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CITY AND COUNTY OF HONOLULU
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August 30, 2011

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The Honorable Ernest Y. Martin, Chair
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Martin and Councilmembers:

Subject: Request for Additional Accompanying Documentation Required for Processing the Land Use Ordinance Amendment of Resolution No. 11-205 Relating to Accessory Dwelling Units

As required by Ordinance 08-8, we are submitting our comments as to submission requirements.

The proposed bill will add a new section to the Land Use Ordinance (LUO) to include a new definition ("accessory dwelling unit"), as well as to create new development provisions for accessory dwelling units (ADUs) and amend the LUO Master Use Table to include ADUs as a permitted use in the Country and Residential Districts.

Ordinance 08-8, Section 2-24.3, specifies that, "prior to adoption of the resolution", the Director must assist the Council by:

- Advising the Council of any documentation "needed to satisfy the Director's usual requirements" for processing the amendments within 30 days of receiving the City Clerk's notice of introduction of the resolution;
- Providing maps, documents, and information in the possession of the Department within 30 days of receiving a written request from any Councilmember; and
- Advising the Council of the sufficiency of any documentation prepared to accompany the proposal within 30 days of submission of the documentation to the Director.

The Department of Planning and Permitting (DPP) typically prepares a report and recommendation for LUO amendments which follows a standard format. Supporting documentation for the LUO amendment should provide the DPP with information adequate to complete its report, and should address the following with regard to the specific proposal.

Problem Statement: The Resolution indicates several reasons justifying the proposal:

1) The Council notes that the Home for Life Task Force (HFLTF) was created to coordinate research and action to reduce barriers to aging in place and to facilitate multigenerational or accessible living, pursuant to Senate Concurrent Resolution No. 7, SD1, of the 2009 Hawaii Legislature, which requested the President of the Senate, the Speaker of the House of Representatives, and the Governor to create the task force.

2) The Council points out that the Resolution directed the task force to examine a number of issues, including building and zoning codes that present barriers to converting an existing single-family dwelling into a multigenerational or accessible home.

3) In January 2011, the HFLTF submitted an interim report to the Hawaii Legislature, which stated that accessory dwelling units hold enormous potential to encourage multigenerational living and aging in place, promote housing affordability, and help revitalize the construction industry. ADUs also offer a compromise between illegal rentals and onerous restrictions imposed by ohana dwelling units.

Provide documentation that adequately supports the above conclusions.

1) The Resolution refers to Appendix E, *Accessory Dwelling Units (ADU): Overview, Background, and Benefits*, which contains information on ADUs, multigenerational living, and ohana dwellings. Appendix E suggests that ADUs are a better source for multigenerational living, and workforce and affordable housing, and that the LUO has onerous restrictions on ohana dwellings which encourage illegal rentals. Explain how ADUs promote affordability and multigenerational living. Define "affordable housing" and identify what mechanisms would be required to ensure that ADUs remain affordable. Provide a current comparison of the amount of rent that ohana dwelling tenants pay versus the amount of rent other tenants pay for comparable rental units that are not ohana dwellings. How many of the units are rented at "affordable levels"?

2) Explain why the proposed ADU amendment would not undermine the LUO regulations relating to ohana dwellings. That is, considering that the LUO Ohana restrictions are intended to promote multigenerational living, aging in place, and housing affordability, how would the removal of those restrictions for ADUs better promote those objectives? Moreover, explain why the development of ADUs would not affect ohana development, in effect, competing for the availability of sewer, water and other facilities necessary for ohana development. On the other hand, if the proposed ADU amendment is superior to the existing ohana regulations, would it not be simpler to amend and/or supersede the ohana regulations by removing the occupancy requirement, i.e., the restriction that limits occupancy to persons who are related by blood, marriage or adoption to the family residing in the principal dwelling, but continue to prohibit the sale of such dwelling units by the Condominium Property Regime (CPR)?

3) Explain how amending the LUO regulations to allow ADUs would eliminate illegal rentals. The resolution restricts ADUs to ohana eligible areas, more specifically areas with adequate public facilities. What number or percentage of illegal rentals on Oahu is located in the ohana-designated areas, and what is the estimated number of illegal rental units that could be eliminated? How does this compare to the number of illegal dwelling units in areas that are not ohana-eligible?

