

COUNTY OF HAWAI'I PLANNING DEPARTMENT
BACKGROUND AND RECOMMENDATION

COUNTY COUNCIL INITIATED (PL-CCI-2025-000012)
AMENDMENT TO CHAPTER 25, ARTICLE 5, OF THE HAWAI'I COUNTY CODE
1983 (2016 EDITION, AS AMENDED), RELATING TO DWELLINGS

The County Council has referred Bill 63, for an ordinance to amend Chapter 25 (Zoning), Article 5 of the Hawai'i County Code 1983 (2016 Edition, as amended), relating to dwellings. The purpose of this amendment is to establish dwellings to be a permitted use in the MCX zoning districts.

PURPOSE OF BILL 63

The Hawai'i County Council has introduced Bill 63 (**Planning Department Exhibit 1**), which seeks to amend Chapter 25 (Zoning), Article 5 of the Hawai'i County Code 1983 (2016 Edition, as amended) (hereinafter HCC) to establish clear and consistent zoning regulations for dwellings within the Industrial-Commercial Mixed (MCX) districts. Requirements for establishing land uses in the MCX zoning district, including a list of the variety of land uses currently permitted, are shown in Section 25-5-132 of the Zoning Code. (**Planning Department Exhibit 2 - Zoning Code Requirements for MCX District**)

PROPOSED AMENDMENTS TO HCC CHAPTER 25 (ZONING)

1. Bill 63 proposes to amend Section 25-5-132 (Permitted Uses), of the Zoning Code to add dwellings as a permitted use in the MCX zoning district to read as follows:
 - “() Dwellings, double-family or duplex, provided that the maximum density is one thousand two hundred and fifty square feet of land area per rentable unit or dwelling unit.”
 - “() Dwellings, multiple-family, provided that the maximum density is one thousand two hundred and fifty square feet of land area per rentable unit or dwelling unit.”
 - “() Dwellings, single-family.”

AGENCY COMMENTS

2. **County of Hawai'i Civil Defense Agency: (Planning Department Exhibit 3 – June 19, 2025 Memo)**
3. **County of Hawai'i Civil Defense Agency: Revised comment letter (Planning Department Exhibit 4 – August 7, 2025 Memo)**
4. **Department of Water Supply: (Planning Department Exhibit 5 – July 14, 2025 Memo)**
5. **State of Hawai'i Office of Planning & Sustainability: (Planning Department Exhibit 6 – July 24, 2025)**

AGENCY COMMENTS – NO COMMENTS/CONCERNS

6. State Department of Health, Department of Public Works – Building Division.

AGENCY COMMENTS – NO RESPONSE PROVIDED

7. Real Property Tax Office; Department of Public Works- Engineering Division, Department of Environmental Management, Police Department, and Fire Department.

PUBLIC COMMENTS PROVIDED

8. As of the date of this report, no written public comments have been received regarding Bill 63.

PLANNING ANALYSIS OF THE IMPACTS OF BILL 63

The Zoning Code was amended in 1996 to establish the MCX district to provide for areas of diversified businesses and employment opportunities by permitting a broad range of uses, without exposing nonindustrial uses to unsafe and unhealthy environments. This district is intended to promote and maintain a viable mix of light industrial and commercial uses.

There is currently no allowance for dwellings to be located within any of the three industrial zoning designations: General Industrial (MG), which allows for the most offensive and noxious uses; Limited Industrial (ML), which allows for lesser offensive and noxious uses; and MCX, which allows the least offensive or noxious uses (the most severe of which include warehousing, wholesaling and distribution operations, light manufacturing, processing, and packaging establishments, minor agricultural products processing facilities, heavy equipment sales, service, and rental, and automobile repair facilities).

According to the June 2023 Hawai‘i Housing Factbook produced by UHERO¹, Hawai‘i has the most restrictive land use regulations in the nation and is among the most regulated states for new housing production. Regulatory barriers, high rates of poverty, affordable housing requirement constraints and low median household income all contribute to a low supply of new housing. The report goes further to state that in order to expand the supply of housing, the production of new multifamily housing is required, and the state should not limit multifamily housing to only specific land areas as it would be essentially putting a cap on the amount of housing that can be created. Bill 63, as written by the County Council, will lift housing limits since dwellings are not currently a permitted use within the MCX zoning district.

