

**A BILL FOR AN ORDINANCE AMENDING SUBSECTIONS 8-15.1(B)
AND 8-15.1(D), KAUA'I COUNTY CODE 1987, AS AMENDED,
RELATING TO ADDITIONAL DWELLING UNIT
ON OTHER THAN RESIDENTIALLY ZONED LOTS**

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

SECTION 1. Findings and Purpose: The Kaua'i County Council finds that due to the recession and tight credit market, lot owners were unable to obtain financing to construct houses, development of new subdivisions were kept to a minimum, and it was prudent to provide an extension of the sunset date to allow for the building of Additional Dwelling Units. The Council further finds that a further extension is warranted due to the slow pace of economic recovery on Kaua'i, coupled with the need for additional capacity to accommodate projected future population growth. The purpose of this bill is to extend the deadline for obtaining a building permit from December 15, 2014 to December 15, 2024 for the owners of lots who have: (1) obtained an Additional Dwelling Unit ("ADU") Facilities Clearance Form on or before June 15, 2007, or (2) who have submitted a building permit application and an ADU Facilities Clearance Form signed by the employees of the agencies listed on the form by November 22, 2006.

SECTION 2. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by amending Subsection 8-15.1(b) as follows:

"(b) Expiration. Subsection (a) of this Section is hereby repealed December 31, 2006. No Building Permit shall be granted for an additional dwelling unit under Subsection (a) after such repeal [date.] date, except as provided in Subsection (d)."

SECTION 3. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by amending Subsection 8-15.1(d) as follows:

"(d) Notwithstanding the expiration of Subsection (a), and subject to compliance with all applicable legal requirements and conditions, a Building Permit for an additional dwelling unit shall be granted for a lot in existence as of December 31, 2006 which, up to December 31, 2006, was eligible to apply for an additional dwelling unit under Subsection (a) and for which an ADU Facilities Clearance Form is certified as complete by the Planning Director as of June 15, 2007, or for which an ADU Facilities Clearance form was signed by the authorized employees of all agencies or departments listed in the ADU Facilities Clearance Form and submitted with a Building Permit application prior to November 22, 2006, provided that:

(1) The term "lot in existence as of December 31, 2006," as used in Subsection (d) shall not apply to any lot created by the relocation of a kuleana lot by consolidation and resubdivision pursuant to the provisions of Chapter 9, Kaua'i County Code 1987, as amended ("Subdivision Ordinance"), where such consolidation and resubdivision occurs after December 31, 2006.

(2) All applicable County requirements not inconsistent with Sec. 46-4(c), Hawai'i Revised Statutes, and the County's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were re-zoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the Residential District requirement.

(3) The provisions of this Subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district, or where additional dwelling units are specifically prohibited by zoning ordinance.

(4) For lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into an additional dwelling unit, but no additional guest house may be constructed.

(5) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water (including, but not limited to, source, transmission, and storage lines/facilities) shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all-weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all-weather surface at the time of application for a Building Permit, there exists funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County

Planning Commission Road Widening Policy” (as may be amended from time to time), for those roads which are considered substandard.

(6) An ADU Facilities Clearance Form as prescribed by the Planning Director shall be completed prior to application for a Building Permit and shall be submitted with the Building Permit application. Completion of the ADU Facilities Clearance Form shall not guarantee the issuance of a Building Permit. All requirements and conditions on the completed ADU Facilities Clearance Form shall be met prior to issuance of a Building Permit based on legal requirements at the time of Building Permit issuance. The Planning Director shall certify the ADU Facilities Clearance Form as complete, only if every signature blank on the Form has been signed by the respective department or agency, and the applicant has signed an affidavit prescribed by the Planning Director verifying: (A) that there is no restriction or covenant applicable in any deed, lease, or other recorded document which prohibits the construction or placement of an additional dwelling unit on the applicable lot; and (B) that the applicant understands that completion of an ADU Facilities Clearance Form does not guarantee or vest any right to a Building Permit, and that all conditions and requirements in existence at the time of Building Permit application shall be met before a Building Permit can be issued. The Planning Department shall keep a record of all ADU Facilities Clearance Forms that are issued and shall retain the original affidavits and the original ADU Facilities Clearance Forms that are certified as complete by the Department.

(7) The applicant shall obtain a re-certification from the Planning Department certifying that applicant has met the requirements set forth in Sec. 8-15.1(d)(6). A regulatory fee of Two Hundred Fifty Dollars (\$250.00) shall be charged upon registration for a re-certification. If the applicant fails to obtain a re-certification by February 15, 2015, the entitlement to the additional dwelling unit shall be deemed terminated and no building permit shall be issued for the additional dwelling unit. The Planning Director shall notify the applicant in writing that the entitlement to the additional dwelling unit has been terminated. The applicant may appeal the termination to the Planning Commission in accordance with the Rules of Practice and Procedure of the Planning Commission.

(8) Where a regulatory fee has been paid, the fee payment shall be deposited to the “ADU Re-certification Fund.” There is hereby established and created a fund to be known as the “ADU Re-certification Fund.” The fees collected pursuant to this subsection are hereby deemed appropriated upon receipt, and may be expended by the Department of Planning for the hiring of persons employed on a fee, contract, or piecework basis, or independent contractors to assist in conducting inspections, and for administrative costs for contested case proceedings related to ADU re-certifications. The maximum number of persons that may be hired with these fees shall be determined by the Budget Ordinance. The fees may also be expended for materials, supplies, and equipment that facilitate inspections, and for payment of overtime to conduct inspections. Any moneys remaining in the ADU Re-certification Fund on December 15, 2024, shall be transferred and deposited into the General Fund.

~~[(7)](9)~~ Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any lot.

~~[(8)](10)~~ Notwithstanding any law to the [contrary,] contrary:

(A) no Building Permit for an additional dwelling unit shall be issued pursuant to this Section after December 15, [2014.] 2024;

(B) it is the applicant's responsibility to resolve any outstanding conditions with the respective governmental agencies; and

(C) new assessments may be applicable to the property that is the subject of the ADU Facilities Clearance Form."

SECTION 4. 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. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Kaua'i County Code 1987, the brackets, bracketed material, and underscoring need not be included.

SECTION 6. This Ordinance shall take effect upon its approval.

Introduced by: /s/ JAY FURFARO

DATE OF INTRODUCTION:

November 5, 2014

Līhu'e, Kaua'i, Hawai'i


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CERTIFICATE OF THE COUNTY CLERK

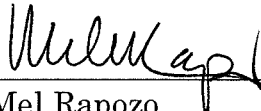
I hereby certify that heretofore attached is a true and correct copy of Bill No. 2545, Draft 2 which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on December 17, 2014, by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i
December 18, 2014


Ricky Watanabe
County Clerk, County of Kaua'i

ATTEST:



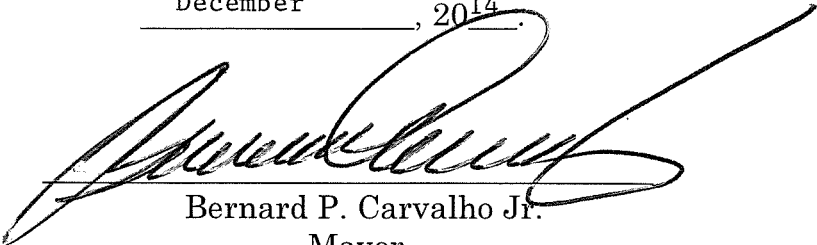
Mel Rapozo
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

December 18, 2014

Approved this 24th day of

December, 2014.


Bernard P. Carvalho Jr.
Mayor
County of Kaua'i