4) Appendix E also states that there is a correlation between the added provisions in the LUO, regarding ohana dwellings, and the decline in the number of ohana dwellings constructed. It contends that fewer and fewer ohana dwellings were constructed after each amendment to the LUO section pertaining to ohana dwellings was made. In 1981, Section 46-4 of the Hawaii Revised Statutes was amended to require all counties to permit two dwellings on any residential lots with adequate facilities. In 1982, the Comprehensive Zoning Code was amended to prohibit ohana dwellings in a cluster housing development, a zero lot line, duplex lots, and planned development housing areas. Additional amendments to the LUO occurred in 1988 when limitations were placed on the size of ohana dwellings. (Note: Ordinance 06-15 removed the size limitation). Ohana dwellings were also considered as "accessory" units. In 1989, the State Law was amended to allow counties to determine if ohana dwellings should be allowed as a development option rather than a mandatory provision, and to set reasonable standards for ohana units. Ordinance 89-155 amended the LUO to give the City Council the authority to designate ohana-eligible areas, prohibit ohana dwellings in the R-3.5 Residential District, provide for limited expansion, and to establish a zoning adjustment permit to allow existing ohana dwellings, which had become nonconforming in size, to be rebuilt following destruction. Ordinance 92-101 added a family occupancy requirement and required the filing of a restrictive covenant prohibiting the conversion of the property to condominium property regime (CPR) the property. Identify and/or explain what problems were created by those amendments or provisions, and how and to what extent they affected the construction of ohana dwellings.

   What evidence suggests that an LUO amendment was a significant factor in the decrease? What other factors could have contributed to the decline in the construction of ohana dwellings on Oahu; e.g., was there a decrease in the number of ohana-eligible areas due to reduced availability of infrastructure that reduced the potential number of ohana units? Appendix E suggests that, conceivably, Honolulu could expect approximately 428 new ADUs per year. What is the estimated maximum number of ADUs that might be possible in the urban core of Honolulu, given the current sewer capacity and/or other facilities?

5) Explain why ADUs should be permitted in the R-10 Residential Districts, since the intent of R-10 (and R-20 Districts) is to provide for low-density, large lot residential developments, which are at the outskirts of urban development and have some development constraints. Explain why ADUs should be permitted in the R-10 Residential District, but not in the R-20 Districts.

6) Explain why ADUs should be permitted on nonconforming lots whereas ohana dwellings are not.

7) Explain how the potential doubling of density would not negatively affect neighborhoods planned for lower density. Ordinance 10-19 amended LUO Section 21-8.20A to facilitate the development of in-fill housing, i.e., up to a maximum of eight dwelling units may be placed on a single lot in the Residential or Country Districts if the lot meets minimum size requirements, and there is sufficient infrastructure capacity, including adequate street or right-of-way access, to assure public health and safety. The proposal to allow an additional eight ADUs on these lots would result in what might be called excessive density, exceed cluster-type housing density standards without the cluster housing permit review and controls, and overburden public facilities.

8) Explain how the proposal would ensure that the number of off-street parking spaces required for each additional bedroom, over one, would be provided. That is, rooms could be designated for other uses, e.g., home office, den, study or library, rather than a bedroom on the building permit plan to avoid the additional parking space requirement. Yet, if the room is used for bedroom purposes, the number of off-street parking spaces may be inadequate and result in traffic and street congestion in the neighborhood. Explain how the ADU proposal could be revised to close this loophole.

If you have any questions, please call me at 768-8000.

Very truly yours,

David K. Tanoue, Director
Department of Planning and Permitting

DKT:nw

APPROVED:

Douglas S. Chin
Managing Director

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 11-205

RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), AS AMENDED, RELATING TO ACCESSORY DWELLING UNITS.

