

CHAPTER 23

SUBDIVISIONS

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CHAPTER 23
SUBDIVISIONS

Article 1. General Provisions.

Section 23-1. Title.

This chapter may be cited as the subdivision control code.
(1983 CC, c 23, art 1, sec 23-1.)

Section 23-2. Scope of chapter.

As authorized by section 62-34(7),* Hawai'i Revised Statutes, as amended, and applicable ordinances, all subdivision plats and all streets or ways within the County created for the purpose of partitioning land shall be approved by the director in accordance with this chapter.
(1983 CC, c 23, art 1, sec 23-2.)

* **Editor's Note:** Chapter 62, Hawai'i Revised Statutes was repealed and replaced with chapter 46.

Section 23-3. Definitions.

Whenever used in this chapter, the following words and phrases, unless the context otherwise requires, shall be defined as indicated:

- (1) "Alley" means a narrow street through a block primarily for access by service vehicles to the back or side of properties fronting on another street.
- (2) "Arterial" means a street of considerable continuity, which is primarily a traffic artery for intercommunication between or through large areas.
- (3) "Building line" means a line on a plat indicating the limit beyond which buildings or structures may not be erected.
- (4) "Bureau of conveyances" means a bureau in the department of land and natural resources, State of Hawai'i, where subdivisions meeting the requirements of this chapter may be filed.
- (5) "City of Hilo" means that portion of the district of South Hilo, County of Hawai'i, which is described as follows: Bounded on the south by the district of Puna; bounded on the west by the districts of Ka'u and North Hilo; on the north by the ahupua'a of Paukaa in the district of South Hilo; and on the east by the sea.
- (6) "Conforming" means compliance with the requirements of the applicable zoning district, including minimum building site area and minimum dimensions.
- (7) "Consolidation" means the combining of two or more lots into one lot.
- (8) "County general plan" means the plan adopted by the County for the guidance of growth and improvement of the County, including modifications or refinements which may be made from time to time.

- (9) “Cul-de-sac” and “dead-end street” mean a street with only one end open to traffic.
- (10) “Director” means the planning director of the County.
- (11) “Director of transportation” means the director of the State department of transportation.
- (12) “District engineer” means the district engineer of the division of highways of the State department of transportation for the County.
- (13) “Easement” means a grant of the right to use a strip of land for specific purposes.
- (14) “Engineer” means a person duly registered as a professional civil engineer in the State.
- (15) (A) “Lot” means a parcel of land intended as a unit for transfer of ownership or for development.
 - (B) “Reversed corner lot” means a corner lot, the side street line of which is substantially a continuation of the front lot line of the first lot to its rear.
 - (C) “Reversed frontage lot” means a lot situated between an existing or proposed arterial street and a minor street with frontage and access being derived from the minor street.
 - (D) “Through lot” means a lot having a frontage on two parallel or approximately parallel streets other than alleys and access being derived from either of the two streets.
- (16) “Manager” means the manager-chief engineer of the department of water supply of the County.
- (17) “Parkway” means a road, street or highway that provides a traffic artery which provides for movement of traffic in opposite directions on either side of a dividing island or medial strip and is designated for through traffic.
- (18) “Pedestrian way” means a public right-of-way through a block between lots for pedestrian traffic, which may also be used as a utility easement.
- (19) “Person” means an individual, firm, partnership, corporation, company, association, syndicate, or any legal entity, including any trustee, receiver, assignee, or other similar representative thereof.
- (20) “Plat” means the map or drawing on which the subdivider’s plan of subdivision is presented and which he submits for approval.
- (21) “Pre-existing lot” means a specific area of land that will be treated as a legal lot of record based on criteria set forth in this chapter.
- (22) “Reserve strip” means a nonaccess reservation, placed under public control with conditions approved by the director, along rear property lines of reverse frontage lots.
- (23) “Resort subdivision” means land which: (A) is within a resort area as designated in the County general plan document or on the Land Use Pattern Allocation Guide (LUPAG) Map; (B) is zoned resort-hotel by the zoning code; or (C) is adjacent to land described in (A) or (B) and whose only ingress and egress is through land described in (A) or (B).

- (24) “Right-of-way” means the area between property boundary lines for use as a street or as a drainage or utility easement.
- (25) “Roadway” means the portion of a street right-of-way developed for vehicular traffic.
- (26) “Sanitary engineer” means the sanitary engineer of the State department of health for the County.
- (27) “Sidewalk” means a surfaced walkway for pedestrian traffic.
- (28) (A) “Street” means the entire width between the boundary lines of every public way provided for public use, for vehicular and pedestrian traffic, and the placement of utilities, and includes a road, boulevard, highway, land, place, avenue, lane, court, or alley.
- (B) “Business or industrial street” means a street providing primary access to business or industrial lots.
- (C) “Collector street” means a street supplementary to the arterial street system which is a means of intercommunication between this system and smaller areas, and which may be used to some extent for through traffic and to some extent for access to abutting properties.
- (D) “Half street” means a portion of the width of a street, usually along the edge of a subdivision, where the remaining portion of the street is to be provided in another subdivision.
- (E) “Marginal access street” or “service road” means a minor street, parallel and adjacent to an arterial, providing access to abutting properties, but protected from through traffic.
- (F) “Minor street” means a street intended exclusively for access to abutting property.
- (G) “Private street” means a street providing primary access to land, retained in private ownership.
- (29) “Street plug” means a reservation for street purposes, placed under public control under conditions approved by the director, for the extension of streets from a subdivision into adjacent lands that may be subdivided in the future.
- (30) “Subdivided land” means improved or unimproved land or lands divided into two or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to or interest in, any or all such parcels, includes re-subdivision, and when appropriate to the context, relates to the process of subdividing of the land or territory subdivided. Easements for the purpose of road and utilities shall not be construed as subdivided land.
- (31) “Subdivider” means a person or any combination of persons who cause land to be divided into a subdivision.
- (32) “Surveyor” means a person duly registered as a professional land surveyor in the State.
- (1983 CC, c 23, art 1, sec 23-3; am 1992, ord 92-138, sec 2; am 2001, ord 01-108, sec 8; am 2002, ord 02-110, sec 2; am 2009, ord 09-118, sec 15; am 2011, ord 11-103, sec 7.)

Section 23-4. Penalty.

Any person violating or failing to comply with the provisions of this chapter shall be sentenced by a fine not exceeding \$500. The continuance of any such violation after conviction shall be deemed a new offense for each day of such continuance.
(1983 CC, c 23, art 1, sec 23-4.)

Section 23-5. Appeals.

Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the director's decision, appeal the decision to the board of appeals. The board of appeals may affirm the decision of the director, or it may reverse, modify or remand the decision if the decision is:

- (a) In violation of this chapter or other applicable law; or
- (b) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (c) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

The board of appeals shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes, necessary for the purposes of this section.
(1983 CC, c 23, art 1, sec 23-5; am 1999, ord 99-111, sec 2.)

Article 2. Administration.**Division 1. General Provisions.****Section 23-6. Applicability of State and County general plans.**

This chapter shall be applied and administered within the framework of the County general plan which is a long range, comprehensive, general plan prepared or being prepared to guide the overall future development of the County. The County general plan includes that portion of the State's general plan that applies to the County, or such lesser portion thereof as the County may adopt, together with those comprehensive or general plans for sections of the County which may be adopted as amendments to or portions of the County general plan.
(1983 CC, c 23, art 2, sec 23-6.)

Section 23-7. Applicability to consolidation or resubdivision action.

The requirements and standards of this chapter shall not apply to consolidation and resubdivision action resulting in the creation of the same or fewer number of lots than that which existed prior to the consolidation/resubdivision action; provided that the director, upon conferring with the director of public works and manager-chief engineer of the department of water supply, may require necessary improvements to further the public welfare and safety.
(1983 CC, c 23, art 2, sec 23-7; am 2001, ord 01-108, sec 1; am 2011, ord 11-103, sec 8.)

Section 23-8. Issuance of building permits; zoning code.

No building permit shall be issued for any building to be erected on any lot within the area covered by any proposed subdivision unless the requirements of the zoning code are met.

(1983 CC, c 23, art 2, sec 23-8.)

Section 23-9. Permits for installation of service utilities; subdivision approval.

The department of public works shall not issue a permit to cut a curb, tap a sewer line, or install any lighting or sewer facilities and the department of water supply shall not issue a permit to tap a water line or install any water facilities in the area covered by a proposed subdivision until such subdivision has been approved as required by the provisions of this chapter.

(1983 CC, c 23, art 2, sec 23-9.)

Section 23-10. Acceptance of highways; compliance with chapter.

The council shall not take over, receive by dedication, do any repair or construction work upon streets or pavements, water lines, street lighting systems, sewer lines, or in any way accept as public highways any street in any subdivision opened or platted in the County after December 21, 1966, except upon full compliance with the provisions of this chapter.

(1983 CC, c 23, art 2, sec 23-10.)

Section 23-11. Public utility or public rights-of-way subdivisions.

The requirements, including lot sizes, and standards of this chapter shall not be applicable to public utility or public rights-of-way subdivisions and their remnant parcels; provided that the director upon conferring with the director of public works and manager-chief engineer of the department of water supply may require necessary improvements to further the public welfare and safety.

(1983 CC, c 23, art 2, sec 23-11; am 2001, ord 01-108, sec 1; am 2011, ord 11-103, sec 9.)

Section 23-12. Submission of application and plans; filing.

(a) A person desiring to subdivide land or desiring to partition land by creation of a street within the County shall submit an application for subdivision and preliminary and final plans and documents for approval as provided in this chapter and State law.

(b) No subdivision plat may be filed with the bureau of conveyances or land court until submitted to and approved by the director.

(1983 CC, c 23, art 2, sec 23-12; am 1992, ord 92-138, sec 3.)

Section 23-13. Large scale developments.

The director may make exceptions to this chapter where a plan and program for a complete community, a neighborhood unit, a large-scale shopping center, large industrial area development, or large agricultural area development provides adequate public spaces and improvements for the circulation, recreation, light, air, and service needs of the tract when fully developed and populated and covenants or other legal provisions are provided to assure conformity to and achievement of the plan. (1983 CC, c 23, art 2, sec 23-13.)

Division 2. Variances.**Section 23-14. Variances.**

Variances from the provisions of this chapter may be granted; provided, that a variance shall not allow the introduction of a use not otherwise permitted within the district; and provided further that a variance shall not primarily effectuate relief from applicable density limitations. (1983 CC, c 23, art 2, sec 23-14.)

Section 23-15. Grounds for variances.

No variance will be granted unless it is found that:

- (a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property; and
- (b) There are no other reasonable alternatives that would resolve the difficulty; and
- (c) The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

(1983 CC, c 23, art 2, sec 23-15.)

Section 23-16. Applications for variances.

Application for a variance shall be on a form prescribed for this purpose by the director and shall be accompanied by:

- (a) A filing fee of \$100;
- (b) A description of the property in sufficient detail to determine the precise location of the property involved;
- (c) A plot plan of the property, drawn to scale, with all proposed structures shown thereon;
- (d) A list of the names and addresses of all owners and all others with property interests in property within three hundred feet of the perimeter boundary of the applicant's property; and
- (e) Any other plans or information required by the director.

