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MEMORANDUM

DATE: May 17, 2024

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

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

SUBJECT: Kia'āina Updated Proposed Amendments to Public, Civic, and Institutional Uses in Bill 64 (2023), FD1, for the P&E Committee Meeting on May 23, 2024, to Supersede CC-146 (2024)

Attached for consideration by the Committee on Planning & the Economy ("P&E") are updated proposed amendments by the P&E Committee Chair to Public, Civic, and Institutional Uses in Bill 64 (2023), FD1, relating to use regulations, for the P&E Committee meeting on May 23, 2024. These proposed amendments supersede the amendments proposed in Council Communication 146 (2024). Changes made by the attached amendment matrix (to the matrix included in Council Communication 146 (2024)) are highlighted in yellow. If adopted by the Committee, the recommendations will be incorporated into a proposed CD1.

Attachments (1):

Amendment Form, Public, Civic, and Institutional Uses, Bill 64 (2023), FD1, Relating to Use Regulations

COUNCIL COM. 159
P&E

AMENDMENT FORM
Bill 64 (2023), FD1
Relating to Use Regulations
PUBLIC, CIVIC, AND INSTITUTIONAL USES

TOTAL PAGES: 7

DATE: May 17, 2024

COUNCILMEMBER: Esther Kiaʻāina

<table>
<tr><th>Item No.</th><th>Bill SECTION</th><th>ROH Section, Exhibit, or Figure, and Title</th><th>Page No.</th><th>Amendment Description</th><th>Amendment Text (in Ramseyer Format)</th><th>Comments or Clarification</th></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>1</td><td>SECTION 3</td><td>Table 21-5.1
Table of Permitted Uses
Public, civic, and institutional uses category
Communication subcategory
Accessory communication structure entry</td><td>5</td><td>Rename accessory communication structure in the Use Table.
Move the entry to a new subcategory at the end of the category.</td><td><table><tr><td>Accessory Public, Civic, and Institutional</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>Accessory [~~communication structure~~] receive only antenna</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>[P*] Ac*</td><td>§ 21-5.60-2(d)</td></tr></table></td><td>Rename "accessory communication structure" to "accessory receive only antenna."
Move the entry to a new accessory public, civic, and institutional subcategory at the end of the public, civic, and institutional category.</td></tr>
<tr><td>2</td><td>SECTION 3</td><td>Table 21-5.1
Table of Permitted Uses
Public, civic, and institutional uses category
Communication subcategory
New broadcasting antenna entry</td><td>N/A</td><td>Add new broadcasting antenna entry</td><td><table><tr><td>Broadcasting Antenna</td><td>Cm*</td><td>Cm*</td><td>Cm*</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td>C*</td><td>C*</td><td>C*</td><td>C*</td><td>§ 21-5.60-2(e)</td></tr></table></td><td>Add broadcasting antenna entry to the Use Table with "Cm*" in the P-2, AG-1, and AG-2 Districts, and "C*" in the I-1, I-2, I-3, and IMX-1 Districts.</td></tr>
<tr><td>3</td><td>SECTION 3</td><td>Table 21-5.1
Table of Permitted Uses
Public, civic, and institutional uses category
Communication subcategory
Communication tower entry</td><td>5</td><td>Amend communication tower entry in the Use Table.</td><td><table><tr><td>Communication tower</td><td>Cm*</td><td>Cm*</td><td>Cm*</td><td>Cm*</td><td>C*</td><td>C*</td><td>C*</td><td>C*</td><td>C*</td><td>C*</td><td>C*</td><td>C*</td><td>C*</td><td>C*</td><td>C*</td><td>C*</td><td>C*</td><td>[~~Cm*~~] P*</td><td>[~~Cm*~~] P*</td><td>[~~Cm*~~] P*</td><td>C*</td><td>§ 21-5.60-2(b)</td></tr></table></td><td>Replace "Cm*" with "P*" in the I-1, I-2, and I-3 Districts.</td></tr>
</table>