WHEREAS, the Home for Life Task Force (HFLTF) was created pursuant to Senate Concurrent Resolution No. 7, SD1, of the 2009 Hawaii Legislature, which requested the President of the Senate, the Speaker of the House of Representatives, and the Governor to create the task force "to coordinate research and action to reduce barriers to aging in place and to facilitate multigenerational or accessible living"; and

WHEREAS, the Concurrent Resolution further directed the task force to examine a number of issues, including:

"(1) Building and zoning codes that present barriers to converting an existing single-family dwelling into a multigenerational or accessible home, and to:

(A) Identify any previous legislative attempts to facilitate the creation of multigenerational or accessible homes;

(B) Recommend legislation for reasonable and appropriate changes to building and zoning codes that will facilitate the creation of or conversion to multigenerational or accessible homes; . . .";

and

WHEREAS, the Concurrent Resolution requested that the members of the HFLTF be appointed from the following categories: master-planned community developers; architects or planners who have a background in universal design or are designated as certified aging in place specialists; contractors with experience developing multi-generational or accessible homes; contractors with experience renovating existing homes to facilitate aging in place; trade or professional organizations involved in developing housing; the Hawaii chapters of the American Institute of Architects, American Society of Interior Design, and American Physical Therapy Association; the Building Industry Association; AARP Hawaii; the State Disability and Communications Access Board; county building officials; the State Building Code Council, created by Act 82, Session Laws of Hawaii 2007; educational institution administrators; the Hawaii Association of Realtors; the Healthcare Association of Hawaii; private agencies that assist older adults and individuals with disabilities with housing issues; and members of the community who have first-hand experience with

independent living environments, "aging in place" and multi-generational or accessible living; and

WHEREAS, in its January 2011 Interim Report to the Hawaii Legislature ("Interim Report") the HFLTF found, among other things, that:

> "(7) Accessory Dwelling Units hold enormous potential to encourage multi-generational living and aging in place, promote housing affordability and help revitalize one of the largest sectors of our local economy, the construction industry. Accessory Dwelling Units are similar, but not synonymous with Ohana Dwelling Units. Accessory Dwelling Units are similar to Ohana Dwelling Units but with less restrictions. Other names for it are "Multigenerational living," "granny units," "in-law apartments," or "ECHO (Elder Cottage Housing Opportunity) housing." One of the key differences is that the occupants of an [sic] Ohana Dwelling Unit in Honolulu are limited to family, whereas Accessory Dwelling Units can be rented to anyone. An Accessory Dwelling Unit is a separate additional living unit, including separate kitchen, sleeping, and bathroom facilities, attached or detached from the primary residential unit, on a residential lot. Accessory Dwelling Units offer a compromise between illegal rentals and the onerous restrictions imposed by Ohana Dwelling Units."

(Interim Report at p. 16); and

WHEREAS, the HFLTF discussed Accessory Dwelling Units (ADUs) in greater detail in Appendix E to the Interim Report, a copy of which is attached hereto and made a part hereof; and

WHEREAS, Appendix E lists the following benefits of ADUs:

- Flexibility of use: Multigenerational living allows families to save while pooling their resources, yet owners also have the option to rent if family moves out.
- ADUs supplement the inventory of affordable rentals.
- ADUs create new housing units without government subsidy, which would generate recurring tax revenue and fees to the county and state.
- ADUs add to the workforce housing inventory.

- Ease of implementation: ADUs will use existing infrastructure. Existing government policies and personnel can readily be adapted to administer ADUs with minimal changes required. Ohana zones have already been mapped to identify areas where ADUs can be added.

- ADUs are consistent with Smart Growth principles. Most ADUs will be located within the urban core of Honolulu, reducing commute time and congestion. Also, ADUs are urban infill, meaning they are built within existing neighborhoods and use existing utility and roadway infrastructure.

- Economic stimulus to the construction industry.

- Increase government revenue such as property taxes, permit fees, and sewer fees.

- Senior income supplement: ADUs support aging in place by providing a supplemental source of income (rentals) for seniors. ADUs can also provide a companion living arrangement for security where a reduced rent is exchanged for assistance with chores or maintenance around the home.

(Interim Report at pp. 36-37.); and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended (RCH), provides that "[a]ny revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director [of planning and permitting]"; and

WHEREAS, ROH Chapter 2, Article 24, establishes procedures and deadlines for processing council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting and the Planning Commission are directed, pursuant to Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended, and ROH Chapter 2, Article 24, to process the proposed amendment to Chapter 21, ROH 1990 (the Land Use Ordinance), attached hereto as Exhibit "A," in the same manner as if the proposal had been proposed by the Director; and

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 11-205

RESOLUTION

BE IT FURTHER RESOLVED that the Director of Planning and Permitting is directed to inform the Council upon the transmittal of the director's report and the proposed Land Use Ordinance amendment to the Planning Commission; and

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, the Clerk shall transmit copies of this Resolution and the Exhibit attached hereto to the Director of Planning and Permitting and the Planning Commission of the City and County of Honolulu, and shall advise them in writing of the date by which the director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.