(1983 CC, c 23, art 2, sec 23-16.)

Section 23-17. Procedures for variances.

(a) Notice to Owners of Property Interests. Upon receipt and acceptance of a properly filed and completed application, the department shall fix a date for the director's consideration of the application. Within three working days after receiving notice of such date, the applicant shall serve notice of the application on owners of interests in properties within three hundred feet of the perimeter boundary of the applicant's property and to owners of interests in other properties which the director may find to be directly affected by the variance sought. Such notice shall state:

- (1) The name of the applicant;
- (2) The precise location of the property involved;
- (3) The nature of the use sought and the proposed accompanying structures, if any;
- (4) The date on which the director will consider the application; and
- (5) That such date is the deadline for the director's actual receipt of written comments on the application.

Prior to the deadline for written comment, the applicant shall submit to the director proof of service or of good faith efforts to serve notice of the application on the designated property owners. Such proof may consist of certified mail, receipts, affidavits, or the like.

- (b) Notice by Publication. At least ten calendar days prior to the date of the director's consideration of the application, the director shall publish, in a newspaper of general circulation, notice of the application and the date by which written comments must be in the actual receipt of the director.
- (c) Notice by Posting of Signs. Within ten days of filing the application for a variance, the applicant shall post a sign on the subject property notifying the public of the nature of the variance, the proposed number of lots, the size of the property, the tax map key or keys of the property and that they may contact the planning department for additional information. The sign shall give the address and telephone number of the planning department.
- (1) The sign shall remain posted until final approval, or until the application has been rejected or withdrawn. The applicant shall remove the sign promptly after such action.
 - (2) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with chapter 3, Hawai'i County Code 1983 (2005 edition).

- (3) The applicant shall file an affidavit with the planning department not more than five days after posting the sign stating that a sign has been posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been approved, rejected or withdrawn. The affidavit shall be accompanied by a photograph of the sign in place.

(1983 CC, c 23, art 2, sec 23-17; am 2005, ord 05-135, sec 3.)

Section 23-18. Actions on variances.

The director shall, within sixty days after the filing of a proper application or within a longer period as may be agreed to by the applicant, deny the application or approve it subject to conditions. The conditions imposed by the director shall bear a reasonable relationship to the variance granted. All actions shall contain a statement of the factual findings supporting the decision.

If the director fails to act within the prescribed period, the application shall be considered as having been denied. Such denial is appealable pursuant to section 23-20* of this division.

(1983 CC, c 23, art 2, sec 23-18.)

* **Editor's Note:** Section 23-20 was repealed. General provisions regarding appeals are set forth in section 23-5.

Section 23-19. Repealed.

(1983 CC, c 23, art 2, sec 23-19; rep 1999, ord 99-111, sec 3.)

Section 23-20. Repealed.

(1983 CC, c 23, art 2, sec 23-20; am 1984, ord 84-5, sec 1; rep 1999, ord 99-111, sec 4.)

Section 23-21. Repealed.

(1983 CC, c 23, art 2, sec 23-21; am 1984, ord 84-5, sec 2; rep 1999, ord 99-111, sec 5.)

Article 3. Design Standards.

Division 1. General Provisions.

Section 23-22. Compliance with design standards required.

Each subdivision and the plat thereof shall conform to the standards set forth in this article.

(1983 CC, c 23, art 3, sec 23-22.)

Section 23-23. Compliance with State and County regulations required.

Subdivisions shall conform to the County general plan and shall take into consideration preliminary plans made in anticipation thereof. Subdivisions shall conform to the requirements of State law, County department of public works, State department of health, State department of transportation, and County department of water supply requirements and the standards established by this chapter.

(1983 CC, c 23, art 3, sec 23-23.)

Section 23-24. Special building setback lines.

If special building setback lines at variance with the provisions of chapter 25, zoning code, are established in a subdivision, they shall be shown on the subdivision plat and included in the deed restrictions.

(1983 CC, c 23, art 3, sec 23-24.)

Section 23-25. Monuments.

Monuments approved by the director of public works shall be placed and properly coordinated with the State survey triangulation stations at all angle points or points of curvature in streets and at such intermediate points as shall be required by the director of public works. All lot and block corners shall be properly established and marked with one-half inch round galvanized pipe or equal and firmly and permanently set in the ground.

(1983 CC, c 23, art 3, sec 23-25; am 2001, ord 01-108, sec 1.)

Section 23-26. Reservation for parks, playgrounds, and public building sites.

The subdivider of a parcel of land capable of supporting two hundred dwelling units shall reserve suitable areas for parks, playgrounds, schools, and other public building sites that will be required for the use of its residents. Five percent to ten percent of the land area, exclusive of streets, shall be reserved for recreational and public use, for a period of two years for acquisition by a public agency. Outstanding natural or cultural features such as scenic spots, water courses, fine groves of trees, heiaus, historical sites and structures shall be preserved as provided by the director.

(1983 CC, c 23, art 3, sec 23-26.)

Section 23-27. Cemeteries and crematoriums; exemption.

The requirements and standards of subdivisions in this chapter shall not apply to cemeteries and crematoriums; provided that the use of land for cemeteries or crematoriums shall comply with zoning requirements and ordinances pertaining to the establishment of cemeteries in the County.

(1983 CC, c 23, art 3, sec 23-27.)

Division 2. Blocks.**Section 23-28. Block general design.**

The lengths, widths, and shapes of blocks shall be designed with regard to providing adequate building sites suitable to the use contemplated, needs for convenient access, circulation, control, and safety of street traffic, and limitations and opportunities of topography.

(1983 CC, c 23, art 3, sec 23-28.)

Section 23-29. Block sizes.

(a) Blocks shall not exceed two tiers of lots in width and thirteen hundred feet in length, except for:

- (1) Blocks adjacent to arterial streets; or
- (2) When the previous adjacent layout or topographical conditions justify a variation. Long blocks shall be provided adjacent to arterial streets to reduce the number of intersections. The recommended minimum distance between intersections on arterial streets is eighteen hundred feet. Longer blocks shall be used when possible.

(b) Blocks shall not be less than four hundred feet in length.

(c) The desired length for normal residential blocks is from eight hundred to one thousand feet. When the layout is such that sewers will be installed or easements for future sewer lines are provided along rear lot lines, the block should not exceed eight hundred feet in length.

(1983 CC, c 23, art 3, sec 23-29.)

Section 23-30. Drainage easements.

Where a subdivision is traversed by a natural water course, drainage way, channel, or stream, there shall be provided a drainage easement or drainage right-of-way conforming substantially with the lines of such water course, and of such further width as will be adequate for the purpose. Streets or parkways parallel to water courses may be required.

(1983 CC, c 23, art 3, sec 23-30.)

Section 23-31. Pedestrian ways.

In any block over seven hundred fifty feet in length, the director may require creation of a pedestrian way to be constructed to conform to standards adopted by the department of public works at or near the middle of the block. If unusual conditions require blocks longer than thirteen hundred feet, two pedestrian ways may be required. The pedestrian way shall be dedicated for public use and shall have a minimum width of ten feet.

(1983 CC, c 23, art 3, sec 23-31.)

Division 3. Lots.**Section 23-32. Lot size, shape, and setback line.**

The lot size, width, shape, and orientation, and the minimum building setback lines shall be appropriate for the location of the subdivision, the type of development and uses contemplated and in conformance with the provisions of chapter 25, zoning code. (1983 CC, c 23, art 3, sec 23-32.)

Section 23-33. Minimum lot sizes.

- (a) The minimum sizes of various types of lots shall be in conformance with the provision of chapter 25, zoning code, and shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.
 - (b) Where property will not be served by a public sewer, lot sizes for sewage disposal systems shall conform to the requirements of the State health department and shall take into consideration problems of water supply and sewage disposal.
- (1983 CC, c 23, art 3, sec 23-33.)

Section 23-34. Access to lot from street.

Each subdivided lot shall abut upon a public street or approved private street. No lot shall be platted without access on a street. The director may indicate the side or sides of any lot from which driveway access shall be permitted or prohibited. (1983 CC, c 23, art 3, sec 23-34.)

Section 23-35. Lot side lines.

The side lines of a lot shall run at right angles to the street upon which the lot faces, or on a curved street they shall be radial to the curve, as far as practicable. (1983 CC, c 23, art 3, sec 23-35.)

Section 23-36. Through lots; planting screen easement.

- (a) Through lots shall be avoided except where essential to:
 - (1) Provide separation of residential development from major traffic arteries or adjacent nonresidential activities; or
 - (2) Overcome specific disadvantages of topography or orientation.
 - (b) A planting screen easement of at least ten feet, across which there shall be no right of access, may be required along through lot lines abutting a traffic artery or other disadvantageous use. A through lot with planting screens shall have a minimum average depth of one hundred twenty-five feet.
- (1983 CC, c 23, art 3, sec 23-36.)

Section 23-37. Lot suitable for intended use; inundation area.

A lot shall be suitable for the purposes for which it is intended to be sold. No area subject to periodic inundation which endangers the health or safety of its occupants may be subdivided for residential purposes.

(1983 CC, c 23, art 3, sec 23-37.)

Section 23-38. Large lot subdivision.

In subdividing tracts into large lots which at some future time are likely to be resubdivided, the director may require that the blocks shall be of such size and shape, be so divided into lots, and contain such building site restrictions as will provide for extension and opening of streets at intervals which will permit a subsequent division of any parcel into lots of smaller size.

(1983 CC, c 23, art 3, sec 23-38.)

Division 4. Street Design.**Section 23-39. Creation of streets; conditions for approval.**

- (a) The creation of a street shall be in compliance with requirements for subdivision.
- (b) The director shall approve the creation of a street provided that any of the following conditions exist:
 - (1) The establishment of the street is initiated by the council and is declared essential for the purpose of general traffic circulation and the partitioning of land is an incidental effect rather than the primary objective of the street;
 - (2) The tract in which the street is to be dedicated is an isolated ownership of one acre or less; or
 - (3) The tract in which the street is to be dedicated is an isolated ownership of a size and with special existing physical conditions which make it impractical to develop more than three lots.

(1983 CC, c 23, art 3, sec 23-39.)

Section 23-40. Street location and arrangement; general requirements.

The location, width, and grade of a street shall conform to the County general plan and shall be considered in its relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the street. Where the location is not shown in the County general plan, the arrangement of a street in a subdivision shall either:

- (a) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
- (b) Conform to a plan for the neighborhood which has been approved or adopted by the director to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

(1983 CC, c 23, art 3, sec 23-40.)

Section 23-41. Minimum right-of-way and pavement widths.