In light of the above, the Planning Director is supportive of permitting dwellings within the MCX district for the following reasons:

1. The intent to diversify housing options within mixed-use areas is consistent with community priorities to promote compact, walkable, and transit-supportive development patterns, increase housing access, support sustainable land use and supports the following CDP objectives:
 - a. Kona CDP
 - i. Section 3.3: Consistency with Sustainable and Smart Growth Principles
 - ii. Objective TRAN-1: Transportation and Land Use - To organize growth on a regional level in Kona, growth should be compact and transit-supportive. Compact mixed- use villages along transit routes provide sufficient densities to support transit feasibility and enable people to meet a variety of daily needs within walking distance.
 - iii. Objective LU-1: Overall Growth Pattern — To identify areas where higher intensity growth areas should occur and areas where the rural character and open space along the shoreline should be preserved.
 - iv. Section 4.5.3 Housing Goal: Diversity of housing choices for all segments of the population close to places of employment and/or daily needs.
 - b. Puna CDP
 - i. Section 3.1.1 Goal (b): The quality of life improves, and economic opportunity expands for Puna's residents.

¹ <https://uhero.hawaii.edu/wp-content/uploads/2023/06/TheHawaiiHousingFactbook.pdf>

- ii. Section 3.1.2 Objective (a): Implement tools for re-shaping the pattern of future development to prevent further sprawl, such as land pooling.
- iii. Section 4.1.1 Goal (b): The percentage of residents who commute to employment or travel for services outside of Puna is reduced.
- iv. Section 4.1.1 Goal (c): Reliance on fossil fuels for transportation is reduced.

2. HB2090, ACT037:

- a. Effective January 1, 2025, this state bill mandates the inclusion of residential uses in all commercial zoning districts. Currently, HCC Chapter 25 already permits dwellings in the CV (Village Commercial), CN (Neighborhood Commercial), and CG (General Commercial) districts. Bill 63 extends this allowance to the MCX (Industrial-Commercial Mixed) district, presenting an opportunity to expand the housing inventory and support mixed-use development in underutilized areas.

3. The table below identifies MCX zoned properties and acreage in each judicial district and in relation to MG zoned properties. There is a total of 117 MCX properties in the County with 15 that are adjacent to the MG zoning district. 14 of these properties are in N. Kona, and 1 in S. Hilo.

	Hawai'i County	N. Kona	S. Hilo	Puna	S. Kohala	Ka'ū
MCX Zone Property Count	117	63	37	13	3	1
MCX Zone Acres	414.42	318.22	39.33	20.34	33.28	3.24
Adjacent to MG (property count)	15	14	1	0	0	0
Adjacent to MG (acreage)	~209.50	194.08	15.41	0	0	0

4. While the MCX District allows for some potentially hazardous and disruptive uses, permitted industrial uses are light or minor industrial type uses such as warehousing, self-storage facilities, car washes, auto service stations, broadcasting stations, and a variety of other light industrial uses. The Planning Director finds that potential conflicts between

uses are minimal and that risks will be mitigated by occupancy and/or fire separations as required by the prevailing building and fire codes.

PLANNING DIRECTOR'S RECOMMENDATION

The Planning Director is supportive of the intent of Bill 63 and commends the County Council for its leadership in advancing legislation that allows for dwellings to be a permitted use within the MCX zoning districts. The Planning Director is recommending the following revision to Bill 63 to address the Civil Defense Agency's concerns regarding proximity of hazardous uses on adjacent properties in the MG zoning district to new dwellings that could be established in the MCX district:

Add subsection (b) to Section 25-5-138. Other regulations.

- (a) Plan approval shall be required for all new structures and additions to existing structures in the MCX district.
- (b) Any dwellings within the MCX district shall have a minimum setback of 200 feet from the property boundary adjoining any General Industrial (MG) district or increased if required by the director.
- (c) Exceptions to the regulations for the MCX district regarding heights, building site areas, building site average widths and yards, may be approved by the commission within a planned unit development.

