

ORDINANCE NO. _____

BILL NO. _____ (2014)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040 AND CHAPTER 19.30A,
MAUI COUNTY CODE, PERTAINING TO COMMERCIAL AGRICULTURAL
STRUCTURES IN THE AGRICULTURAL DISTRICT

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose and intent. The purpose of this bill is to allow commercial agricultural structures within the agricultural district as an accessory use and special use, subject to appropriate restrictions and standards. It is the intent of the Council to provide for consistency between the County's land use laws and the State's land use laws, in order to augment the agriculture industry in the County of Maui.

SECTION 2. Section 19.04.040, Maui County Code, is amended by amending the definition of "agricultural products stand" to read as follows:

"Agricultural products stand" means a building, structure [used] or place with a wall area that is at least 25 per cent open and is owned and operated by a single producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii."

SECTION 3. Section 19.30A.050, Maui County Code, is amended by amending subsection B to read as follows:

"B. Accessory Uses. Uses that are incidental or subordinate to, or customarily used in conjunction with a permitted principal use, as follows:

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area;
2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet two of the following three criteria:

a. Provide proof of at least \$35,000 of gross sales of agricultural product(s) per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State general excise tax forms and federal form 1040 Schedule F filings;

b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system; or

c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of Moloka'i and Lana'i, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050.B.2.a and 19.30A.050.B.2.b;

3. A maximum of two commercial agricultural structures per lot; [One agricultural products stand per lot, for the purpose of displaying and selling agricultural products grown and processed on the premises or grown in the County, provided that said stand shall not exceed three hundred square feet, shall be set back at least fifteen feet from roadways, shall have a wall area that is at least fifty percent open, and shall meet the off-street parking requirements for roadside stands provided by section 19.36.010 of this code, except that paved parking shall not be required; stands that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, Hawaii Revised Statutes;]

4. [Farmer's market for the growers and producers of agricultural products to display and sell agricultural products grown and processed in the County; structures shall have a wall area that is at least fifty percent open; markets shall operate only during daylight hours and shall not operate on parcels less than ten acres; the director of public works may impose additional requirements if a building permit is required for any structures; markets that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;

5.] Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County;

[6.] 5. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation;

[7.] 6. Energy systems, small-scale;

[8.] 7. Small-scale animal-keeping;

[9.] 8. Animal hospitals and animal board facilities; if conducted on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter;

[10.] 9. Riding academies; if conducted on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter;

[11.] 10. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection or by subsection 19.30A.060.H shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;

[12.] 11. Except on Moloka'i, bed and breakfast homes permitted under chapter 19.64 of this title that are:

a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 schedule F filings; or

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A, Hawaii Revised Statutes:

i. The lot was created prior to November 1, 2008.

ii. The lot is comprised of five acres or less;
and

iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or

c. Located in sites listed on the State of Hawaii Historic Register or the National Register of Historic Places.

[13.] 12. Parks for public use, not including golf courses and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds; and

[14.] 13. Other uses that primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter.”

SECTION 4. Section 19.30A.060, Maui County Code, is amended to read as follows:

“**19.30A.060 Special Uses.** The following uses and structures shall be permitted in the agricultural district if a special use permit, pursuant to section

19.510.070 of this title has been obtained; except that if a use described in this section also requires a special permit pursuant to chapter 205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the state special permit shall fulfill the requirements of this section:

A. Additional farm dwellings beyond those permitted by subsection 19.30A.050.B.1;

B. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050.B.2;

C. [Agricultural product stands] Commercial agricultural structures that do not meet the standards or restrictions of [subsection 19.30A.050.B.3] this chapter;

D. [Farmer's markets that do not meet the standards of subsection 19.30A.050.B.4;

E.] Public and quasi-public institutions that are necessary for agricultural practices;

[F.] E. Major utility facilities as defined in section 19.04.040 of this title;

[G.] F. Telecommunications and broadcasting antenna;