(a) Unless otherwise indicated on the County general plan, the width of a street in feet shall not be less than the minimums shown in the following table:

| Type of Street | Minimum Right-of-Way | Pavement |
|--|-----------------------------|--|
| Parkways | 300 feet | 24 feet |
| Primary arterials | 120 feet | 24 feet |
| Secondary arterials | 80 feet | 60 feet (urban) 24 feet (rural) 24 feet (agricultural) |
| Business & industrial streets | 60 feet | 36 feet (urban) 24 feet (rural) 24 feet (agricultural) |
| Collector streets | 60 feet | 24 feet (urban) 20 feet (rural) 20 feet (agricultural) |
| Minor streets | 50 feet | 20 feet (urban) 20 feet (rural) 20 feet (agricultural) |
| Cul-de-sac and dead-end streets | 50 feet | 20 feet (urban) 20 feet (rural) 20 feet (agricultural) |
| Radius for turn-around at end of cul-de-sac | 45 feet | 35 feet (urban) 35 feet (rural) 35 feet (agricultural) |
| Alleys | 20 feet | 20 feet (urban) 20 feet (rural) 20 feet (agricultural) |

(b) When sidewalks, curbs, and gutters are required, pavements in collector streets in urban areas shall be thirty-six feet wide and pavements in minor and dead-end streets in urban areas shall be thirty-two feet wide.

(1983 CC, c 23, art 3, sec 23-41.)

Section 23-42. Reserve strip; street plug.

A reserve strip or street plug controlling the access to a street shall not be approved unless: (1) it is necessary for the protection of the public welfare or of substantial property rights; and (2) the control and disposal of the land composing such strips is placed definitely within the jurisdiction of the County or State under conditions approved by the director.

(1983 CC, c 23, art 3, sec 23-42.)

Section 23-43. Alignment.

- (a) As far as practical, a street shall be aligned with an existing street by continuation of the centerline thereof. The staggering of streets making "T" intersections shall be designed and adjusted with curves and diagonals, so that jogs are not less than one hundred fifty feet measured along the centerline of the through street.
- (b) If it is not possible to align a street of a new subdivision with an existing street of an adjacent tract, short jogs may be avoided by establishing reverse curves in the road alignment within a block. Such reverse curves shall be separated from the existing road right-of-way by a tangent, a minimum of fifty feet long to the beginning or end of the curve. Reverse curves shall be avoided in districts zoned commercial and industrial in chapter 25, zoning code.

(1983 CC, c 23, art 3, sec 23-43.)

Section 23-44. Future extensions of streets.

Where necessary to give access to or permit a satisfactory future subdivision of adjoining land, a street shall be extended to the boundary of the subdivision and the resulting dead-end streets may be approved without a turn-around. A reserve strip and street plug may be required to preserve the objectives of a street extension.

(1983 CC, c 23, art 3, sec 23-44.)

Section 23-45. Intersection angles; corner radius.

- (a) Streets shall be laid out to intersect at right angles except where topography requires a lesser angle, but the angle shall not be less than sixty degrees unless there is a special intersection design.
- (b) Intersections which are not at right angles shall have a minimum corner radius of twenty-five feet along the right-of-way lines of the acute angle. All other right-of-way lines at these intersections shall have a corner radius of not less than twenty feet. If unusual topographical conditions exist that will impair sight distances and create a traffic hazard, the director of public works may specify a larger corner radius.

(1983 CC, c 23, art 3, sec 23-45.)

Section 23-46. Improvement of existing streets.

When an existing street adjacent to or within a tract is not of the width required by this chapter additional rights-of-way shall be provided at the time of subdivision.

(1983 CC, c 23, art 3, sec 23-46.)

Section 23-47. Half streets.

- (a) A half street shall not be permitted except:
 - (1) Where essential to the reasonable development of a subdivision;
 - (2) When it is in conformance with other provisions of this chapter; and
 - (3) When the director is shown clear evidence that the adjoining parcels will be developed and that dedication of the other half will be made when the adjoining property is subdivided.

- (b) Whenever a half street is adjacent to a tract to be subdivided, the other half of the street shall be platted within the tract.
- (c) Reserve strips and street plugs may be required to preserve the objectives of a half street.

(1983 CC, c 23, art 3, sec 23-47.)

Section 23-48. Cul-de-sacs.

- (a) A cul-de-sac shall be as short as possible and shall not be more than six hundred feet in length nor serve more than eighteen lots; provided that longer streets may be approved by the director when unusual conditions exist.
- (b) All cul-de-sacs shall terminate with a circular turn-around of forty-five feet radius, except that a T-turn-around or other suitable turn-around may be permitted, if in the opinion of the director, this type of turn-around meets the requirements of the situation.

(1983 CC, c 23, art 3, sec 23-48.)

Section 23-49. Street names.

No street name shall be used which may duplicate or may be confused with the name of an existing street in the County, provided that identical or similar names may be used to name extensions of existing streets. Street names shall conform to the adopted policy of the County and shall be subject to the approval of either the windward or leeward planning commission, or both acting jointly, as provided in the Charter, and shall further require adoption by the council.

(1983 CC, c 23, art 3, sec 23-49; am 1984, ord 84-68, sec 2; am 2009, ord 09-118, sec 16.)

Section 23-50. Grades and curves.

- (a) A grade of a street shall be a reasonable minimum but in no case be less than one-half of one percent and shall not exceed seven percent on major arterials, eight percent on secondary arterials, ten percent on collector streets, or twelve percent on any other street. No grade shall be less than one-half of one percent at the gutter. Vertical and horizontal curves shall be so designed as to give nonpassing distance visibility in conformance with the following minimum requirements:

| Classification | Vertical Curve | Horizontal Curve |
|-------------------------------|----------------|------------------|
| Primary arterial | 500 feet | 500 feet |
| Secondary arterial | 500 feet | 500 feet |
| Business or industrial street | 500 feet | 500 feet |
| Collector street | 300 feet | 300 feet |
| Minor street | 300 feet | 300 feet |
| Cul-de-sac | 100 feet | 200 feet |

- (b) Variations from the required grades or curves may be permitted by the director and the director of public works where advisable to meet unusual conditions and the director of public works may specify additional standards accordingly.
(1983 CC, c 23, art 3, sec 23-50; am 2001, ord 01-108, sec 1.)

Section 23-51. Protection from existing or proposed arterial streets.

Where a subdivision abuts or contains an existing or proposed arterial street, the director may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a nonaccess reservation along the rear property line, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
(1983 CC, c 23, art 3, sec 23-51.)

Section 23-52. Alleys.

Alleys shall have a minimum width of twenty feet in districts designated commercial and industrial in chapter 25, zoning code, unless adequate permanent provisions for access to off-street parking and loading facilities approved by the director have been provided. At street and alley intersections, ten feet corner radii shall be required.
(1983 CC, c 23, art 3, sec 23-52.)

Section 23-53. Private streets.

No private street or alley shall be approved unless they are improved as specified under article 6, division 2 of this chapter.
(1983 CC, c 23, art 3, sec 23-53.)

Division 5. Utilities.

Section 23-54. Utilities location within streets and State highways.

- (a) In general, all utilities shall be located within the street width, and government owned water mains shall be located in the paved areas, except that water mains of a suburban water system may be located as designated in the area between the edge of pavement and the property line when approved by the director of public works and manager. Where practicable, sewer mains shall be located in the paved area between curbs.
- (b) On State highways, all utilities shall be located in the area between the edge of pavement and the property line. Where practicable, a minimum distance of six feet shall be maintained between the edge of pavement and the location of the utilities. Utilities may be permitted to cross the highway on a line perpendicular to the centerline of the highway. Under certain conditions the utility may be permitted to deviate from the normal line but in no case shall the angle between the utility and a line perpendicular to the centerline exceed forty-five degrees.
(1983 CC, c 23, art 3, sec 23-54; am 2001, ord 01-108, sec 1.)

Section 23-55. Location of utilities within street impractical; alternative.

If in the opinion of the director, the director of public works and manager, the most suitable and reasonable location for any of the utilities, such as sewers, storm drains, water and gas pipes, electric and telephone pole lines and conduits, which are likely to be required within a subdivision for the service thereof or for the service of areas in the surrounding territory, does not lie wholly within the street width, the director may require provisions to be made for the location of such utilities on routes elsewhere than within said street width. The subdivider shall designate the required area for all such utility locations outside of the street width and shall deliver a proper easement or right-of-way for the area.

(1983 CC, c 23, art 3, sec 23-55; am 2001, ord 01-108, sec 1.)

Section 23-56. Easements for utilities; size; conveyance.

- (a) Easements or rights-of-way for sewers, storm drains and government owned water facilities shall be fifteen feet in width and centered on rear or side lot lines except for guy-wire tie-back easements, which shall be three feet wide by twenty feet long along lot lines at change of direction points of easements, except that this width may be modified where the director of public works or the manager, whichever is appropriate, finds that a greater or lesser width is necessary or satisfactory for the purpose of the use of the area.
- (b) Easements or rights-of-way for all government owned utilities including storm drains except those under the jurisdiction of the department of water supply shall be conveyed to the County and documents shall be delivered to the council for acceptance. Easements or rights-of-way for water facilities which are under the jurisdiction of the department of water supply shall be conveyed to the water commission and the documents shall be delivered to the water commission for acceptance.

(1983 CC, c 23, art 3, sec 23-56; am 2001, ord 01-108, sec 1.)

Article 4. Application for Subdivision and Preliminary Plat.**Division 1. General Provisions.****Section 23-57. Where information obtainable.**

A subdivider may call at the planning department's office for information regarding procedures and general information that may have a direct influence on the proposed subdivision.

(1983 CC, c 23, art 4, sec 23-57.)

Section 23-58. Application for subdivision; plat and plans submitted by subdivider.

- (a) The subdivider shall submit a written application for subdivision, a preliminary plat prepared, stamped and signed by a surveyor, and other supplementary material required to describe the nature and objectives of the proposed subdivision,

and shall submit ten copies, or more if requested by the director, of the preliminary plat and other supplementary material to the director.

- (b) All pertinent information on the preliminary plat shall be drawn to scale.
- (c) Where the area to be subdivided contains only part of the tract owned or controlled by the subdivider, the director may require a sketch of a tentative layout for streets in the unsubdivided portion.
- (d) Application for Resort Subdivision. The subdivider may file an application for resort subdivision. An application for resort subdivision may either be filed under this section or under any other provision of this chapter. If an application for subdivision is filed under this section, it shall be clearly designated as such. Such application shall, in addition to all other information to be submitted with the subdivision application, preliminary plat and other supplementary material, include the following:
 - (1) A statement acknowledging that all improvements will not be approved for dedication unless and until such improvements satisfy all of the requirements for dedicable improvements.
 - (2) A description of the provisions made for permanent maintenance of the private roadways within the proposed resort subdivision.
 - (3) A description of how subsequent owners of the property will be notified of the private nature of the improvements and maintenance responsibilities.

(1983 CC, c 23, art 4, sec 23-58; am 1992, ord 92-138, sec 5; am 2006, ord 06-104, sec 2; am 2015, ord 15-19, sec 1.)

Section 23-58.1. Posting of signs for public notification.

- (a) Within ten days of filing the application for a subdivision, the applicant shall post a sign on the subject property notifying the public of the following:
 - (1) The nature of the application;
 - (2) The proposed number of lots;
 - (3) The size of the property;
 - (4) The tax map key or keys of the property;
 - (5) That they may contact the planning department for additional information; and
 - (6) The address and telephone number of the planning department.
- (b) The sign shall remain posted until final approval, or until the application has been rejected or withdrawn. The applicant shall remove the sign promptly after such action.
- (c) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property the applicant shall post the sign to

be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with chapter 3, Hawai'i County Code 1983 (2005 edition).