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4	SECTION 3	Table 21-5.1 Table of Permitted Uses Public, civic, and institutional uses category Education subcategory K-12 school entry	5	Rename K-12 school entry in the Use Table.	School, [~~K-12~~] PreK-12 | -- | -- | C*+ | Cm* | Cm* | Cm* | Cm* | Cm* | Cm* | Cm* | Cm* | Cm* | -- | P | P | P | P | -- | -- | -- | -- | § 21-5.60-3(a)	Rename "K-12 school" to "PreK-12 school"
5	SECTION 3	§ 21-5.60-1(a) Public, civic, and institutional uses Education K-12 school – standards	31	Amend name of K-12 schools in the standards section.	(a) *School, [~~K-12~~] PreK-12 – standards.* (1) All structures and facilities must be set back a minimum of 20 feet from the property line of any adjoining zoning lot in the country, residential, apartment, or apartment mixed-use zoning districts. The director may waive this requirement upon finding that the topography or landscaping makes a buffer unnecessary. (2) Schools must be located with access to a street or right-of-way of minimum access width and sufficient street frontage as determined by the appropriate government agencies. (3) *Parking and loading.* (A) Schools with a design capacity of more than 25 students must provide an off-street drop-off area, with a minimum capacity equivalent to four standard-sized parking spaces. This number may be adjusted by the director as the design capacity of the school changes, or if a traffic management plan is approved. (B) Schools with a design capacity of more than 50 students must provide at least one multipurpose bay that is a minimum of 40 feet in depth by 14 feet in width to accommodate bus pickup and drop-off. This multipurpose bay may be used for other activities outside of pickup and drop-off hours. The director may adjust this requirement as the design capacity of the school changes. (4) In the AG-2 zoning district, a minimum of 51 percent of the zoning lot area suitable for crop production or livestock keeping must be dedicated to crop production or livestock keeping through an agricultural easement or similar legal encumbrance for as long as the [~~K-12~~] preK-12 school is in operation. The director may adopt rules pursuant to HRS Chapter 91 to determine the zoning lot area considered to be suitable for crop production or livestock keeping.	Rename "K-12 school" to "PreK-12 school."

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6	SECTION 3	§ 21-5.60-2(b) Public, civic, and institutional uses Communication Communication tower – standards	31	Amend communication tower standards.	(b) *Communication tower – standards.* (1) Communication towers must be set back from all property lines a minimum of 1 foot for every 5 feet of height. (2) Communication towers must be enclosed by fencing a minimum of 6 feet in height, and towers must be equipped with an anti-climbing device. (3) All communication towers in the residential zoning districts must use monotree (designed to blend in with surrounding trees) or other stealth design to minimize visual impacts. (4) In the industrial zoning districts, [~~a minor conditional use permit is required if the zoning lot for~~] the communication tower [~~is adjacent to~~] must be set back a minimum of 100 feet from the property line of any adjoining zoning lot in the residential, apartment, or apartment mixed-use zoning districts. (5) Communication towers that qualify as an eligible facility requests under 47 U.S.C. § 1455(a) and 47 C.F.R § 1.6100, as may be amended or superseded, do not require any additional land use permits or approvals under this chapter; provided that the communication tower complies with all conditions of the initial land use permit or approval.	Clarifies that monotree design must blend in with surrounding trees. Provides that in the industrial zoning districts, the communication tower must be set back a minimum of 100 feet from the property line of any adjoining zoning lot in the residential, apartment, or apartment mixed-use zoning districts. Adds a provision regarding communication towers that qualify as an eligible facility request under federal law.
7	SECTION 3	§ 21-5.60-2(c) Public, civic, and institutional uses Communication Communication support structure – standards	31	Amend communication support tower standards	(c) *Communication support structure – standards.* (1) At-grade equipment [~~shelters~~] must be [~~surrounded by a minimum 10-foot wide buffer.~~] screened by a solid wall or fence, or by a landscape hedge of sufficient height and width to screen the equipment. (2) [~~Communication support structures:~~] Antennas and other equipment: (A) Must be concealed within the communication support structure or obscured to minimize visual impacts. Integration with existing structures or with existing uses must be accomplished through the use of architecture, landscape, and site solutions. Acceptable concealment includes screening antennas, or painting or coloring antennas to match abutting building materials. Paint color alone is not sufficient to minimize visual impacts if the antenna or equipment extends above the roofline, or if the antenna or equipment is installed against a building but there is no integration with abutting architectural features or elements, such as alignment with corners or columns. (B) When located on the roof of an existing structure without architectural integration or concealment, antennas must be set back or located to minimize visual impacts, especially from public rights-of-way and public places. (3) Communication support structures that qualify as an eligible facility requests under 47 U.S.C. § 1455(a) and 47 C.F.R § 1.6100, as may be amended or superseded, do not require any additional land use permits or approvals under this chapter; provided that the communication support structure complies with all conditions of the initial land use permit or approval.	For at-grade equipment, requires screening (instead of a minimum 10-foot wide buffer). Clarifies that paint color alone is not sufficient to conceal a communication support structure if it extends above the roofline, or there is no integration with abutting architectural features or elements. Adds a provision regarding communication towers that qualify as an eligible facility request under federal law.