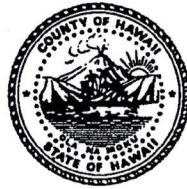
Based on the analysis provided and in recognition of the County's goals for sustainable land use, the Planning Director **recommends that the Windward and Leeward Planning Commissions forward a favorable recommendation** of Bill No. 63 to the County Council, outlined in this report.

PLANNING COMMISSION ACTION

The Windward and Leeward Planning Commissions are required to take action on Bill 63 as described in Section 25-2-43 (b) of the Zoning Code (**Planning Department Exhibit 7 - HCC Section 25-2-43(b)**). This bill was transmitted by the County Council to the Department on June 3, 2025, which means the commissions are required to transmit their recommendations to the council by October 1, 2025. The commissions shall recommend approval in whole or in part, with or without modifications, or rejection of the proposed bill. Each commission's recommendations will be forwarded separately, but at the same time, to the County Council for their consideration and decision. In the event the commissions fail to act on the proposed bill by

this date, such inaction shall be considered as an unfavorable recommendation by the commissions.

COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 63

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 25, ARTICLE 5, OF THE HAWAI'I
COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO DWELLINGS.

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

SECTION 1. Purpose. The purpose of this ordinance is to permit residential dwellings within the industrial-commercial mixed use (MCX) district.

SECTION 2. Chapter 25, article 5, division 13, section 25-5-132, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended by adding paragraphs to be appropriately inserted in subsection (a) and to read as follows:

"() Dwellings, double-family or duplex, provided that the maximum density is one thousand two hundred and fifty square feet of land area per rentable unit or dwelling unit."

"() Dwellings, multiple-family, provided that the maximum density is one thousand two hundred and fifty square feet of land area per rentable unit or dwelling unit."

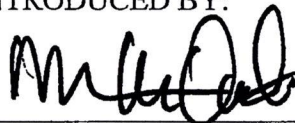
"() Dwellings, single-family."

SECTION 3. New material is underscored. In printing this ordinance, the underscoring need not be included.

SECTION 4. 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 5. This ordinance shall take effect upon its approval.

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAI'I

_____, Hawai'i
Date of Introduction:
Date of 1st Reading:
Date of 2nd Reading:
Effective Date:

REFERENCE Comm. 333

Section 25-5-128. Other regulations.

- (a) Plan approval shall be required for all new structures and additions to existing structures in the CV district, except for construction of one single-family dwelling and any accessory buildings per lot.
 - (b) Exceptions to the regulations for the CV district regarding heights, building site areas, building site average widths and yards, may be approved by the commission within a planned unit development.
- (1996, ord 96-160, sec 2; ratified April 6, 1999; am 2005, ord 05-155, sec 15; am 2015, ord 15-33, sec 4.)

Division 13. MCX, Industrial-Commercial Mixed Districts.**Section 25-5-130. Purpose and applicability.**

The purpose of the MCX (industrial-commercial mixed use) district is to allow mixing of some industrial uses with commercial uses. The intent of this district is to provide for areas of diversified businesses and employment opportunities by permitting a broad range of uses, without exposing nonindustrial uses to unsafe and unhealthy environments. This district is intended to promote and maintain a viable mix of light industrial and commercial uses.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-131. Designation of MCX districts.

Each MCX (industrial-commercial mixed use) district shall be designated by the symbol "MCX" followed by a number which indicates the minimum land area, in number of thousands of square feet, required for each building site.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-132. Permitted uses.

- (a) The following uses shall be permitted in the MCX district:
 - (1) Agricultural products processing, minor.
 - (2) Amusement and recreation facilities, indoor.
 - (3) Apiaries.
 - (4) Art galleries, museums.
 - (5) Art studios.
 - (6) Automobile sales and rentals.
 - (7) Automobile service stations.
 - (8) Bars, nightclubs and cabarets.
 - (9) Broadcasting stations.
 - (10) Business services.
 - (11) Car washing.
 - (12) Catering establishments.
 - (13) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
 - (14) Churches, temples and synagogues.