- (d) The applicant shall file an affidavit with the planning department not more than five days after posting the sign stating that a sign has been posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has received final approval, or has been rejected or withdrawn. A photograph of the sign in place shall accompany the affidavit.
(2005, ord 05-135, sec 2.)

Section 23-58.2. Publication of notices.

The director shall publish, on a semi-monthly basis, a list of all applications accepted under this section in at least two newspapers of general circulation in the County. The list shall include the name of the property owner, the tax map key number(s) of the property, the land area, the number of lots proposed, and any other information deemed useful by the director.
(2006, ord 06-104, sec 3.)

Section 23-59. Size and scale of plat.

The preliminary plat shall be drawn according to size and scale as stipulated in section 502-19, Hawai'i Revised Statutes, or on a sheet size of eight and one-half inches by thirteen inches. When more than one sheet is required, an index sheet of the same size shall be filed to show the entire subdivision on one sheet, with block and lot numbers.
(1983 CC, c 23, art 4, sec 23-59.)

Section 23-60. Application fees for subdivision plans.

- (a) Each application for a subdivision (including consolidation) is subject to the payment of the following fee: \$250 plus \$25 per lot noted on the initial preliminary plat or cluster plan development and for each additional lot resulting from any subsequent amendment of the initial preliminary plat exclusive of any lots set aside for roadway or easement purposes or lands dedicated for public use.
- (b) These fees shall not apply to subdivision of land into burial or crematory lots within the confines of duly established cemetery areas; provided that a processing fee will be filed as follows: \$100 per acre and proportionate fee for fraction of acre thereof.
- (c) The payment of the filing fee shall be made at the planning department's office and payable to the director of finance. No portion of the fee is refundable for applications granted tentative subdivision approval. A portion of fee equivalent to ten percent of the fee or \$50, whichever is greater, shall be retained for applications which have been withdrawn or denied before granted tentative approval.
(1983 CC, c 23, art 4, sec 23-60; am 1999, ord 99-97, sec 2.)

Section 23-61. Review of plat.

The director shall furnish one copy of the preliminary plat and supplemental materials after they are submitted by the subdivider, to the manager, the director of public works, and the state department of health, and when a subdivision is adjacent to a State highway or proposed State highway, to the district engineer for their review and comment.

(1983 CC, c 23, art 4, sec 23-61; am 2001, ord 01-108, sec 1; am 2006, ord 06-104, sec 4.)

Section 23-62. Tentative approval of preliminary plat.

(a) Within forty-five days after submission of the preliminary plat, the director shall review the plan and may give tentative approval of the preliminary plat as submitted or as modified or may disapprove the preliminary plat, stating the reasons for disapproval in writing or shall defer action pending further review. Approval of the preliminary plat shall indicate the director's directive to prepare detailed drawings on the plat submitted, provided there is no substantial change in the plan of subdivision as shown on the preliminary plat and there is full compliance with all requirements of this chapter. The action of the director with reference to any attached documents describing any conditions shall be noted on two copies of the preliminary plat. One copy shall be returned to the subdivider and the other retained by the director. At such time the director shall stamp the above two preliminary plats:

“Subdivider authorized to prepare detailed drawings on plat as submitted including corrections noted.”

“Recordation with the Bureau of Conveyances, State of Hawai'i, not authorized until approved for record at a later date.”

- (b) If no action (approval, disapproval, modification, or deferral) is taken by the director within forty-five days after submission of the preliminary plat, or such longer period as may have been agreed upon in writing, the preliminary plat shall be deemed approved. The approval shall be on condition that the subdivider construct roads to the standards required by this chapter, a water system to the standards of the department of water supply, drainage meeting with the approval of the department of public works under section 23-92, that sewage disposal shall conform with section 23-85, if applicable, and the requirements of the department of health, and that the lot sizes and dimensions must be adjusted to conform to the zoning code on the final plat. The subdivider shall comply with the provisions of this chapter in order to receive final subdivision approval.
- (c) The director shall disapprove a preliminary plat or a subdivision map where the subdivider has failed to comply with the provisions of chapter 25, zoning code.
- (d) The subdivider shall complete all requirements specified as conditions for approval of the preliminary plat (tentative approval) within three years of said approval. An extension of not more than two years may be granted by the director upon timely written request of the subdivider. At the end of said three year period or its approved extension, unless all said conditions are completed, the approval of the

preliminary plat shall expire and shall be of no further force or effect, or shall be subject to the technical review of the applicable agencies for compliance with current Code and rule requirements. This subsection shall be applied to all subdivision applications which have received tentative subdivision approval and which have not completed subdivision improvements, provided the three year period, and extension, if applicable, shall be taken from December 4, 1992 and not from the date of preliminary plat (tentative) approval.

- (e) The director's deferral of a subdivision for further review under subsection (a) constitutes an acceptance of the contents of the preliminary plat as submitted, and the director's issuance of tentative and final subdivision approval is valid despite the failure of the preliminary plat to include all of the information specified in sections 23-63 to 23-66, provided that there has been actual compliance with the substantive requirements of this chapter and chapter 25, zoning code. The director may require the subdivider to submit supplementary information prior to tentative or final approval and may condition tentative or final approval on the submission of such information and on the performance of conditions attached to the tentative approval.

(1983 CC, c 23, art 4, sec 23-62; am 1992, ord 92-138, sec 6; am 2006, ord 06-104, sec 5.)

Division 2. Contents of Preliminary Plat.

Section 23-63. General information on preliminary plat.

The preliminary plat shall include the following general information:

- (1) Name of the subdivision, if proposed, which shall not duplicate nor resemble the name of another subdivision in the County. The proposed name shall be subject to approval by the director;
- (2) Date, northpoint and scale of drawing;
- (3) Tax key number and other information to sufficiently describe and define the location and boundaries of the proposed subdivision according to the County real property records;
- (4) Names and addresses of the owner, subdivider, and engineer or surveyor who prepared the plat;
- (5) The approximate lot layout and the approximate dimension and area of each lot;
- (6) Acreage of proposed subdivision and number of lots; and
- (7) A title report issued by a licensed title company in the name of the owner of the land, showing all parties whose consents are necessary and their interests in the premises when required by the director.

(1983 CC, c 23, art 4, sec 23-63; am 2006, ord 06-104, sec 6.)

Section 23-64. Existing conditions shown on preliminary plat.

The preliminary plat shall include the following information on existing conditions, unless waived or deferred by the director:

- (1) Location, width and names of all existing or platted streets within or adjacent to the tract, together with easements, other rights-of-way, and other important features, such as corners, property boundary lines, and control of access lines adjacent to State highways;
- (2) When required by the director, contours at vertical intervals of five feet where the slope is greater than ten percent. Elevations shall be marked on the contours based on an established bench mark or other datum approved by the director of public works. In addition, the contours as may be required by the manager, State department of health, and director of public works shall be shown;
- (3) The location and direction of all water courses and approximate location of areas subject to inundation or storm water overflow;
- (4) Existing uses of property, including but not limited to, location of all existing structures, wells, cisterns, private sewage disposal systems, and utilities; and
- (5) Zoning on and adjacent to the tract, provided that if the information required by subsection (3) is not shown, it shall be made a condition of tentative approval, and tentative approval shall also require drainage improvements pursuant to section 23-92 or their equivalent.

(1983 CC, c 23, art 4, sec 23-64; am 2001, ord 01-108, sec 1; am 2006, ord 06-104, sec 6.)

Section 23-65. Proposed plan of land partitioning on preliminary plat.

The preliminary plat plan shall include the following land partitioning information:

- (1) Streets showing location, widths, approximate radii or curves. The relationship of all streets to projected streets shown on the County general plan, which may be shown on a vicinity map;
- (2) Existing and proposed easements, showing width and purpose;
- (3) Lots, showing approximate dimensions, proposed lot size and proposed lot numbers; and
- (4) Sites, if any, allocated for purposes other than single-family dwellings, or farm dwellings.

(1983 CC, c 23, art 4, sec 23-65; am 2006, ord 06-104, sec 6.)

Section 23-66. Explanatory information on preliminary plat.

Unless waived or deferred by the director, the preliminary plat shall include the explanatory information listed in this section. If such information cannot be shown practicably on the preliminary plat, it shall be submitted in separate statements accompanying the preliminary plat:

- (1) A vicinity map at a small scale, showing existing subdivided land ownerships adjacent to the proposed subdivision, and showing how proposed streets may be extended to connect with existing streets;

- (2) Proposed deed restrictions in outline form if any;
- (3) Statement regarding water system to be installed, including source, quality and quantity of water;
- (4) Provisions for sewage disposal, conceptual drainage and flood control which are proposed. The drainage map shall include the approximate location of areas subject to inundation or storm water overflow and all areas covered by waterways, including ditches, gullies, streams and drainage courses within or abutting the subdivision; and
- (5) Parcels of land proposed to be dedicated to public use, and the conditions of such dedication, provided that if the information required in subsections (3) and (4) is not shown, water supply, sewage disposal, and drainage shall be determined by conditions of tentative approval.

(1983 CC, c 23, art 4, sec 23-66; am 2006, ord 06-104, sec 6.)

Article 5. Final Plat.

Section 23-67. Time limit for completing final plat.

The final plat shall be prepared and completed within one year following the tentative approval given on the preliminary plat by the director. If the final plat has not been filed within this period, the tentative approval of the preliminary plat shall be deemed void. A time extension, for good cause may be granted as provided under section 23-72.

(1983 CC, c 23, art 5, sec 23-67.)

Section 23-68. Drafting of final plat.

- (a) A surveyor shall prepare, stamp, and sign the final plat in accordance with the provisions of this chapter and sections 502-17, 502-18 and 502-19, Hawai'i Revised Statutes, as amended.
- (b) The scale and sheet size utilized on this drawing shall be the same as required under section 23-59, and dedication or other written material shall be submitted on supplemental sheets.
- (c) If the final plat, following approval by the director, is to be filed with the land court for recordation, it shall comply with all requirements specified under the rules of the land court for land court subdivisions.

(1983 CC, c 23, art 5, sec 23-68; am 2015, ord 15-19, sec 2.)

Section 23-69. Information required on final plat.