INTRODUCED BY:

Tom Berg

DATE OF INTRODUCTION:

JUL 22 2011

Honolulu, Hawaii

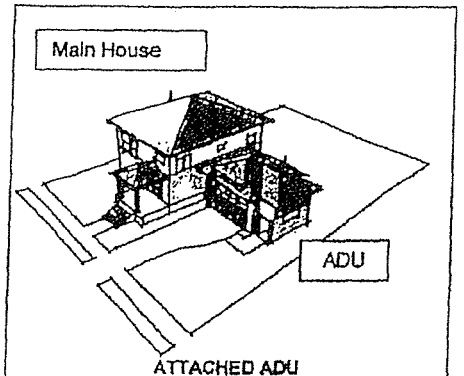
Councilmembers

Appendix E
Accessory Dwelling Units (ADUs): Overview, Background, and Benefits

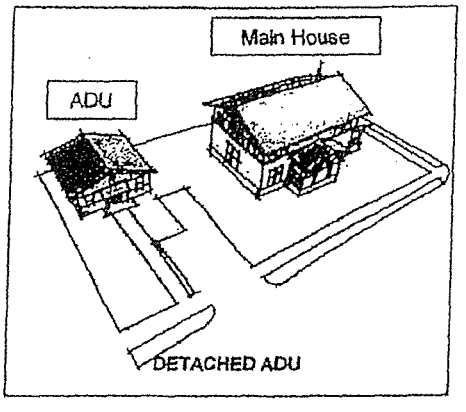
An Accessory Dwelling Unit (ADU) is a separate additional living unit, including separate kitchen, sleeping, and bathroom facilities, attached or detached from the primary residential unit, on a residential lot.

ADUs are similar to Ohana Dwelling Units but with less restrictions. Other names for it are "Multigenerational Living," "Granny Units," "In-law Apartments," or "ECHO (Elder Cottage Housing Opportunity) Housing." One of the key differences is that the occupants of an Ohana Dwelling Unit (in Honolulu) are limited to family, whereas ADUs can be rented to anyone. (See Comparison Chart)

A common misconception is that ADUs are equivalent to Bed and Breakfast homes (B&Bs) or Transient Vacation Units (TVUs). They are not the same. The key difference is the tenants' length of stay. B&Bs and TVUs as defined in the Honolulu Land Use Code, provide accommodations to transient occupants for periods of less than 30 days. On the other hand, single family dwellings and ADUs are intended for long term residents and this has a stabilizing effect on neighborhoods.



ATTACHED ADU



DETACHED ADU

Graphics from Santa Cruz California ADU Manual

ADUs offer a compromise between illegal rentals and the onerous restrictions imposed by Ohana Dwelling Units.

Organizations such as the AARP[1], HUD[2], EPA[3], the Joint Center for Housing Studies of Harvard University[4] and the SmartCode[5] specifically name "Accessory Dwelling Units" or ADUs as a form of supportive housing for seniors and a source of affordable rental housing. Although the goal of "home for life" is to remain in one's home for as long as possible, the level of care provided at home is generally not intended to substitute for a nursing home or skilled nursing facility that provides 24-hour care.

[1] http://assets.aarp.org/rgcenter/consume/d17158_dwell.pdf
[2] http://www.huduser.org/publications/PDF/adu.pdf
[3] http://www.epa.gov/aging/bhc/guide/
[4] http://www.jchs.harvard.edu/publications/seniors/lawler_w01-13.pdf
[5] http://www.transect.org/docs/AffHousingPolicyModule.pdf

Background of Ohana Dwelling Units and ADUs

Multigenerational dwellings were enacted by the State Legislature in 1981 (Act 229). The term "Ohana Dwellings Units" as they are commonly known, was coined by then Honolulu Mayor Eileen Anderson. Initially, there was no restriction that occupancy be limited to "ohana." The statute only required that the counties allow a second dwelling unit by right, on any residential property that had adequate public facilities (i.e., sewer, water, roads)[6].