- (15) Cleaning plants using only nonflammable hydrocarbons in a sealed unit as the cleaning agent.
- (16) Commercial parking lots and garages.
- (17) Community buildings, as permitted under section 25-4-11.
- (18) Convenience stores.
- (19) Crematoriums, funeral homes, funeral services, and mortuaries.
- (20) Data processing facilities.
- (21) Display rooms for products sold elsewhere.
- (22) Equipment sales and rental yards.
- (23) Farmers markets.
- (24) Financial institutions.
- (25) Food manufacturing and processing.
- (26) Home improvement centers.
- (27) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.
- (28) Ice storage and dispensing facilities.
- (29) Kennels in sound-attenuated buildings.
- (30) Laboratories, medical and research.
- (31) Laundries.
- (32) Manufacturing, processing and packaging establishments, light.
- (33) Medical clinics.
- (34) Meeting facilities.
- (35) Model homes.
- (36) Motion picture and television production studios.
- (37) Offices.
- (38) Personal services.
- (39) Photographic processing.
- (40) Photography studios.
- (41) Plant nurseries.
- (42) Public uses and structures, as permitted under section 25-4-11.
- (43) Publishing plants for newspapers, books and magazines, printing shops, cartographing, and duplicating processes such as blueprinting or photostating shops.
- (44) Repair establishments, minor.
- (45) Restaurants.
- (46) Retail establishments.
- (47) Sales and service of machinery used in agricultural production.
- (48) Schools, business.
- (49) Schools, photography, art, music and dance.
- (50) Schools, vocational.
- (51) Self-storage facilities.
- (52) Telecommunications antennas, as permitted under section 25-4-12.
- (53) Temporary real estate offices, as permitted under section 25-4-8.
- (54) Theaters.
- (55) Utility substations, as permitted under section 25-4-11.
- (56) Veterinary establishments in sound-attenuated buildings.

- (57) Warehousing.
 - (58) Wholesaling and distribution operations.
 - (b) In addition to those uses permitted under subsection (a) above, the following uses may be permitted in the MCX district, provided that a use permit is issued for each use:
 - (1) Major outdoor amusement and recreation facilities.
 - (2) Schools.
 - (3) Yacht harbors and boating facilities.
 - (c) Buildings and uses normally considered directly accessory to the uses permitted in this section shall also be permitted in the MCX district.
- (1996, ord 96-160, sec 2; ratified April 6, 1999; am 2003, ord 03-113, sec 1; am 2011, ord 11-26, sec 3; am 2012, ord 12-28, sec 15; am 2024, ord 24-65, secs 7 and 10; am 2025, ord 25-28, sec 2.)

Section 25-5-133. Height limit.

The height limit in the MCX district shall be forty-five feet.
(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-134. Minimum building site area.

The minimum building site area in the MCX district shall be twenty thousand square feet.
(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-135. Minimum building site average width.

Each building site in the MCX district shall have a minimum building site average width of ninety feet.
(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-136. Minimum yards.

The minimum yards in the MCX district shall be as follows:

- (1) Front yards, twenty feet; and
- (2) Side and rear yards, none, except where the adjoining building site is in an RS, RD, RM or RCX district. Where the side or rear property line adjoins the side or rear yard of a building site in an RS, RD, RM or RCX zoned district, there shall be a side or rear yard which conforms to the side or rear yard requirements for dwelling use of the adjoining district.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

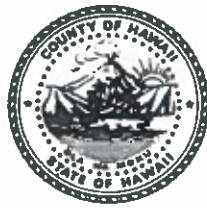
Section 25-5-137. Landscaping of yards.

- (a) All front yards in the MCX district shall be landscaped, except for necessary access drives and walkways.
 - (b) Any required side or rear yard in the MCX district adjoining a building site in an RS, RD, RM or RCX district, shall be landscaped with a screening hedge not less than forty-two inches in height, within five feet of the property line, except for necessary drives and walkways.
- (1996, ord 96-160, sec 2; ratified April 6, 1999.)