In addition to any other information required to be shown thereon under provisions of any State statute or County ordinance the following information shall be shown on the final plat and supplemental sheets:

- (1) Date, northpoint and scale of drawing;
- (2) Legal description of the tract boundaries;
- (3) Names and addresses of the owner, subdivider, and engineer, or surveyor who prepared the plat;

- (4) Reference points of existing surveys identified, related to the plat by distances and azimuths, and reference to a field book or map as follows:
 - (A) All stakes, monuments or other evidence found on the ground and used to determine the boundaries of the subdivision;
 - (B) Adjoining corners of all adjoining subdivisions;
 - (C) Boundary lines and grants within and adjacent to the plat;
 - (D) All other monuments found or established in making the survey of the subdivision or required to be installed by provisions of this chapter;
 - (5) Tract boundary lines, right-of-way lines of streets: lot lines with dimensions, azimuths and radii, points of curvature and tangent azimuths shall be shown;
 - (6) The width of the portion of streets being dedicated, the width of any existing right-of-way and the widths each side of the centerline. For streets and curvature, all curve data shall be based on the street centerline and, in addition to centerline dimensions, shall indicate thereon the central angle;
 - (7) All easements which shall be denoted by fine broken lines, clearly identified and if already on record, its recorded reference; if any easement is not definitely located on record, a statement of such easement. The widths of the easement and information sufficient to definitely locate the easement with respect to the subdivision shall be shown. If the easement is being dedicated by the map, it shall be properly referenced in the owner's certificates of dedication;
 - (8) Lot identification which shall be according to good engineering practices;
 - (9) Land parcels to be dedicated for any purpose, public or private, to be distinguished from lots intended for sale and their use indicated;
 - (10) Minimum building setback lines, where not otherwise fixed by a building code or County ordinance;
 - (11) The following certificates which may be combined where appropriate:
 - (A) A certificate signed and acknowledged by all parties having any record title interest in the land subdivided consenting to the preparation and recording of the plat when required by the director.
 - (B) A certificate signed and acknowledged as above, when dedicating all parcels of land shown on the final map and intended for any public use except those parcels which are intended for the exclusive use of the lot owners in the subdivision, their licensees, visitors, tenants and servants.
 - (C) A certificate with the seal of and signed by the engineer or surveyor responsible for the survey and final draft.
 - (D) All other certificates now or hereafter required by law;
 - (12) All control of access lines adjacent to State highways which shall be denoted by the State highways division standard symbol of semicircles on the control of access line.
- (1983 CC, c 23, art 5, sec 23-69; am 2006, ord 06-104, sec 7.)

Section 23-70. Supplemental information with final plat.

The following data shall be submitted with the final plat:

- (1) A complete title report issued by a licensed title company in the name of the owner of the land, showing all parties whose consents are necessary and their interests in the premises when required by the director;
- (2) Five copies of any deed restrictions applicable to the subdivision;
- (3) Written proof that all taxes and assessments on the tract are paid to date; and
- (4) For nondedicable streets in a resort subdivision, the subdivider shall submit a recordable document with the director which shall describe all nondedicable streets, the ownership thereof and access rights thereon for all lots in the subdivision and the maintenance rights and responsibilities thereof. The document shall contain statements as follows: that nondedicable streets within the resort subdivision have not been built to the standards required for streets which are dedicable to the County of Hawai'i; that such streets will accordingly not be accepted for dedication unless they are brought into compliance with the requirements for dedication as of the time they are offered for dedication; and that the County is not responsible for maintenance of such nondedicable streets. The document shall be in a form acceptable to the director of public works and corporation counsel. For subdivided land within the jurisdiction of the land court, such document shall be recorded with the land court. For all other subdivided land, the document shall be recorded with the State bureau of conveyances.

(1983 CC, c 23, art 5, sec 23-70; am 1992, ord 92-138, sec 7; am 2001, ord 01-108, sec 1; am 2006, ord 06-104, sec 7.)

Section 23-71. Subdivision not involving streets, drains, or utilities.

The preliminary plat may be approved by the director for recordation if:

- (1) The preliminary plat meets all of the requirements of a final plat; and
- (2) The subdivision involves no streets, drains, or utilities.

(1983 CC, c 23, art 5, sec 23-71.)

Section 23-72. Filing of final plat.

- (a) Within one year after tentative approval of the preliminary plat by the director, the subdivider shall have the subdivision surveyed and shall prepare a final plat which conforms with the preliminary plat as tentatively approved. The subdivider shall submit to the director eight copies of the final plat, prepared in conformity with these regulations, together with four additional copies of a general layout map, which was originally attached to the construction drawings and specifications (where required) showing the location of lots, streets, water mains and storm drainage systems.
- (b) For good cause, the director may grant to the subdivider an extension of time within which the subdivider may file the final plat.

- (c) The time of filing the final plat means the time at which the final plat, together with all required data, is received by the director. The director shall indicate the date of filing on all copies of the final plat and accompanying data.
(1983 CC, c 23, art 5, sec 23-72; am 2006, ord 06-104, sec 7.)

Section 23-73. Technical review.

Within thirty days after receipt of the final plat and other data, the director shall submit copies of the final plat and other data to the director of public works, manager, State department of health and district engineer when the subdivision involves State highways for review of the final plat with the director. The final plat shall be examined as to whether it is substantially similar to the approved preliminary plat and whether it is technically correct. The information on the final plat shall also be verified by entering upon the respective subdivision where deemed necessary by the director. If there is a variance, the subdivider shall be advised by the director of the changes or additions that must be made and given an opportunity to make corrections. The director's submission of copies of the final plat to other reviewers constitutes acceptance of the contents of the final plat, provided that the director may request supplementary information, and may require the subdivider to correct errors prior to the issuance of final subdivision approval, and after final approval pursuant to section 23-74(c). The director's issuance of final subdivision approval shall be valid despite the absence of technical information as required by section 23-69(1) and (3), or the absence of similar technical but non-substantive information required by sections 23-69 and 70.
(1983 CC, c 23, art 5, sec 23-73; am 2001, ord 01-108, sec 1; am 2006, ord 06-104, sec 7.)

Section 23-74. Final approval of plat.

- (a) When all the construction work is complete and is accepted in writing by the director of public works, the subdivider may apply for approval of the subdivision map for recordation. If the director disapproves the plat, the grounds for disapproval shall be filed in the records of the planning department. No plat shall be disapproved by the director without giving the subdivider an opportunity to correct errors in the plat.
- (b) Upon final approval, the director shall stamp three copies of the final plat:

“SUBDIVISION NUMBER _____ APPROVED FOR RECORDATION
WITH THE BUREAU OF CONVEYANCES, STATE OF HAWAII.”

The approval shall bear the signature of the director. The planning department shall then retain one copy of the final plat, and forward one copy of the final plat to the County real property tax office, and one copy of the final plat to the subdivider. The approval of the final plat by the director shall not be deemed to constitute or effect an acceptance by the County of the dedication of any street or other easement shown on the plat.

- (c) The approval for recordation of the final plat by the director shall not relieve the subdivider of the responsibility for any error in the dimensions or other discrepancies. Such errors or discrepancies shall be revised or corrected, upon request, to the satisfaction of the director.
 - (d) Nondedicable Streets. In addition to all other requirements for approval of the final plat herein, if the subdivision includes any nondedicable streets, the subdivider shall, prior to final approval, deposit a duly recorded copy of the document described in section 23-70(4) of this chapter with the director.
- (1983 CC, c 23, art 5, sec 23-74; am 1992, ord 92-138, sec 8; am 2001, ord 01-108, sec 1; am 2006, ord 06-104, sec 7.)

Section 23-75. Change after approval.

No change in a subdivision, or in the plan of a subdivision, already approved, may be made without the approval of the director.

(1983 CC, c 23, art 5, sec 23-75.)

Section 23-76. No conveyance of land prior to approval for recordation.

Land shall not be offered for sale, lease or rent in any subdivision, nor shall options or agreements for the purchase, sale, leasing or rental of the land be made until approval for recordation of the final plat is granted by the director.

(1983 CC, c 23, art 5, sec 23-76.)

Section 23-77. Recordation of final plat.

After the director grants approval for recordation of the final plat, the subdivider may file and record the plat.

(1983 CC, c 23, art 5, sec 23-77.)

Section 23-78. Release of surety after final approval.

Upon completion of the improvements and utilities in a subdivision as required by this chapter and certification thereof as provided by article 7 of this chapter, and after the subdivider files one set of construction plans as actually modified to meet construction requirements with the department of public works, State department of health and department of water supply (if applicable), the department of public works, State department of health and the department of water supply (if applicable), shall approve the performance and thereupon discharge the subdivider and surety (in whole or in part according to the terms of the subdivider's agreement, if any) from the obligation of any bonds and release to the subdivider any security posted by the subdivider, or authorize and direct such discharge and release by the appropriate agency.

(1983 CC, c 23, art 5, sec 23-78.)

Article 6. Improvements.**Division 1. Construction.****Section 23-79. Construction plans; contents; review.**

- (a) After the subdivider has secured tentative approval of his preliminary plat of the subdivision from the director, and before beginning construction of the improvements therein, the subdivider shall prepare and submit to the director construction plans and specifications showing details of road construction, drainage structures, sewers, water mains and all other utilities proposed to be installed in the proposed subdivision. The construction plans shall be drawn on acceptable tracing medium to County standards as to size and general drafting practice. Included with the construction plans shall be a general layout map showing the location of lots and streets, and the location of water lines, sewer mains and drainage systems and other utility lines. Plans shall be prepared by an engineer registered under the laws of the State provided that, when the subdivision consists of three lots or less, the director may grant tentative approval to proceed with plans without the seal of an engineer.
- (b) The subdivider shall submit six copies of the construction plans and specifications to the director for examination and submission to the director of public works, the manager, the sanitary engineer and the district engineer as required under section 23-61, for their respective consideration and approval. Such construction plans and specifications shall be considered approved for construction purposes when the construction plan tracings and specifications bear the approval of the director of public works, the manager, the sanitary engineer, the district engineer and the director as required under section 23-61.

(1983 CC, c 23, art 6, sec 23-79; am 2001, ord 01-108, sec 1.)

Section 23-80. Construction required for final approval.

- (a) When the construction drawings and specifications bear the approval of the director, the director of public works, the manager, the sanitary engineer and the district engineer as required under section 23-79, the subdivider may proceed with the construction of the improvements and utilities.
- (b) Where construction extends into the State highway right-of-way, the contractor shall obtain a permit from the district engineer prior to commencement of work within the State right-of-way. In this case no bond or security need be posted with the department of public works or the department of water supply.

(1983 CC, c 23, art 6, sec 23-80; am 2001, ord 01-108, sec 1.)

Section 23-81. Final approval before construction completed; bond required.

A subdivider may secure final approval prior to completion of construction by entering into an agreement which conforms to section 23-82 with the County, signed by the director and the department of public works and, when appropriate, department of water supply and file with the department of public works and when required department of water supply a surety bond or other security as specified in section 23-83 to assure the department of public works and the department of water supply that the actual construction and installation of the improvements and utilities will be completed as shown on the approved construction drawings and specifications. The director shall, after the execution and acceptance of the agreement and bond, grant approval of the final plat. The subdivider may then proceed to record the final plat and sell the lots or transfer any interest therein prior to completion of the improvements.
(1983 CC, c 23, art 6, sec 23-81.)

Section 23-82. Agreement to provide improvements and utilities.

The owner of the subdivision shall submit an agreement to the director who shall refer the document to the corporation counsel for approval as to form and legality. The agreement shall specify that the subdivider shall make, install, and complete all required improvements and utilities to the satisfaction of the director of public works and when appropriate, the department of water supply, and shall also provide that:

- (1) If the subdivider fails to complete:
 - (A) The required improvements within the time specified; and
 - (B) Any additional conditions imposed for the granting of an extension to complete the required improvements and additional conditions with the extended time period;
- (2) If the subdivider fails to timely complete or abandons the subdivision prior to final approval; or
- (3) If the agreement is terminated for any of the grounds stated in the agreement; the department of public works and when appropriate, the department of water supply may complete the improvements and recover the full cost and expense thereof from the subdivider.

