendment pursuant to section 16.2(1).

(3) General Public

- (a) Consistent with the County Charter, a member of the public may submit an application requesting the Planning Director to initiate an amendment to the General Plan at any time except during the comprehensive review.
- (b) The application shall include:
 - (i) A filing fee of \$500.00 to cover the administrative cost of processing the application;
 - (ii) A statement of the nature of the proposed amendment;
 - (iii) A draft of the language of the proposed amendment;
 - (iv) A statement of the reasons for granting the proposed change, supported by a written, documented assessment of the relationships of the proposed change with pertinent elements of the General Plan; and
 - (v) Maps, graphs, plot plan, and other supportive information.
- (c) Upon receipt of a properly filed and completed application, the Planning Director shall have 120 days to take one of the following actions:
 - (i) Reject the application for an amendment; or
 - (ii) Initiate an amendment to the General Plan.
- (d) Should the Planning Director initiate an amendment, the amendment shall be processed according to section 16.2(2).
- (e) In the event that the Planning Director rejects an application for an amendment, the applicant may request the County Council to initiate an amendment on its behalf at any time, except during the comprehensive review. If the County Council decides to initiate the proposed amendment by resolution, the amendment procedure shall follow section 16.2(1).
- (f) In the event that an application is denied by the County Council, the same or a substantially similar application may not be submitted for consideration within one year following such denial, unless the applicant submits significant new data or additional reasons that the Planning Director may find to be a sufficient basis for the application to be considered.”

SECTION 4. Ordinance No. 05-25, as amended, is amended by amending section 16.3, relating to Rules and Regulations for Amendment Procedures of the County of Hawai'i General Plan, to read as follows:

"16.3 RULES AND REGULATIONS. The Planning Director and the [~~Planning Commission~~] Windward and Leeward Planning Commissions are authorized to promulgate rules and regulations to implement the amendment procedures. Any such rule or regulation shall be established by the Windward and Leeward Planning Commissions acting jointly."

SECTION 5. 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 without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 6. Material to be repealed is bracketed and stricken. New material is underscored. In re-printing this ordinance or the General Plan, the brackets, bracketed and stricken material, and underscoring need not be included.

SECTION 7. This ordinance shall take effect upon its approval.

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAI'I

Kona, Hawai'i
Date of Introduction: December 2, 2009
Date of 1st Reading: December 2, 2009
Date of 2nd Reading: December 16, 2009
Effective Date: December 30, 2009

REFERENCE: ~~Comm.~~ 604

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

RECEIVED

Introduced By: Donald Ikeda
Date Introduced: December 2, 2009
First Reading: December 2, 2009
Published: N/A

REMARKS: _____

Second Reading: December 16, 2009
To Mayor: December 24, 2009
Returned: December 30, 2009
Effective: December 30, 2009
Published: January 8, 2010

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann	X			
Ikeda	X			
Naeole-Beason	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann	X			
Ikeda	X			
Naeole-Beason	X			
Onishi	X			
Yagong			X	
Yoshimoto	X			
	8	0	1	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:

Donald Ikeda
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date DEC 28 2009

[Signature]

COUNCIL CHAIRMAN

[Signature]

COUNTY CLERK

[Signature] 28th
Approved/Disapproved this _____ day
of December, 2009
[Signature]
MAYOR, COUNTY OF HAWAII

Bill No.: 169
Reference: C-604/PC-52
Ord No.: 09 161