The 1981 enabling legislation linked the importance of multigenerational living and housing affordability[7] – core concepts of aging in place.

Implementation of the State mandate to allow second units proved troublesome at the local level. In the early 1980s, the counties raised the objection that the law removed their ability to control residential density and direct urban growth. Thus, the State amended the law in 1989 (Act 313) to make second units optional rather than mandatory.[8]

Despite the objections of the counties, the 1988 Legislative Reference Bureau study indicates that none of the counties had repealed their Ohana ordinances.

Similar to Hawaii, California enacted a second dwelling unit law in 1982. California originally promoted second units primarily as a source of affordable housing in all jurisdictions. In an effort to remove barriers to affordable housing, the California law went further to state that local agencies could not create requirements "so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units...."[9]

Despite the new California state law, not all jurisdictions allowed second dwelling units. Those jurisdictions that resisted had problems with illegally built dwellings. For example, San Francisco refused to allow second units. Consequently, "in the 1980s and 1990s, many new buildings were constructed with ground floor spaces (e.g., a recreational room, a wet bar, a bathroom, and a separate entrance) that were easily convertible to a secondary unit."[10] In other words, in the absence of reasonable laws that permit increased density in areas of high market demand, the markets create illegal dwelling units.

The urban core of Honolulu is seeing a similar increase in the number of illegally built second dwelling units. This situation is aggravated by the fact that the core of Honolulu is essentially

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[6] City and County of Honolulu Department of Planning and Permitting report dated 11/3/05: http://www4.honolulu.gov/docushare/dsweb/Get/Document-39468/0zsj5mdc.pdf

[7] Legislative Reference Bureau: Ohana Zoning: A 5-Year Review (1988): http://lrbhawaii.info/lrbrpts/88/88ohana.pdf

[8] The following excerpt from HRS 46-4, the section currently in effect:

> ***Current* state law regarding second units** (HRS §46-4 County zoning):
> (c) Each county **may** adopt reasonable standards to allow the construction of two single family dwelling units on any lot where a residential dwelling unit is permitted.
>
> ***Original* Ohana law (as passed** in 1981):
> (c) Neither this section nor any other law, county ordinance, or rule shall prohibit the construction of two single family dwelling units **on any lot** where a residential dwelling unit is permitted; provided:
> (1) All applicable county requirements, not inconsistent with the intent of this subsection, are met, including building height, setback, maximum lot coverage, parking, and floor area requirements; and
> (2) The county determines that public facilities are adequate to service the additional dwelling units permitted by this subsection.

[9] San Francisco Planning + Urban Research Assoc. "Building More Secondary Units: A Painless Way to Increase the Supply of Housing" (2001) http://spur.org/publications/library/report/secondaryunits_080101

[10] Ibid.

built-out.[11] Under existing laws, very little space remains to legally add additional dwellings, either single family or high-rise. The market response to strict regulation of Ohana Dwelling Units has been a strong preference for illegal rental units.[12]

A comparison between Ohana Dwelling Units and Recreation Rooms used as illegal rentals (see Comparison Chart) highlights why illegal rentals are so attractive. Recreation Rooms are allowed in all residential zones, can be detached from the main house, have no required parking, have no sewer connection fee, and may not have a recurring utility fee (i.e., sewer base charge). Illegal rentals use the state and county infrastructure of sewers, water, and roadways but contribute minimally to taxes and fees. The current regulations actually create strong incentives for owners to prefer an illegal rental unit to a conforming one.

Other Jurisdictions

The Working Group on Codes and Laws is awaiting responses to requests for information from the Counties of Maui, Kauai and Hawaii. However, it is noted that the County of Maui currently allows "Accessory Dwelling Units". Maui has a maximum floor area size, requires that the Accessory Dwelling Unit have a separate entry and must not be attached to the main home. In contrast, the City and County of Honolulu's Ohana law requires the unit be attached to the main home but the Ohana maximum size is not limited. (See Comparison Chart)

The following discussion will focus on the City and County of Honolulu, as information on Ohana Dwelling Units (i.e., past studies and GIS maps) was readily available to help formulate a model for what could be expected if ADUs were to be implemented.