(1983 CC, c 23, art 6, sec 23-82; am 2001, ord 01-108, sec 1.)

Section 23-83. Bond.

- (a) The agreement as specified in section 23-82 shall be secured by a good and sufficient surety bond (other than personal surety), certified check or other security acceptable to the director and approved by the corporation counsel, in the sum equal to the cost of all the work required to be done by the subdivider as estimated by the director of public works and the manager, if the subdivision is within the scope of the department of water supply requirements. The surety bond shall be payable to the County and when appropriate to the department of water supply. The bond shall be conditioned upon the faithful performance of any and all work required to be done by the subdivider.

- (b) The security shall be filed with the director and deposited with the County treasurer as a realization in whole or part for the completion of work, or correction of any defective or improper work called for in the original plan.
(1983 CC, c 23, art 6, sec 23-83; am 2001, ord 01-108, sec 1.)

Division 2. Improvements Required.

Section 23-84. Water supply.

A subdivision to be laid out after December 21, 1966 shall be provided with water as follows:

- (1) A water system meeting the minimum requirements of the County department of water supply; and
 - (2) Water mains and fire hydrants installed to and within the subdivision in accordance with the rules and regulations of the department of water supply, adopted in conformity with article VIII of the Charter.
- (1983 CC, c 23, art 6, sec 23-84.)

Section 23-85. Sewage disposal systems.

- (a) In a subdivision to be laid out after December 21, 1966 sewer lines shall be installed where the subdivision is within three hundred lineal feet of the existing sewer system. These lines shall conform to the minimum requirements of the department of public works.
 - (b) In subdivisions where sewer connections cannot be made to an existing sewer system under the requirements of this chapter, the subdivider shall meet the minimum requirements of the State health department relating to sewage disposal.
- (1983 CC, c 23, art 6, sec 23-85.)

Section 23-86. Requirements for dedicable streets.

- (a) The subdivider shall grade, drain, and surface all streets constructed after December 21, 1966 as shown on his plat, except reserved dedication for future street purposes, so as to provide access for vehicular traffic to each lot of the subdivision.
- (b) A street shall be constructed in accordance with the specifications in this section and those on file with the department of public works. A street shall be installed under the supervision of the director of public works and to permanent grades approved by him.
- (c) A street shall have sufficient thickness of pavement, and compacted base course and sub-base material to support axle and wheel loads permitted under section 291-35, Hawai'i Revised Statutes. In no case shall the streets be less substantial than the following minimum dedicable standards of the County:

- (1) A street serving areas zoned for lots seventy-five hundred square feet to and including one acre, shall have a six-inch minimum select borrow sub-base course, a base course of four inches of compacted crusher run base with filler, and a pavement of two inches of asphaltic concrete or two and one-half inches of asphaltic macadam, applied in three separate applications. Pavement width shall conform to the urban standard as set forth under section 23-41.
 - (2) A street serving areas zoned for lots of over one acre and up to and including three acres, shall have a six-inch minimum select borrow sub-base course, a base course of four inches of compacted crusher run base and a pavement of two inches of asphaltic concrete or two and one-half inches of asphaltic macadam, applied in three separate applications. Pavement width shall conform to the rural standard as set forth under section 23-41.
- (d) A street meeting the minimum requirements of this section shall be dedicable. (1983 CC, c 23, art 6, sec 23-86; am 2001, ord 01-108, sec 1.)

Section 23-87. Standard for nondedicable street; escrow maintenance fund.

- (a) A street serving areas zoned for lots of three acres and over shall have a six-inch minimum fine select borrow base course with surface treatment acceptable to the director of public works and director. Preparation of the surface, application of surface and utilization of equipment shall conform to standards adopted by and on file in the department of public works, subject to the condition that a portion of a roadway where the grade is eight percent or greater shall be built to paved requirements of this chapter. Pavement widths shall conform to the agricultural standards as set forth under section 23-34.* Where a subdivision street connects with a State highway, the standards of the pavement within the State highway right-of-way shall conform to standards adopted by the State department of transportation.
 - (b) A street meeting only the minimum requirements of this section shall not be dedicable.
 - (c) A maintenance escrow fund, when required by the director, shall be established by the subdivider with an escrow depository approved by the director prior to final approval for recordation. The fund shall be reviewed by the corporation counsel and approved by the director.
- (1983 CC, c 23, art 6, sec 23-87; am 2001, ord 01-108, sec 1.)

* **Editor's Note:** Pavement widths are set forth in section 23-41.

Section 23-88. Nondedicable street; private dead-end street.

(a) A private dead-end street may be established upon approval of the director. The street shall provide access to six lots or less conforming to the minimum area requirements set forth in this chapter and shall be restricted only to residential lots and those agricultural lots zoned for less than three acres. The following shall be the minimum pavement width and right-of-way:

| Road Access | Pavement | Right-of-Way |
|-------------|----------|--------------|
| 1 lot | 8 feet | 12 feet |
| 2 lots | 12 feet | 16 feet |
| 3 lots | 14 feet | 18 feet |
| 4 to 6 lots | 16 feet | 20 feet |

(b) A private street shall be constructed in conformance with standards on file at the department of public works.
 (c) A private street meeting only the minimum requirements of this section shall not be dedicable.

(1983 CC, c 23, art 6, sec 23-88.)

Section 23-89. Sidewalks.

For the safety of pedestrians and of children at play, sidewalks on both sides of the street may be required. The director shall have the authority to recommend and the council may, when in its judgment a necessity exists for such improvements, require the construction of sidewalks which shall be constructed in accordance with specifications of the County department of public works.

(1983 CC, c 23, art 6, sec 23-89.)

Section 23-90. Pedestrian way.

A four-foot walk strip shall be paved in the center of all pedestrian ways. Paving shall consist of not less than three inches of compacted crusher run or crushed rock passing a three-fourth inch screen. Construction of a pedestrian way shall conform to standards adopted by the department of public works.

(1983 CC, c 23, art 6, sec 23-90.)

Section 23-91. Curbs and gutters.

The director shall have the authority to recommend and the council may, when in its judgment a necessity exists for such improvements, require the construction of curbs and gutters which shall be constructed in accordance with specifications of the department of public works.

(1983 CC, c 23, art 6, sec 23-91.)

Section 23-92. Drainage, flood, and erosion mitigation measures.

- (a) The subdivider shall construct a storm water disposal system to contain runoff caused by the subdivision improvements within the boundaries of the subdivision, up to the expected one-hour, ten year storm event, as shown in Plate 1 of the Department of Public Works "Storm Drainage Standards", dated October 1970, or any approved revisions, unless those standards specify a greater recurrence interval, in which case, the greater interval shall be used. The amount of expected runoff shall be calculated according to the Department of Public Works "Storm Drainage Standards", dated October 1970, or any approved revisions thereto, or by any nationally-recognized method meeting with the approval of the director of public works. Runoff calculations shall include the effects of all required subdivision improvements, and lot improvements that may be allowed by existing zoning.
- (b) Storm water shall be disposed into drywells, infiltration basins, or other infiltration methods. The subdivision shall not alter the general drainage pattern above or below the subdivision.
- (c) Subdivider shall also comply with the requirements of chapter 27, Hawai'i County Code.

(1983 CC, c 23, art 6, sec 23-92; am 2001, ord 01-108, sec 1; am 2007, ord 07-56, sec 2.)

Section 23-93. Street lights.

Street lights shall be constructed within the subdivision. The street lights shall conform to the standard specifications on file with the department of public works. The construction of street lights shall be made a part of the contract for subdivision improvement and installed coincident with other required improvements.

(1983 CC, c 23, art 6, sec 23-93.)

Section 23-94. Street name and traffic signs.

Street name signs showing the names of intersecting streets shall be erected by the subdivider at each street intersection. The type and location of street name and traffic signs which shall be created by the subdivider shall be subject to the approval of the director of public works and shall conform to the standard specifications on file at the department of public works.

(1983 CC, c 23, art 6, sec 23-94; am 2001, ord 01-108, sec 1.)

Section 23-95. Right-of-way improvement.

The subdivider shall be required to improve the entire street right-of-way. The improvements shall conform to the standard specifications on file with the department of public works.

(1983 CC, c 23, art 6, sec 23-95.)

Section 23-95.1. Improvements for resort subdivision.

Except as provided in this section, improvements for resort subdivision shall be as provided in this article 6, division 2, of this chapter. Upon submission of a resort subdivision application, the following standards shall apply.

- (a) Nondedicable Resort Street. A private street within the resort subdivision may be established upon approval by the director in consultation with the director of public works. Such streets shall be restricted to use only for lots within resort subdivisions. Divided roadways may include medial separations and elevation separations. Grades and curves of resort subdivision streets shall conform to section 23-50 or its successor statute. Pavement widths and minimum resort subdivision street rights-of-way shall be as specified in section 23-41(a) or its successor statute. Resort subdivision streets shall also conform to sections 23-43, 23-44, 23-45, 23-46, 23-48 or their successor statutes.
- (b) Sidewalks for resort subdivisions shall be required for safety of pedestrians. In considering the need for such sidewalks and the appropriate location of sidewalks, the director shall consider the following factors in addition to any other relevant factors:
 - (1) Pedestrian circulation within the resort area;
 - (2) Interaction of vehicular traffic to pedestrian traffic;
 - (3) Interaction of pedestrian traffic with uses in the resort area and applicable adjacent area; and
 - (4) Topography and slope of the area.

If consistent with pedestrian safety and with the factors listed above, said sidewalks may be constructed along roadways or at other suitable locations to accommodate pedestrian traffic whether or not the sidewalks are adjacent to resort subdivision streets.

- (c) A private resort subdivision street meeting only the minimum requirements of this section shall not be dedicable. If a private resort subdivision street is offered for dedication after final subdivision approval, said street must meet all of the requirements for a dedicable street under this chapter applicable as of the date that the street is offered for dedication.

(1992, ord 92-138, sec 9; am 2001, ord 01-108, sec 1.)

Article 7. Inspection and Certification.**Section 23-96. Inspection by director of public works and manager.**

The director of public works shall inspect the construction of improvements, the installation of facilities and utilities, and other work in any subdivision. The manager shall inspect all construction and improvements relating to water systems.

(1983 CC, c 23, art 7, sec 23-96; am 2001, ord 01-108, sec 1.)

Section 23-97. Inspection fee.

- (a) Prior to the beginning of construction of the required improvements or prior to final approval of a subdivision map, when a suitable bond is posted, the applicant shall be required to pay a fee of two-tenths of one percent of the estimated cost of the construction work to be done in the subdivision but not less than \$25 to cover the costs of inspection. The fee shall be returned to the applicant if the subdivision map is not approved.
- (b) Fees received from applicants shall be deposited with the director of finance. (1983 CC, c 23, art 7, sec 23-97.)

Section 23-98. Notice before beginning work; inspections; certification.

