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MEMORANDUM

DATE: March 28, 2024

TO: Pearlene Sotelo
Clerk, Committee on Planning & the Economy

FROM: Esther Kia'āina, Chair
Committee on Planning & the Economy 

SUBJECT: Kia'āina Proposed Amendments to Accessory Dwelling Unit & Ohana
Uses in Bill 64 (2023), FD1 for the April 4, 2024 P&E Meeting

Attached for consideration by the Committee on Planning & the Economy are my proposed amendments to accessory dwelling unit and ohana uses (residential accessory uses) in Bill 64 (2023), FD1, relating to use regulations for the April 4, 2024 Committee on Planning & the Economy Meeting.

Attachments (1):
Amendment Form, Residential Uses, Bill 64 (2023), FD1, Relating to Use Regulations

AMENDMENT FORM
Bill 64 (2023), FD1
Relating to Use Regulations
RESIDENTIAL USES

TOTAL PAGES: 3
DATE: March 28, 2024
COUNCILMEMBER: Esther Kiaʻāina

Item No.	Bill SECTION	ROH Section, Exhibit, or Figure, and Title	Page No.	Amendment Description	Amendment Text (in Ramseyer Format)	Comments or Clarification
1.	SECTION 3	§ 21-5.50-3(a) Residential Uses Accessory residential Accessory dwelling unit – standards	22	Amend standards for accessory dwelling units.	<p>(a) <i>Accessory dwelling unit – standards.</i></p> <p>(1) <i>General.</i></p> <p>(A) Accessory dwelling units are not permitted:</p> <p>(i) On zoning lots in planned development housing or cluster housing; or</p> <p>(ii) On zoning lots that are landlocked.</p> <p>(B) The total floor area of an accessory dwelling unit must not exceed:</p> <p>(i) 500 square feet for zoning lots up to 4,999 square feet in area; or</p> <p>(ii) 800 1,000 square feet for zoning lots 5,000 square feet or more in area.</p> <p>(C) The construction or conversion of an accessory dwelling unit must meet all development standards for the principal use in the underlying zoning district.</p> <p>(D) An accessory dwelling unit may be created by:</p> <p>(i) Building a new structure (attached or detached from the principal dwelling unit); or</p> <p>(ii) Converting a legally established structure (attached to or detached from the principal dwelling unit), attic, or basement.</p> <p>(E) Only one accessory dwelling unit is permitted on a zoning lot (including a zoning lot with existing multiple dwelling units)[-]; <u>provided that an ohana unit that is otherwise permitted on a zoning lot is not considered to be an accessory dwelling unit for purposes of limiting the number of accessory dwelling units to one per zoning lot.</u></p> <p>(F) See § 21-6.30(b) for adjustments and exemptions to parking requirements for accessory dwelling unit.</p> <p>(2) <i>Conditions of approval.</i></p> <p>(A) <i>Covenant for accessory dwelling units.</i> The owners of the zoning lot shall record covenants running with the land with the State bureau of conveyances or the land court of the State of Hawaii, or both, as appropriate. The covenant must be recorded in a form approved by the director and may contain such terms as the director deems necessary to ensure its enforceability. The failure of an owner or of an owner's heirs, successors, or assigns to abide by such covenant will be deemed a violation of this chapter and will be grounds for enforcement by the director pursuant to § 21-2.150. At a minimum, the covenant must state:</p> <p>(i) The accessory dwelling unit may only be used for long-term residential occupancy and may not be used as a bed and breakfast home or transient vacation unit;</p> <p>(ii) The deed restrictions lapse upon removal of the accessory dwelling unit;</p> <p>(iii) All of the covenants are binding upon any and all heirs, successors, and assigns of the owners; and</p> <p>(iv) Neither the owners nor the heirs, successors, or assigns of the owners may submit the zoning lot or any portion thereof to a condominium property regime under the State of Hawaii Condominium Property Act to separate the ownership of an accessory dwelling unit from the ownership of its principal dwelling unit.</p> <p>(B) <i>Removal.</i> The owners of an accessory dwelling unit shall notify the department upon removal of the accessory dwelling unit.</p>	Increases the maximum size of an accessory dwelling unit on zoning lots of 5,000 square feet or more to 1,000 square feet (instead of 800 square feet).