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8	SECTION 3	§ 21-5.60-2(d) Public, civic, and institutional uses Communication Accessory communication structure – standards	32	Rename accessory communication structure in the standards section.	(d) *Accessory [~~communication structure~~] receive only antenna – standards.* (1) Antennas [~~must~~] may not be located in the required yards. (2) All antennas must be set back from all property lines one-third of the height of the antenna or according to the setback requirements for the underlying zoning district, whichever is greater. (3) The antenna must be located at a distance equal to or greater than the antenna height from the nearest residential dwelling, excluding the owner's primary dwelling or structure. (4) Antennas [~~must~~] may not be illuminated. (5) All antennas must be equipped with safety devices to prevent them from being climbed, and must be securely fastened. (6) All guy wires must be anchored onsite and outside of any right-of-way. (7) When mounted on the ground, the accessory communication structure must be screened by walls, earth berms, or landscaping a minimum of 4 feet in height.	Rename "accessory communication structure" to "accessory receive only antenna."
9	SECTION 3	§ 21-5.60-2(e) Public, civic, and institutional uses Communication Broadcasting antenna – standards	N/A	Add standards for broadcasting antenna.	(e) *Broadcasting antenna – standards.* (1) Freestanding broadcasting antennas must be set back from all property lines a minimum of 1 foot for every 5 feet of height. (2) Broadcasting antennas supported by guy wires must be set back from all property lines a minimum of 1 foot for every 1 foot of height. (3) AM antennas must be set back a minimum of 500 feet from any adjoining zoning lot in the country, residential, apartment, or apartment mixed-use zoning districts. (4) FM and TV antennas must be set back a minimum of 2,500 feet from any adjoining zoning lot in the country, residential, apartment, or apartment mixed-use zoning districts. (5) Broadcasting antennas must be designed to structurally accommodate: (A) For TV broadcasting antennas: (i) At least three high power television antennas and one microwave facility or one low power television antenna; or (ii) Two FM antennas and at least one two-way radio antenna for every 10 feet of the tower over 200 feet; or (B) For broadcasting antennas other than for TV: (i) At least one two-way radio antenna for every 10 feet of the tower; or (ii) At least one two-way radio antenna for every 20 feet of the tower and at least one microwave facility or one low power TV antenna; provided that these requirements may be reduced if the Federal Communications Commission provides a written statement that no additional licenses for those broadcast frequencies will be available in the foreseeable future. These requirements may also be reduced if the height of the tower needed significantly exceeds the height of existing towers in the area and would therefore create an unusually onerous visual impact that would dominate and alter the visual character of the area when compared to the visual impact of existing towers. (6) Once a site for a broadcasting antenna is approved, additional antennas and accessory uses proposed within the approved envelope (within a specified height and distance) will be processed without requiring modification to the initial land use permit or approval, unless the broadcasting antenna site is within a special district. (7) Broadcasting antennas and associated facilities must be enclosed by fencing not less than 6 feet in height. (8) All requests for broadcasting antenna installations must be accompanied by a landscape plan.	Add standards for broadcasting antenna.