- (a) Before starting any construction work, the subdivider shall give written notice at least one week in advance to the director of public works and manager (if construction involves a water supply system), of the name of the contractor and any other pertinent information, and shall file three prints of approved construction drawings and specifications with the department of public works and the department of water supply (if construction involves a water supply system).
- (b) During construction of improvements and installation of facilities and utilities and the carrying on of other work in any subdivision, the work shall at all times be subject to inspection by the director of public works and manager, or their representatives.
- (c) Subdivision improvements shall not be considered complete and acceptable for final approval by the director until such improvements are so certified in writing to be complete and of acceptable standards by the director of public works and manager (if construction involves a water supply system).
- (d) Construction within the State highway right-of-way shall be subject to inspection by the district engineer or his representative. (1983 CC, c 23, art 7, sec 23-98; am 2001, ord 01-108, sec 1.)

Article 8. Safety Flood Hazard District Requirements.**Section 23-99. Tentative approval of plan for subdivision in SF district.**

No subdivision located in a safety flood hazard district (SF district) shall be granted tentative approval of the preliminary plat or approval of the final plat if the land is found by the director, upon consultation with the director of public works or other governmental agencies, to be unsuitable for the proposed use by reason of proneness to flooding, inundation or erosion by sea water, bad drainage or other features or conditions likely to be harmful or dangerous to the health, safety and welfare of future residents of the proposed subdivision or of the surrounding neighborhood, unless satisfactory protective improvements or other measures are proposed or taken by the subdivider and approved by the director.

(1983 CC, c 23, art 8, sec 23-99; am 2001, ord 01-108, sec 1.)

Section 23-100. New utilities in SF district.

New utilities located in the SF district shall be located and constructed to minimize or eliminate flood damage.

(1983 CC, c 23, art 8, sec 23-100.)

Section 23-101. Water systems in SF district.

All water systems located within an SF district shall be floodproofed to a point at or above the flood elevation level defined on the zone maps. Gate valves shall be installed in all water mains crossing the limits of an SF district.

(1983 CC, c 23, art 8, sec 23-101.)

Section 23-102. Sewage disposal facility in SF district.

No sewage disposal facility located in the SF district requiring soil absorption will be approved where such system will not function due to high ground water, flood or unsuitable soil characteristics.

(1983 CC, c 23, art 8, sec 23-102.)

Article 9. Plantation Community Subdivision.**Section 23-103. Plantation community subdivision.**

A plantation community subdivision is a subdivision established on lands formerly owned by sugar plantations and which had been developed into housing and community buildings for employees of the plantation.

(1994, ord 94-117, sec 2.)

Section 23-104. Criteria.

A plantation community subdivision may be established in former sugar plantation communities if all of the following conditions exist:

- (1) A sugar plantation has provided housing for its workers which developed into a plantation community.
- (2) The plantation community has existed for at least fifty years.
- (3) The sugar plantation is no longer in operation.
- (4) The fee title of each proposed lot within the plantation community on which the housing and improvements exist is to be conveyed in fee simple to the former employees of the sugar plantation.

(1994, ord 94-117, sec 2.)

Section 23-105. Designation as a plantation community.

The planning director shall review and investigate any application for a plantation community subdivision to determine if the plantation community involved meets the criteria established herein, except however, due to public safety and health considerations, the established plantation community with the approval of the council by resolution, may be relocated to another area within the region.

(1994, ord 94-117, sec 2.)

Section 23-106. Notice.

Upon receipt of an application for a plantation community subdivision, the director shall fix a date for approval or disapproval of the plantation community subdivision and notify the applicant. The applicant shall serve notice of the application upon owners of interests in properties within three hundred feet of the perimeter boundary of the applicant's property. The notice shall state:

- (1) The name of the applicant.
- (2) The nature of the request.
- (3) The location of the subject property or properties.
- (4) The date by which public comments and comments from the affected agencies must be submitted to the planning director.

(1994, ord 94-117, sec 2.)

Section 23-107. Appeals.

The applicant or other interested parties may appeal the director's determination on the designation to the board of appeals in accordance with its rules.

(1994, ord 94-117, sec 2.)

Section 23-108. Infrastructure.

Notwithstanding any other provisions herein, the requirements of this chapter to provide infrastructure improvements shall not apply to a subdivider of a plantation community subdivision, provided that the planning director in consultation with the director of public works and the manager-chief engineer of the department of water supply may require the improvements necessary to further the public health and safety.

All of the proposed lots within a plantation community subdivision shall prohibit the construction of an ohana dwelling or second dwelling unit, or any structure that will further any increase in density of the plantation community subdivision. This prohibition shall be recorded in the deeds of all the proposed lots with the bureau of conveyances and shall be submitted to the planning department for review and approval prior to final subdivision approval. A copy of the approved covenant shall be recited in an instrument executed by the applicant and the county and recorded with the bureau of conveyances likewise prior to final subdivision approval.

(1994, ord 94-117, sec 2; am 2001, ord 01-108, sec 1; am 2011, ord 11-103, sec 10.)

Section 23-109. Lots.

The size and configuration of the lots and setback requirements in a plantation community subdivision are exempt from the provisions of this chapter and chapter 25, Hawai'i County Code.

(1994, ord 94-117, sec 2.)

Section 23-110. Agriculture district.

- (a) For lands within the State land use agriculture district, lot sizes of less than one acre may be allowed, provided that:
- (1) The planning director designates the subject area as a plantation community subdivision; and
 - (2) The area of the proposed subdivision is reclassified into the State land use urban district.
- (b) If the above procedure is not applicable or deemed inappropriate by the planning director, then the subdivision may be considered under the procedures described in section 46-15.1 and section 201-210,* Hawai'i Revised Statutes.
(1994, ord 94-117, sec 2.)

* **Editor's Note:** Section 201-210, Hawai'i Revised Statutes, no longer exists. See section 201G-118, Hawai'i Revised Statutes.

Section 23-111. Procedure.

Except as provided in this article, the subdivision process for the plantation community subdivision shall be required pursuant to this chapter.
(1994, ord 94-117, sec 2.)

Article 10. Farm Subdivisions.**Section 23-112. Purpose.**

The purpose of this Article is to allow a person(s) owning property within an agricultural zoned district by the Hawai'i County Code to lease the property for agricultural purposes, provided that structures for residential occupancy or habitation shall be prohibited. This Article is intended to encourage landowners to provide affordable agricultural lands which are leased at reduced infrastructural standards warranted by the prohibition of residential or habitable structures.
(1995, ord 95-136, sec 2.)

Section 23-113. Definitions.

- As used in this Article, the following terms shall have the meanings indicated:
- (a) "Agriculture" means the care and production of livestock, livestock products, poultry or poultry products, aquaculture or aquaculture products, apiary, horticultural, agronomical or floricultural products or the planting, cultivating and harvesting of crops or trees, including tree farms. Agricultural production may include but not be limited to land preparation for crop production in accordance with acceptable agricultural practices.
 - (b) "Farm subdivision" means leasehold parcels within an agricultural zoned district having a minimum leasable area of five (5) acres, prohibiting any structures for temporary, seasonal or permanent residential occupancy or habitation.
(1995, ord 95-136, sec 2.)

Section 23-114. Restrictions, requirements and standards for farm subdivision.

The planning director may approve farm subdivisions under the following conditions:

- (a) The minimum leasable area within a farm subdivision shall be five (5) acres, irrespective of the minimum lot size of the applicable zoning ordinance.
- (b) Any structures for temporary, seasonal or permanent residential occupancy or habitation shall be prohibited.
- (c) Farm subdivision provisions shall be applicable only to leasehold lands located within an agricultural zoned district and shall be a lease term of no less than ten (10) years and a maximum of thirty (30) years. The terms of the lease shall be clearly defined in the lease agreement.
- (d) The owner of the parcel and lessees shall submit a soil conservation plan approved by the United States department of natural resources conservation service upon filing for a farm subdivision.
- (e) The owner of the parcel shall file a map, drawn to scale, of the parcel indicating the land area under consideration for the farm subdivision and the number of leasable areas and acres.
- (f) The leases within a farm subdivision shall be recorded by the bureau of conveyances and a copy of the recorded document shall be filed with the planning director upon its receipt from the bureau of conveyances. Each lease shall:
 - (1) Restrict uses to agriculture as defined in chapter 25, section 25-160(a),* Hawai'i County Code, except that farm dwellings or structures suitable for residential occupancy or habitation shall be prohibited.
 - (2) Provide a roadway maintenance agreement for all roadways within the farm subdivision.
 - (3) Assure implementation of the soil conservation plan required in subsection (d) of this Article and compliance with the provisions of such plan, including maintenance of conservation improvements specified therein.
- (g) Notwithstanding the provisions of Chapter 23, the following infrastructure standards shall apply:
 - (1) Water. A water system for a farm subdivision shall not be required.
 - (2) Roadway improvements. Roadway improvements within a farm subdivision which are less than those required under the County of Hawai'i Subdivision Code may be approved.
 - (A) Adequate access from a government road shall be provided to a farm subdivision meeting the requirements of the department of public works for the purpose of access to a farm subdivision.
 - (B) Roads within a farm subdivision shall be the property and the responsibility of the subdivider, lot owner and/or lessees pursuant to an executed roadway maintenance agreement.

(1995, ord 95-136, sec 2.)

* **Editor's Note:** Section 25-160 (a), no longer exists. See section 25-5-82.

Section 23-115. Nullification.

In the event that conditions relative to the area in which a farm subdivision is located change to such extent that a farm subdivision is no longer feasible or desirable, the lessor-owner may apply to the planning director to nullify the farm subdivision, provided that the consent of all lessees within the subdivision is secured. Upon the approval of the nullification of the farm subdivision by the planning director the parcel shall revert to its original status.

(1995, ord 95-136, sec 2.)

Section 23-116. Procedure.

Except as provided in this Article, the subdivision process for a farm subdivision shall be complied with pursuant to this chapter.

(1995, ord 95-136, sec 2.)

Article 11. Pre-Existing Lots.**Section 23-117. Purpose.**

The purpose of this article is to specify the criteria by which a pre-existing lot may be recognized and to state how certain uses will be accounted for during a consolidation/resubdivision action.

(2002, ord 02-110, sec 3.)

Section 23-118. Criteria to determine a pre-existing lot.

The director shall certify that a lot is pre-existing if the lot meets one of the following criteria:

- (a) The lot was created and recorded prior to November 22, 1944 or the lot was created through court order (e.g. partition) prior to July 1, 1973, and the lot had never been legally consolidated, provided that no pre-existing lot shall be recognized based upon a lease except for a lease which complied with all other applicable laws when made, including Territorial statutes regulating the sale or lease of property by lot number or block number, and on September 25, 2002, the proposed lot contains a legal dwelling, or has been continuously leased since January 8, 1948, as a separate unit.
- (b) The lot was created prior to December 21, 1966, as an agricultural lot in excess of twenty acres pursuant to County ordinance.
- (c) The lot was created through evidence of a properly prepared deed and/or subdivision plat for fee simple ownership of such lot to a grantee other than the grantor or a grantor's trust which deed was recorded at the State of Hawai'i Bureau of Conveyances or with the Registrar of the Land Court prior to May 1, 1999, and was subsequently depicted on a County of Hawai'i Tax Map, was issued a tax map parcel number therefor, and was individually assessed for real property taxation purposes.