[H.] G. Open land recreation uses, structures or facilities which do not meet the criteria of subsection 19.30A.050.B.10. including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, roller blading, playing fields, accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawaii Revised Statutes. The following uses or structures shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses and golf driving ranges;

[I.] H. Cemeteries, crematories, and mausoleums;

[J.] I. Churches and religious institutions;

[K.] J. Mining and resource extraction;

[L.] K. Landfills;

[M.] L. Solar energy facilities that are greater than fifteen acres;

and

[N.] M. Short-term rental homes, subject to the provisions of chapter 19.65 of this title; provided that, the applicant need not obtain a County special use permit pursuant to section 19.510.070 of this title; and provided further that, if the property containing the short-term rental home is located in the state agricultural district, the applicant shall obtain a state special use permit, pursuant to section 205-6, Hawaii Revised Statutes, in addition to the short-term rental home permit required by chapter 19.65 of this title.”

SECTION 5. Chapter 19.30A, Maui County Code, is amended to add a new section to be appropriately designated and to read as follows:

“19.30A.072 Commercial agricultural structures. A. When used in chapter 19.30A, unless the context clearly indicates a different meaning, for the

purposes of chapter 19.30A, the following words and terms shall be defined as follows:

“Agricultural retail food establishment” means a building or structure, owned and operated by a producer and permitted under title 11, chapter 12 of the rules of the state department of health, that prepares and serves food at retail using agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, and other food items.

“Agricultural retail structure” means a fully enclosed building or structure owned and operated by a single producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producer’s agricultural operations, and other food items. All agricultural retail structures that prepare or serve food shall require a permit as required under title 11, chapter 12 of the rules of the state department of health.

“Commercial agricultural structure” means an agricultural product stand, farmers’ market, stall within a farmers’ market, agricultural retail structure, or agricultural retail food establishment.

“Farmers’ market” means a building, structure, or place with a wall area that is at least 25 per cent open that is used by two or more producers for the display and direct sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producers’ agricultural operations, and other food items. All farmers’ markets shall operate only during daylight hours and shall not operate on parcels less than five acres.

“Logo item” means an item meant for direct sale by a producer that has the producer’s business logo affixed to it in a permanent manner. Logo items include, but are not limited to, clothing, cups, glasses, stationery, postcards, and writing utensils.

“Other food item” means any food item that is not an agricultural product grown in Hawaii or a value-added product that was produced using agricultural products grown in Hawaii.

“Producer” means an owner, lessee, or licensee of a parcel of land located within the agricultural district who is engaged within the State of Hawaii in the growing or production for sale of any agricultural product or value-added product. A lessee or licensee must have a lease with a minimum duration of five years for the portion of land that a commercial agricultural structure is located on or will be located on. An owner must own the portion of land that a commercial agricultural structure is located on or will be located on.

“Value-added” means any activity that increases, by processing or any other means, the value of raw agricultural materials.”

B. Any producer who owns and operates a commercial agricultural structure shall register the structure with the department of planning. All registration forms shall include the following information:

1. The name, address, and telephone number of the producer;
2. The tax map key number of the lot on which the proposed commercial agricultural structure is located;
3. Verification that the producer is the owner, lessee, or licensee of the lot on which the proposed commercial agricultural structure

is located. If the producer is the lessee or licensee, authorization of the owner shall also be provided;

4. The type of commercial agricultural structure(s) being registered; and

5. The signature of the producer, certifying acknowledgment of and compliance with the requirements of this chapter and all other applicable laws and regulations, including those of the state department of health and the department of public works.

C. The department of planning shall maintain a database of all commercial agricultural structures registered pursuant to this chapter. Failure of a producer to register a commercial agricultural structure may be enforced pursuant to chapter 19.530 of this title.

D. Each commercial agricultural structure shall require a separate registration.

E. Within a commercial agricultural structure, other food items and logo items shall occupy no more than 49 per cent of the total floor area.

F. Additional regulation of commercial agricultural structures shall be established by applicable rules.

G. Agricultural product stands that are 300 square feet or less in floor area are exempt from the registration requirements of this section.”

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

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

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

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