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10	SECTION 3	§ 21-5.60-5(a) Public, civic, and institutional uses Parks and open space Cemetery – standards	33	Amend cemetery standards	(a) *Cemetery – standards.* (1) Prior to approval of an application for a cemetery, a certificate of approval must be obtained from the Board of Water Supply indicating that there is no danger of contamination of the water supply. (2) In the AG-2 zoning district, burials are prohibited within 50 feet from the property line of any adjoining zoning lot located in the country, residential, apartment, or apartment mixed-use zoning districts. (3) In the AG-2 zoning district, a minimum 50-foot landscaped buffer is required from the property line of any adjoining zoning lot located in the country, residential, apartment, or apartment mixed-use zoning districts. (4) In the P-2 zoning district, the following development standard flexibility may be permitted pursuant to the plan review use process: (a) An increase of up to 25 feet above the maximum height limit; (b) An increase in the maximum density; and (c) An increase in the maximum building area.	Provide that in the P-2 District, an increase of up to 10 feet above the maximum height limit, increased maximum density, and increased maximum building area may be permitted pursuant to the plan review use process.
11	SECTION 3	§ 21-5.60-6(b)(1)(C) Public, civic, and institutional uses Utility Medium – standards General	38	Amend medium utility abandonment standards.	(C) Medium utilities will be deemed abandoned if operations cease for one continuous year, with the exception of periods related to necessary maintenance, transfer of ownership or operation, or repairs to the system. Upon determination by the director that a medium utility has been abandoned, the structure must be dismantled and removed or repurposed [~~with~~] within 180 days after receipt of written notice from the director, unless the medium utility owner or operator demonstrates to the satisfaction of the director the owner or operator's good faith efforts to sell, repurpose, dismantle, or remove the medium utility in a timely manner, or to otherwise restore the site on which the abandoned medium utility was located.	Technical amendment.
12	SECTION 3	§ 21-5.60-6(c)(2)(E) Public, civic, and institutional uses Utility Large – standards Wind energy generation	40	Amend large wind energy generation facility setback standards.	(E) Large wind energy generation facilities must be set back from all property lines a minimum distance equal to the height of the facility, measured from the highest vertical extension of the facility; and a minimum distance of 1.25 miles from the property lines of any zoning lot located in the country, residential, apartment, apartment mixed-use, or resort zoning districts[~~; provided that the setback requirements in this paragraph only apply to new large wind energy generation facilities and do not apply to the repair, maintenance, or component replacement of any existing facility covered by a power purchase contract with an electric public utility during the term of the contract, including any renewal or extension thereof~~]. Height includes the height of the tower or its vertical support structure and the farthest vertical extension of the tower.	Existing large wind energy generation facilities that do not meet the setback requirements would become nonconforming. The State Energy Office indicated that power purchase agreements typically are not extended or renewed (instead, a new power purchase agreement would be executed).

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13	SECTION 25	§ 21-4.60(c)(4) General development standards Heights Utility poles and antennas	114	Amend provisions relating to additional height allowances for utility poles and antennas.	(4) *Utility poles and antennas.* The council finds and declares that there is a significant public interest served in protecting and preserving the aesthetic beauty of the city. Further, the council finds that the indiscriminate and uncontrolled installation, location, and height of antennas are detrimental to the city's appearance and image; may result in significant damage to the community's sense of well-being, particularly in residential areas; and may have negative economic impacts to the city's tourism industry, which relies heavily on the city's physical appearance. However, the council also finds that there is a need for additional height for certain types of utility poles and antennas, and that there is a clear public interest served by ensuring that those transmissions and receptions providing the public with power and telecommunication services are unobstructed. Therefore, in accord with the health, safety, and aesthetic objectives set forth in § 21-1.20, and considering the public interest needs associated with certain types of power and telecommunication services: (A) Utility poles and [~~communication towers~~] broadcasting antennas must not exceed 500 feet from existing grade; (B) [~~Antennas associated with utility installations~~] Communication towers and accessory receive only antennas must not exceed 10 feet above the governing height limit; provided that in residential zoning districts where utility lines are predominantly located underground, the governing height limit will apply; and (C) Accessory [~~communication structures~~] receive only antennas must not exceed the governing height limit, except as provided under § 21-2.140-1(j);	Correct references regarding additional height for utility poles and antennas by: • Referring to utility poles and broadcasting antennas (instead of utility poles and communication towers); and • Referring to communication towers and accessory communication structures (instead of antennas associated with utility installations).
14	SECTION 70	§ 21-10.1 Definitions	N/A	Add new definition of broadcasting antenna.	***Broadcasting Antenna.*** Antennas, towers, and other accessory facilities for radio frequency transmissions of AM and FM radio and television broadcasting. Transmissions may be received by anyone with a radio or television. These facilities are regulated by the Federal Communications Commission under Title 47 CFR Part 73, as may be amended or superseded. The term does not include broadcasting studios and stations, and telecommunication facilities (see communication tower, communication support structure).	Add definition of broadcasting antenna.
15	SECTION 70	§ 21-10.1 Definitions	190	Amend definition of accessory communication structure	***[Communication Structure, Accessory***. ~~Any communications structure or system not regulated by the Federal Communications Commission (FCC), including a satellite dish up to 1 meter in size and an amateur (ham) radio antenna.~~] ***Accessory Receive Only Antenna.*** An antenna that is not regulated by the Federal Communications Commission, is used primarily to receive radio frequency or microwave transmissions, and is accessory to a principal use. The term includes satellite dishes up to 1 meter in size, amateur (ham) radio antennas, and television antennas attached to single-unit, two-unit, and duplex-unit dwellings. The term does not include broadcasting antennas (see broadcasting antenna), telecommunication facilities (see communication tower, communication support structure), or satellite dishes larger than 1 meter in diameter (see dish antenna).	Rename "accessory communication structure" to "accessory receive only antenna" and clarify the definition.
16	SECTION 70	§ 21-10.1 Definitions	190	Amend definition of communication tower	***Communication Tower***. [~~Any structure constructed for the sole or primary purpose of supporting any Federal Communications Commission-licensed or authorized antennas and associated facilities, including:~~ ~~(1) Structures constructed for wireless communications services, including but not limited to private, broadcast, and public safety services;~~ ~~(2) Structures constructed for unlicensed wireless services and fixed wireless services such as microwave backhaul and the associated cell site;~~ ~~(3) Radio, television, microwave, common carrier, and other similar communication tower facilities; and~~ ~~(4) Monopalm, monopine, and other communication towers with partial camouflage that are integrated within a facility.~~] A freestanding structure that supports a telecommunications facility. The term includes monopoles, monopalms, monopines, lattice towers, and similar structures. The term does not include broadcasting antennas (see broadcasting antenna) or structures that support or conceal an antenna (see communications support structure).	Clarify definition of communication tower.