(2002, ord 02-110, sec 3; am 2018, ord 18-12, sec 1.)

Section 23-119. Proof.

The owner of property seeking certification as a pre-existing lot shall provide reasonable evidence to meet the criteria set forth therein, provided that recognition of a lot based on a lease shall be supported by evidence that a valid lease was in existence on January 8, 1948, which specifies the boundaries of the claimed lot with reasonable certainty.

(2002, ord 02-110, sec 3.)

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23-40.2

UNOFFICIAL ADVANCE SHEET – Updated on February 20, 2018.
Contains sec(s) affected since publication of Supp. 3 (1-2018). Official revision to be published in Supp. 4 (7-2018).

Section 23-120. Use of certain pre-existing lots in consolidation and resubdivision.

A pre-existing lot that was created for use as a road lot, a railroad right-of-way, a flume line, or a pole anchor, shall be excluded for calculating the number of lots in applying section 23-7, unless it is conforming, except to create road lots or other non-buildable lots.

(2002, ord 02-110, sec 3.)

Article 12. Condominium Property Regimes.**Section 23-121. Purpose.**

The purpose of this article is to ensure that when land is placed under a condominium property regime, the individual units created are adequately served by roads, water systems, and other infrastructure, and that wastewater, drainage and flooding issues are properly addressed. It also clarifies the applicability of zoning regulations to condominium developments.

(2002, ord 02-111, sec 2.)

Section 23-122. Definitions.

“Apartment” shall mean any area designated as an “apartment” in the declaration.

“Common element” means any area designated as a “common element” in the declaration.

“Condominium” means the ownership of single units, with common elements, located on property within a condominium property regime.

“Condominium property regime” means the legal status created by chapter 514A, Hawai‘i Revised Statutes.

“Declaration” means the instrument by which property is submitted to chapter 514A, Hawai‘i Revised Statutes, and as such declaration is amended from time to time.

“Developer” means a person who undertakes to develop a real estate condominium project.

“Limited common element” means any common element designated in the declaration as reserved for the use of a certain apartment to the exclusion of the other apartments.

“Minimum building site area” means the minimum building site area established for the zoning district by the zoning code. For example, in the FA-3a district, the minimum building site area is 3 acres. In the RS-10 district, the minimum building site area is 10,000 square feet.

“Project” means a real estate condominium project; a plan or project whereby a condominium of two or more apartments located within the condominium property regime is offered or proposed to be offered for sale.

“Unit” means an apartment and any contiguous limited common elements.

(2002, ord 02-111, sec 2.)

Section 23-123. Applicability.

Sections 23-121 to 23-140 apply only to condominium property regimes in the RS, RA, A, FA, IA, and APD zoning districts, and to no other zoning districts. (2002, ord 02-111, sec 2.)

Section 23-124. Approval required.

- (a) No developer shall certify that the project is in compliance with all applicable County permitting requirements, pursuant to sections 514A-1.6, 514A-11(13) and 514A-40(a)(9), Hawai'i Revised Statutes, or any successor statute, unless the project has received final map approval for a condominium property regime from the director as provided herein.
- (b) The director shall not certify that the project is in compliance with all applicable County permitting requirements, pursuant to sections 514A-1.6, 514A-39.5(c), and 514A-40(b)(1), Hawai'i Revised Statutes, or any successor statutes, unless the project has received final map approval for a condominium property regime from the director as provided herein.
- (c) The application for map approval for a condominium property regime shall conform to the procedures for subdivision approval except as otherwise stated herein. (2002, ord 02-111, sec 2.)

Section 23-125. Submission of preliminary map.

The applicant shall submit a preliminary map for a condominium property regime containing the information required by a preliminary plat. It shall also show the location of all apartments, limited common elements, and common elements, shall identify which apartment each limited common element is appurtenant to, and shall identify each unit. The preliminary map shall conform to the declaration. (2002, ord 02-111, sec 2.)

Section 23-126. Standards of review.

In considering the application for preliminary map approval, the reviewing agencies shall consider each unit as a lot for the purpose of determining the necessary improvements. The applicant shall pay an application fee per unit equal to the fee required by a subdivision application containing the same number of lots. (2002, ord 02-111, sec 2.)

Section 23-127. Common elements.

The project may have common elements that are not included within a unit. (2002, ord 02-111, sec 2.)

Section 23-128. Maximum number of units.

The number of units shall not exceed the area of the project divided by the minimum building site area. (2002, ord 02-111, sec 2.)

Section 23-129. Minimum building site area and unit dimensions.

- (a) Each unit shall contain no less than the minimum building site area, except as stated in (b). No limited common element may be included in more than one unit for the purpose of determining the minimum building site area.
- (b) The director may allow a reduction of the minimum building site area for a project not exceeding two acres, or for a project not exceeding three units, if the director finds that the overall development is consistent with the zoning district, and that the project would meet the applicable criteria for a planned unit development. In such projects, not exceeding two acres or three units, common areas not included in a unit may be apportioned to the units in determining whether the units meet the minimum building site area. The director shall not waive the requirement that the number of units shall not exceed the area divided by the minimum building site area. In the state land use agricultural or rural districts, the unit shall not be less than the minimum lot size required by the state land use law.

(2002, ord 02-111, sec 2.)

Section 23-130. Minimum unit dimensions.

The width and length of a unit shall conform to the requirements for a building site established by the zoning district in question, except that the director may allow modification of dimensions if the director finds that the overall development is consistent with the zoning district, and that the project would meet the applicable criteria for a planned unit development. Common elements not included in a unit may be considered in making this determination.

(2002, ord 02-111, sec 2.)

Section 23-131. Tentative approval.

The director shall grant tentative approval to a preliminary map for a condominium property regime in the same manner as tentative approval of a preliminary plat, with conditions consistent with those that would be imposed for a preliminary subdivision plat.

(2002, ord 02-111, sec 2.)

Section 23-132. Final approval if no infrastructure required.

If the project requires no construction of streets, private streets, drainage improvements, sewers, water systems, utilities, or other infrastructure, the director shall issue final map approval for a condominium property regime at the same time as tentative approval.

(2002, ord 02-111, sec 2.)

Section 23-133. Construction plans.

After the developer has secured tentative approval pursuant to section 23-131, and before beginning construction, the developer shall submit construction plans for approval pursuant to section 23-79.

(2002, ord 02-111, sec 2.)

Section 23-134. Final approval.

After approval of construction plans under section 23-79, the director shall issue final map approval for a condominium property regime after the developer has (1) obtained certification of completion under section 23-98; or (2) entered into a bond for completion of improvements under sections 23-81 to 83.

(2002, ord 02-111, sec 2.)

Section 23-135. Conformance with conditions of approval required.

The developer shall disclose the tentative approval and any conditions attached thereto in any filings with the real estate commission for obtaining an effective date for a final public report.

(2002, ord 02-111, sec 2.)

Section 23-136. Final condominium map.

The developer shall prepare and file a final map for a condominium property regime that conforms to the preliminary map as tentatively approved. The review and approval of the final map shall conform to sections 23-72 to 23-74, insofar as applicable.

(2002, ord 02-111, sec 2.)

Section 23-137. No change in condominium after approval.

After final approval of the map for a condominium property regime, no change may be made in the boundaries of the limited common elements or their assignment to apartments, or to the boundaries of the common elements, without the approval of the director. Approval shall be granted only if the changes also conform to the provisions of this chapter.

(2002, ord 02-111, sec 2.)

Section 23-138. Effect of condominium map approval.

A unit within a project that has received final map approval for a condominium property regime and an effective date for a final public report shall be considered a legal building site and a lot for purposes of the zoning code and subdivision code.

(2002, ord 02-111, sec 2.)

Section 23-139. Development as a PUD or CPD.

A project may be developed as a planned unit development or a cluster plan development. The standards of the approved planned unit development or cluster plan development shall supercede the standards of this chapter.

(2002, ord 02-111, sec 2.)

Section 23-140. Exemptions.

- (a) Notwithstanding section 23-124, the director shall certify compliance with all County laws if requested under section 514A-40, Hawai'i Revised Statutes, to permit the developer to obtain an effective date for a final public report for a condominium property regime creating two units on a lot, if the project complies with applicable County requirements, except for the minimum building site area, minimum dimensions, and the provisions of this article, and, on or before June 19, 2001:
- (1) The declaration involving the condominium property regime had been filed with the bureau of conveyances, pursuant to section 514A-20, Hawai'i Revised Statutes, or
 - (2) A notice of intent had been filed with the real estate commission, pursuant to section 514A-31, Hawai'i Revised Statutes, or
 - (3) Fees had been committed for attorneys or surveys directly related to creating a condominium property regime on the lot.

Documentary evidence to qualify under paragraph (3) shall be submitted to the director within six months of the approval of this ordinance.

[Effective: September 25, 2002]

Under this section, the developer may also amend a declaration or notice of intent filed on or before June 19, 2001, creating more than two units, to allow the creation of only two units.

- (b) Notwithstanding section 23-124, the director shall certify compliance with all applicable County laws under section 514A-40(b), Hawai'i Revised Statutes, to permit the issuance of an effective date for a final public report creating two condominium units on a lot, if the lot contained, on June 19, 2001, two or more legal dwellings, either completed or with valid building permits, and the project complies with applicable County requirements, except for the minimum building site area, minimum dimensions, and the provisions of this article. The declaration establishing the condominium property regime shall be filed with the bureau of conveyances no later than one year after the effective date of this ordinance.
- [Effective: September 25, 2002]
- (c) Notwithstanding section 23-124 and section 23-140(a) and (b), the director shall certify compliance for no more than two units on a lot if the following exist:
- (1) The lot is in the County's RS zoned district;
 - (2) The lot contains at least two completed legal dwelling units;
 - (3) The lot has legal access on a State or County road having a minimum 20-foot wide pavement or on a private road built to current County-dedicable standards;
 - (4) The lot is serviced by a County or private water system with fire hydrants; and
 - (5) A minimum of two-off street parking spaces are provided for each unit.

(2002, ord 02-111, sec 2.)

Section 23-141. Assessments and rollback taxes on condominiums.

In all zoning districts, if a rezoning ordinance applicable to the property imposes a fair share assessment, impact fee, or other similar assessment payable upon subdivision, said fee shall be paid prior to final map approval for a condominium property regime or prior to the effective date of a final public report, if a condominium is created on the property. For purposes of rollback taxes under section 19-53, Hawai'i County Code, the creation of units by condominium property regime shall be treated as subdivision into lots of like size.

(2002, ord 02-111, sec 2.)

Section 23-142. Effect of modification of state law.

If state laws regulating condominium property regimes are amended or modified, the provisions of this chapter shall be interpreted to preserve the intent of this article.

(2002, ord 02-111, sec 2.)

Section 23-143. No retroactive effect.

This ordinance shall not affect the legal status of any project that had received an effective date for a final public report before the effective date of this ordinance.

[Effective: September 25, 2002]

(2002, ord 02-111, sec 2.)