C. Kimo Alameda, PhD
Mayor

William V. Brilhante Jr.
Managing Director

Merrick Nishimoto
Deputy Managing Director



County of Hawaii
CIVIL DEFENSE AGENCY

920 Ululani Street • Hilo, Hawai'i 96720-3958
(808) 935-0031

Talmadge J. Magno
Civil Defense Administrator

June 19, 2025

To: Hawaii County Planning Department; planning@hawaiicounty.gov

From: Talmadge Magno, Civil Defense Administrator

RE: Comments on Bill No. 63 (PL-CCI-2025-000012) Amendment to Chapter 25, Article 5 of the Hawai'i County Code 1983 (2016 Edition, As Amended) Relating to Permitting Dwellings in the Industrial- Commercial Mixed (MCX) Zoning District

Aloha,

The Hawaii County Civil Defense Agency does NOT support Bill 63. There are remedies available in the Hawaii County Code to request changes to or variances to an existing zoning district to accommodate a specific construction project, based on the individual situation, when the proposed construction site is not located within a zone that allows that type of structure.

Zoning laws exist to protect the health and safety of residents in a community. For that purpose, the Hawaii County Code identifies seventeen zoning districts. Each zoning district addresses commercial, residential, industrial, agricultural, resort-hotel, and special districts. There are mixed use districts such as the industrial-commercial mixed use (MCX) district within the seventeen zoning districts. The intent of the MCX district is to provide for areas of diversified businesses and employment opportunities by permitting a broad range of uses, without exposing non-industrial uses to unsafe and unhealthy environments. The Hawaii County Code does not have any mixed-use districts that include both industrial and residential use. Co-locating these activities is not generally conducive to community safety or quality of life.

What is the intent of changing the MCX district in the County Code? Why can't this intent be met through existing remedies in the County Code such as a zone change or variance?

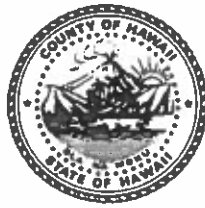
The bottom line is that there is no reason to make this change to the Hawaii County Code as it negates the purpose of zoning.

Mahalo

C. Kimo Alameda, PhD
Mayor

William V. Brilhante Jr.
Managing Director

Merrick Nishimoto
Deputy Managing Director



County of Hawaii

CIVIL DEFENSE AGENCY

920 Ululani Street • Hilo, Hawai'i 96720-3958
(808) 935-0031

Talmadge J. Magno
Civil Defense Administrator

August 7, 2025

To: Hawaii County Planning Department; planning@hawaiicounty.gov

From: Talmadge Magno, Civil Defense Administrator

RE: Comments on Bill No. 63 (PL-CCI-2025-000012) Amendment to Chapter 25, Article 5 of the Hawai'i County Code 1983 (2016 Edition, As Amended) Relating to Permitting Dwellings in the Industrial-Commercial Mixed (MCX) Zoning District

Aloha,

After multiple meetings to discuss Bill 63 and gaining an improved understanding of the zoning districts in Hawaii County, the Civil Defense Agency amends its earlier position and supports Bill 63 with the following requirements.

Zoning laws exist to protect the health and safety of residents and visitors in our community and only with the following additions to the requirements for an MCX or any zone where residential dwellings are applicable will Civil Defense support this bill.

In areas with residential zoning where adjacent zoning allows for activities such as heavy industrial, the potential exposure of dangerous and toxic materials and fumes is a health and safety concern, and setbacks of at least 200 feet must be established. These setbacks would be regulated through permits that are required in the planning and building process to ensure conflicting activities are not situated in close proximity and thereby reduce or eliminate the potential to cause harm.

Mahalo,

Planning Dept.
Exhibit 4



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAI'I

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAI'I 96720

TELEPHONE (808) 961-8050 • FAX (808) 961-8657

July 14, 2025

TO: Mr. Jeffrey Darrow, Director
Planning Department

FROM: Keith K. Okamoto, Manager–Chief Engineer

Subject: **County Council Initiated Bill No. 63 (PL-CCI-2025-000012)**
Amendment to Chapter 25, Article 5 of the Hawai'i County Code 1983 (2016
Edition, As Amended) Relating to Permitting Dwellings in the Industrial-
Commercial Mixed (MCX) Zoning District

We have reviewed the proposed amendments and have the following comments.