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17	SECTION 71	§ 21-10.1 Definitions	209	Amend definition of communication support structure	***Communication Support Structure***. [~~A facility such as a rooftop structure, facade-mounted concealed structure, clock tower, campanile, steeple, or other wireless communication structure that conceals an antenna.~~] A structure designed for a separate use or purpose that also supports or conceals a telecommunications facility. Equipment may be mounted on and integrated with a roof or facade, light pole, bell tower, clock tower, campanile, steeple, light structure other than a street light pole or traffic signal pole, or similar structure.	Clarify definition of communication support structure.
18	SECTION 71	§ 21-10.1 Definitions	210	Amend definition of dish antenna.	***Dish antenna***. A receiver or transmitter of [~~electromagnetic energy, especially microwaves or radio waves, consisting of a reflector shaped like a shallow dish larger than 1 meter in size.~~] radio frequency or microwave transmissions consisting of a reflector-shaped satellite dish that is larger than 1 meter in diameter. The term does not include dish antennas integrated with telecommunication facilities (see communication tower, communication support structure). See also accessory receive only antenna.	Clarify definition of dish antenna.
19	SECTION 71	§ 21-10.1 Definitions	216	Amend definition of K-12 School.	***School, [~~K-12.~~] PreK-12.*** A facility educating students enrolled in pre-kindergarten through 12th grade, operated by a private institution or entity that provides educational programs using a curriculum equivalent to the Hawaii public school curriculum for the same grade level[.], and when applicable, in compliance with the Hawaii State compulsory attendance laws. The term does not include public schools (see public facility), post-secondary schools (see university, college and vocational school). See also child daycare and home-based childcare.	Change "K-12 school" to "PreK-12 school" and clarify the definition.
20	SECTION 71	§ 21-10.1 Definitions	216	Amend definition of vocational school	***School, Vocational***. A facility for post-secondary education with a curriculum devoted primarily to business (including barbers and beauticians), industry, trade, or other vocational-technical instruction, or a language school. The term does not include institutions of higher education that award associates, bachelors, masters, or doctorate degrees (see university, college). The term also does not include vocational training on harbor fast lands that support commercial marine activities (see major general marine). The term also does not include sports classes, tutoring, martial arts studios, dance studios, or gymnastic studios (see general personal services). (1) ***Minor:*** Facilities that do not include the operation of industrial equipment such as floor-mounted woodworking or machine shop equipment. (2) ***Major:*** Facilities that include the operation of industrial equipment such as floor-mounted woodworking or machine shop equipment.	Adds that the term does not include institutions of higher education that award advanced degrees.
21	SECTION 71	§ 21-10.1 Definitions	N/A	Add definition of telecommunications facility	***Telecommunications facility***. Facilities integrated with communication towers or communication support structures that are regulated by the Federal Communications Commission, and may include transmitting panel antennas, GPS antennas, accessory satellite dish antennas, remote radio units, power cables, and similar equipment. The term includes accessory structures that may be located elsewhere on the zoning lot, including equipment cabinets, emergency generators, and fencing.	Add definition of telecommunications facility.
22	SECTION 71	§ 21-10.1 Definitions	217	Amend definition of university, college.	***University, College***. A facility for post-secondary education operated by an institution of higher education that awards an associate, bachelor, master, or doctorate degree. See also public facility, vocational school, and preK-12 school.	Clarify that universities and colleges are for post-secondary education. Cross reference vocational school and preK-12 school (in addition to public facility.