

A BILL FOR AN ORDINANCE TO ADD A NEW CHAPTER TO THE KAUA'I COUNTY CODE 1987 ENTITLED "TEMPORARY MORATORIUM ON CREATION OF NEW AGRICULTURAL SUBDIVISIONS."

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Purpose, Intent, and Findings. The Constitution of the State of Hawai'i has articulated the importance of conserving and protecting agricultural lands, promoting increased agricultural self-sufficiency, and ensuring the availability of agriculturally suitable lands. The purpose of this Bill is to honor this Constitutional mandate and to preserve our remaining agricultural lands while the County Council and Planning Department work to develop legislation and regulations that will preserve and to protect existing agricultural lands in the County. Toward this end, the County believes that the institution of a temporary moratorium on the subdivision of agricultural lands is warranted.

First, it is increasingly apparent that more stringent controls on the use of agricultural land are required to ensure the viability of agricultural production in the County. With the passage of time, some of the assumptions underlying past legislation governing the use of agricultural lands, such as Hawai'i Revised Statutes (HRS) chapter 205, have changed or new circumstances have arisen that demonstrate HRS chapter 205, as currently drafted and executed, cannot meet the concerns of the County regarding the use, preservation, and protection of agricultural lands for agricultural purposes.

Second, the public record contains numerous references to problems and inconsistencies in the regulation of agricultural lands in the County, such as (1) the creation of residential condominium property regimes on agricultural land, (2) the increase in density on agricultural land in the form of additional dwelling units, and (3) the maintenance of commercial activities on agricultural lands.

Third, the County Council believes that the preservation and protection of agricultural land is of sufficient concern to merit legislation that will protect important agricultural lands in the County. Measures necessary for their preservation and protection, including a statement of permitted uses and a procedure for reviewing and allowing such uses must be developed expeditiously by the County Council and the Planning Department.

Fourth, the impending County legislation will also have the effect of causing landowners to seek approval for development permits to develop their lands in order to avoid the potential restrictions and other consequences that will or may arise out of such impending County legislation and regulations. The threat of accelerated applications for development permits and the accelerated development of agricultural lands in the County creates an emergency that warrants the enactment of this Bill as an ordinance of the County. Failure to impose proper regulations will allow development to proceed and for new, non-agricultural uses in the County to become established during any such consideration in a manner that may irreversibly change the character of the County's agriculture districts to the possible detriment of the County and its residents. Imposition of a moratorium on approvals of applications for subdivision after August 3, 2007, the date of the Mayor's proposal, is intended to prevent a flood of applications and requests for approval from landowners seeking approval in anticipation of a moratorium.

In order to prevent such irreversible changes in the character of the County's agricultural districts, a moratorium is required to temporarily allow time for the County to complete its legislation and regulation changes.

Fifth, the enactment of an ordinance that imposes a temporary moratorium on certain development activity on agricultural lands in the County serves the best interests of the County and its residents. Without a moratorium, the availability of agricultural lands may be severely curtailed or limited to the degree of rendering any impending County ordinances and regulations practically useless, leaving little or no agricultural lands for County ordinances and regulations to preserve or to protect.

SECTION 2. The Kaua'i County Code is amended by adding a new chapter to read:

Chapter X-XX.

Section X-XX **Temporary moratorium on new agricultural subdivisions.**

(a) Notwithstanding any provision in this Code to the contrary, and subject to the exception in subsection (c), as of August 3, 2007, no county department, agency, or board shall approve an application for the subdivision of land located in the State Agricultural Land Use District. The moratorium shall be temporary and shall terminate on the later of (1) December 31, 2008, or (2) until the County, acting through the Council or the Planning Commission as the case may be, adopts legislation or rules and regulations to protect the County's remaining agricultural lands.

(b) The Council of the County of Kaua'i may extend the termination date of the temporary moratorium if the Council finds, after first holding a public hearing, that the problems giving rise to the need for the temporary moratorium continue to exist and that reasonable progress is being made by the County, acting through County Council and the Planning Department, to adopt ordinances and regulations to preserve and to protect use of the agricultural lands located in the State Agricultural Land Use District for agricultural uses.

(c) The only exceptions to this moratorium are 1) an application may be approved if the proposed subdivision is for the sole and exclusive purpose of the development of affordable housing; and 2) all subdivision applications that have received tentative approval.

SECTION 3. The County Clerk shall place the terms of this ordinance in an appropriate portion of the Kaua'i County Code with appropriate cross-references by way of annotations.

SECTION 4. This Ordinance shall take effect upon its approval, and, further, the dates defined in Section 2 relating to the filing and approval of applications and the termination date of the temporary moratorium shall remain as provided in Section 2 notwithstanding the effective date of this ordinance.

Introduced by:

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i