Although the Department is in full support of providing more residential availability, we are concerned that the addition of residential uses to industrial-commercial mixed zoning will add a larger demand for water in these areas.

Should there be any questions, please contact Ms. Robyn Matsumoto of our Water Resources and Planning Branch at (808) 961-8070, extension 255.

Sincerely yours,

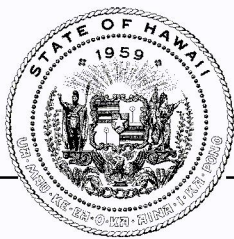
Keith K. Okamoto, P.E.
Manager-Chief Engineer

RM:klcm

Planning Dept.
Exhibit 5

... Water, Our Most Precious Resource ... Ka Wai A Kāne ...

The Department of Water Supply is an Equal Opportunity provider and employer.



**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARY ALICE EVANS
DIRECTOR

235 South Beretania Street, 6th Floor, Honolulu, Hawai'i 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawai'i 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <https://planning.hawaii.gov/>

Coastal Zone
Management
Program

DTS 202507081649NA
Transmitted via email

Environmental Review
Program

July 24, 2025

Land Use Commission

Jeffrey Darrow, Planning Director
Planning Department
County of Hawai'i
Hilo, Hawai'i 96720

Land Use Division

Special Plans Branch

State Transit-Oriented
Development

Dear Mr. Darrow:

Statewide Geographic
Information System

Subject: County Council Initiated Bill No. 63 (PL-CCI-2025-000012)
Amendment to Chapter 25, Article 5 of the Hawai'i County Code
1983 (2016 Edition, As Amended) Relating to Permitting
Dwellings in the Industrial-Commercial Mixed (MCX) Zoning
District

Statewide
Sustainability Branch

The Office of Planning and Sustainable Development (OPSD) has reviewed the request for comments on the proposed measure to allow single-family, double-family, and multiple-family dwellings in the Industrial-Commercial (MCX) Zoning District.

OPSD has concerns about the proposal as written and offers the following comments on the measure.

- 1. Potential for displacement of industrial uses.** Under pyramiding zoning schemes where residential uses are allowed in less restrictive zones like industrial zones, industrial uses can be displaced by higher-valued uses and higher per square foot rental rates. This can drive industrial uses further out from commercial and job centers and other suppliers and markets—potentially decreasing operational efficiency and increasing costs for the industrial user.
- 2. Infrastructure requirements.** The infrastructure needs of residential and industrial uses are different and allowing both in the same district could result in either substandard infrastructure improvements for

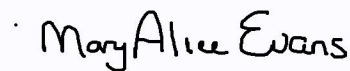
residential tenants or costly and unnecessary infrastructure improvements for the industrial tenants.

3. **Unclear interpretation of density as proposed in the bill.** The language in the bill defining maximum density is unclear and could limit its utility for multiple-family units in MCX zones. Consideration should be given to using other density metrics such as floor area ratios.
4. Commercial/industrial loft space above or live-work units within an industrial/commercial structure or complex might be appropriate residential uses in such a zone. We can also envision, under certain circumstances such as in a more intense urban setting, that multiple-family units above or attached could be suitable in some MCX zones, especially where a County land use plan anticipates a transition to a more mixed-use urban character where industrial uses are less land intensive. Residential units may be suitable in more rural areas if the ordinance requires that occupancy of the units is associated with or connected to the industrial user, such that industrial uses in the zone do not become subordinate to residential use due to industrial or commercial vacancies.

In conformance with Hawai‘i Revised Statutes, Chapter 205, the proposed ordinance should ensure that residential units are not permitted by right on any MCX-zoned lands in the State Agricultural District.

Thank you for the opportunity to provide input on the proposed bill. If you have any questions, please contact Ruby Edwards, ruby.m.edwards@hawaii.gov, (808) 587-2817. If you wish to respond to this comment letter, please include DTS 202507081649NA in the subject line.

Mahalo,



Mary Alice Evans
Director

Section 25-2-43. Amendments initiated by the council and director.