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2.	SECTION 3	§ 21-5.50-3(c) Residential Uses Accessory residential Ohana unit – standards	26	Amends standards for ohana unit.	<p>(c) <i>Ohana unit – standards.</i></p> <p>(1) <i>General.</i> The ohana unit and the principal dwelling unit may be located within a single structure, such as a two-unit dwelling, or detached from the principal dwelling unit but located on the same zoning lot.</p> <p>(2) <i>Occupants.</i> The ohana unit must be occupied by persons who are related by blood, adoption, guardianship, marriage, or other duly-authorized custodial relationship to the family residing in the principal dwelling unit; provided that ohana units for which a building permit was obtained prior to September 10, 1992, are not subject to this subsection and their occupancy by persons other than persons who are related to the family residing in the principal dwelling unit is permitted.</p> <p>(3) <i>Covenant for ohana unit.</i> The owners of the zoning lot on which an ohana unit is located shall record covenants running with the land with the State bureau of conveyances or the land court of the State of Hawaii, or both, as appropriate. The covenant must be recorded on a form approved by or provided by the director and may contain such terms as the director deems necessary to ensure its enforceability. The failure of an owner or of an owner's heir, successor, or assign, to abide by the recorded covenants will be deemed a violation of this chapter and will be grounds for enforcement by the director pursuant to § 21-2.150. The covenant must state: "Neither the owner or owners, nor the heirs, successors, or assigns of the owner or owners may submit the zoning lot or any portion thereof to a condominium property regime under the State of Hawaii Condominium Property Act to separate the ownership of an ohana unit from the ownership of its principal dwelling unit."</p> <p>(4) <i>Size.</i> The maximum size of an ohana unit is subject to the maximum building area development standard for the applicable underlying zoning district set forth in Article 3.</p> <p>[(5) <i>Residential districts.</i> In the residential zoning districts, ohana units are not permitted in the R-3.5 zoning district.</p> <p>(6)]<u>(5) <i>Zoning lot limitations.</i> Ohana units are not permitted on zoning lots that are:</u></p> <p style="margin-left: 20px;">(A) Within a zero lot line project;</p> <p style="margin-left: 20px;">(B) Within a cluster housing project;</p> <p style="margin-left: 20px;">(C) Within an agricultural cluster project,</p> <p style="margin-left: 20px;">(D) Within a country cluster project;</p> <p style="margin-left: 20px;">(E) Within a planned development housing project;</p> <p style="margin-left: 20px;">(F) Within a duplex-unit project; or</p> <p style="margin-left: 20px;">(G) Nonconforming.</p> <p><u>(6) <i>An ohana unit may be permitted as accessory to a principal dwelling unit on a zoning lot that already includes one accessory dwelling unit; provided that all development standards and requirements in the underlying zoning district for the principal dwelling unit, the accessory dwelling unit, and the ohana unit are satisfied.</i></u></p>	<p>Deletes the prohibition on ohana units in the R-3.5 Residential Zoning Districts.</p> <p>Provides that an ohana unit may be permitted as accessory to a principal dwelling unit on a zoning lot that already includes one accessory dwelling unit, so long as all development standards for the principal use in the underlying zoning district are satisfied.</p>

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3.	SECTION 43	§ 21-8.20-1(a) Procedures for approval of ohana units Procedures for designating ohana-eligible areas	147		<p>(a) Procedures for designating ohana-eligible areas, including rules providing that:</p> <p>(1) Only those areas that are determined by the appropriate government agencies to have adequate public facilities to accommodate ohana units will be ohana-eligible; <u>and</u></p> <p>(2) Upon a finding by the responsible agency that wastewater treatment and disposal, water, or transportation facilities are not adequate to accommodate additional ohana units in any ohana-eligible area, no more ohana units may be approved in that area;</p> <p>[(3) Notwithstanding the adequacy of public facilities, if the owners of 60 percent of the zoning lots in a residential zoning district in the same census tract sign a petition requesting that zoning lots in the residential zoning district in the census tract be excluded from ohana eligibility and submit the petition to the department, no new ohana units may be approved on zoning lots in the residential zoning district in that census tract from the date the department certifies the validity of the petition. For the purposes of this subdivision, the term "owners" means the fee owner of property that is not subject to a lease, or the lessee of property that is subject to a lease. For the purposes of this subdivision, the term "lease" has the same meaning as defined in HRS § 516-1;</p> <p>(4) Notwithstanding the adequacy of public facilities, if the owners of 60 percent of the zoning lots in the agricultural or country zoning districts in the same census tract sign a petition requesting that all zoning lots in the agricultural or country zoning districts in a census tract be excluded from ohana eligibility and submit the petition to the department, no new ohana units may be approved on zoning lots in the agricultural or country zoning districts in that census tract from the date the department certifies the validity of the petition. For the purposes of this subdivision, "owner" means the fee owner of property that is not subject to a lease, or the lessee of property that is subject to a lease. For the purposes of this subdivision, the term "lease" means a conveyance of land or an interest in land, by a fee simple owner as lessor, or by a lessee or sublessee as sublessor, to any person, in consideration of a return of rent or other recompense, for a term, measured from the initial date of the conveyance, of 20 years or more (including any periods during which the lease may be extended or renewed at the option of the lessee);</p> <p>(5) The director may adopt rules pursuant to HRS Chapter 91 to establish procedures for, to implement, and to further define the terms used in subdivisions (3) and (4). These rules may include but are not limited to provisions relating to the form of petitions, determination of necessary signatures if there is more than one owner or when the owner is an entity, the signing of petitions, validity of signatures, the withdrawal of signatures, the time frame for collection of signatures, verification of signatures, certification of results, duration of the prohibition, and procedures upon the change of census tract boundaries; and</p> <p>(6) Before an area is designated as eligible for ohana units, the director shall publish a notice of the proposed change in a newspaper of general circulation, and notify the neighborhood boards in the affected area;]</p>	<p>Deletes provisions that allow for owners of zoning lots in the residential, agricultural, and country zoning districts to exclude ohana eligibility in a census tract by petition.</p> <p>Deletes the requirement that the DPP Director publish a notice (in a newspaper of general circulation) before an area is designated as eligible for ohana units.</p>