- (a) Any amendment initiated by the director shall be reviewed by the commission.
 - (1) The amendment shall be submitted to the commission with the director's justification and recommendation on the amendment.
 - (2) Upon receipt of a proposed amendment from the director, the commission shall hold at least one public hearing. Notice of the hearing by the publication shall be provided by the commission in accordance with section 25-2-5, except that when a proposed amendment involves a specific parcel of land, notice shall be provided by the commission in accordance with subsections (c) and (d).
 - (3) Within sixty days after receipt of the amendment from the director, the commission shall transmit the proposed amendment together with its recommendations thereon through the mayor to the council. The commission shall recommend approval in whole or in part, with or without modifications, or rejection of such amendment. In the event that the commission fails to act on the amendment within the sixty-day period, such inaction shall be considered as unfavorable recommendation by the commission, and the amendment shall then be submitted through the mayor to the council with such recommendation.
- (b) The council shall refer any proposed council-initiated amendment to this chapter to the director and the commission with requests for their respective comments and recommendations thereon, prior to the first reading of any such amendment. The director and the commission shall each submit comments and recommendations on the proposed amendment to the council within one hundred twenty days from the date that the amendment is transmitted by the council to the director and the commission.
 - (1) The director shall submit comments and any recommendations to both the commission and the council within the one-hundred-twenty-day review period.
 - (2) The commission shall hold at least one public hearing on the proposed amendment. Notice of the hearing by publication shall be provided by the commission in accordance with section 25-2-5, except that when a proposed amendment involves a specific parcel of land, notice shall be provided by the commission in accordance with subsections (c) and (d).
 - (3) The commission shall transmit the amendment together with its recommendations thereon through the mayor to the council. The commission shall recommend approval in whole or in part, with or without modifications, or rejection of such amendment. In the event that the commission fails to act on the amendment within the one-hundred-twenty-day review period, such inaction shall be considered as an unfavorable recommendation by the commission.
 - (4) After the one-hundred-twenty-day review period has expired, the council may proceed to act on the proposed amendment as it deems appropriate.

- (c) Notice by mail to surrounding owners and lessees of record of properties within the boundaries established by section 25-2-4, shall not be required for any amendment initiated by the council or the director. In lieu of mailing written notice to surrounding property owners and lessees of record, the director shall publish notice of the commission's public hearing in at least two newspapers of general circulation in the County, once a week for three consecutive weeks, with the last notice to be at least ten days prior to the hearing. The notice shall specify the time, date and place of the hearing, its purpose and a description of any property which may be involved.
 - (d) Notice to owners of any properties specifically subject to the proposed amendment shall be provided by mail from the director, no later than thirty days prior to the commission's public hearing on the amendment.
- (1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-2-44. Conditions on change of zone.

- (a) Within any ordinance for a change of zone, the council may impose conditions on the applicant's use of the property subject to the change of zone provided that the council finds that the 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.

Within any ordinance for a change of zone that includes any such conditions, except for ordinances reverting zoning to a previous zoning district designation or to an open zoning designation, the director shall specify the time by which all conditions shall be completed. The time during which required plans, reports, studies, or relevant permit applications are under review for approvals by government agencies shall not count towards the deadline established in the ordinance. To justify this tolling, the applicant shall provide evidence of the excluded time period to the planning department for its review and approval, which shall consist of dates obtained from a government agency website, permitting program, or office indicating when the required plans, reports, studies, or permit applications were submitted, approved, denied, or returned by the government agency. Any request for tolling shall be verified and approved in writing by the director prior to the deadline established by the ordinance. The director shall notify the council of any approval of a request for tolling within thirty days of such approval. If any conditions have not been completed by the deadline, or if a time extension request has not been submitted in accordance with section 25-2-44(c), the planning department shall inform the applicant that the ordinance is null and void without further action by the County. In that event, the zoning designation of the property(s) affected by the ordinance shall automatically revert to its immediate prior zoning designation

- (b) Requests to change or alter the conditions of any change of zone ordinance shall be processed in the same manner as a zone change, unless the council authorizes the changes or alterations to be made by the director.