For example, approximately 17,000 properties are within the Ohana eligible zone. Most existing Ohana Dwelling Units and Ohana eligible properties are located within the urban core of Honolulu.[13] If ADUs are allowed only within the existing Ohana eligible zones, it would not increase the residential density above what would have been allowed under the Ohana Dwelling Unit scheme. In effect, allowing ADUs would mainly help to streamline the permit process.

Before the numerous restrictions, Ohana Dwelling Units were a very popular option for homeowners, but the number of Ohana Dwelling Units declined in direct proportion to the number of added restrictions.

Ohana Dwelling Units as a % of the total number of new dwelling permits:

- 1982-83[14]: 25%
- 1982 to 1990[15]: 11% (restrictions added)
- 2008[16]: 1.4% (further restrictions added in 1994)

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[11] Primary Urban Center Development Plan (Honolulu) http://honoluludpp.org/planning/Puc/Puc3.pdf

[12] 48% of every single family home sold in June 2010 within the metro-Honolulu region, contained a living area that was described as a second unit. http://allkindsdrafting.blogspot.com/2010/09/case-study-48-of-homes-sold-contain-second.html

[13] City and County of Honolulu Department of Planning and Permitting report dated 11/3/05: http://www4.honolulu.gov/docushare/dsweb/Get/Document-39468/0zsJ5mdc.pdf

[14] Office of Information and Complaint "Ohana Housing: A Program Evaluation" (1984) http://www.scribd.com/full/43559663?access_key=key-2607mkbu6vqcx63e7b6q

[15] Pacific Business News: http://www.bizjournals.com/pacific/stories/1998/01/12/focus3.html

[16] Honolulu Dept. of Planning & Permitting: http://www.honoluludpp.org/daily/calendaryear/yearly2008.pdf

- 2009[17]: 1.2%

not exactly no adequate facilities available - facilities getting older & can't supply adult housing.

In its first year of implementation, (1982-83) more Ohana Dwelling Units would have been built. However, up to 40% of Ohana applications were rejected because of inadequate sewers.[18] The very low number of Ohana permits issued in Honolulu (see chart) suggests that requirements are too restrictive. In 2008 and 2009, Ohana permits were 1.4% and 1.2% of New Dwelling permits. In fact, there were more Relocation permits than Ohana permits, meaning that people found it more desirable to haul an entire house from one property to another and spend the money to retrofit and bring it up to code rather than apply for an Ohana permit.

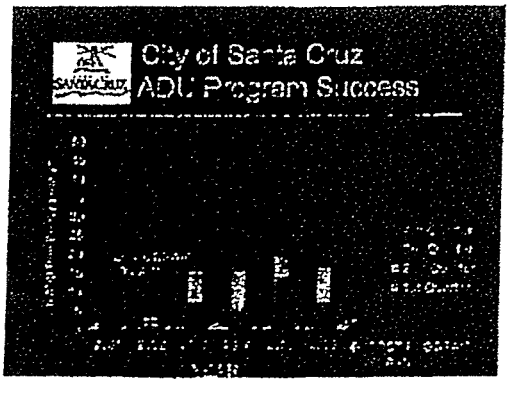
HONOLULU: # of Bldg Permits Issued		
	2008	2009
New Dwelling	788	856
Alt/Addn/Repair	10,291	9,532
New Ohana	11	10
Relocation	12	13

SOURCE: Honolulu Dept of Planning & Permitting website

In comparison, the County of Maui adopted "Accessory Dwellings" and does not limit occupancy to family. The County of Maui continues to enjoy a healthy rate of new ADUs.[19]

MAUI COUNTY: # of Bldg Permits Issued			
	2007	2008	2009
Single-Family, detached	1063	535	280
valuation	$ 263,121,848	$ 152,701,147	$ 71,145,201
avg cost per unit	$ 247,528	$ 285,423	$ 254,090
Accessory Dwelling	192	79	46
*valuation	$ 12,237,820	$ 4,846,610	$ 2,906,004
avg cost per unit	$ 63,739	$ 61,349	$ 63,174
% of Single-Family permits	18%	15%	16%

Similar to Hawaii, Santa Cruz, California, also has high real estate values and also struggles with housing affordability. In 2003, Santa Cruz streamlined their ADU law to make it easier for homeowners to get permits and financing. The table shows that from 2007-2009, the number of Accessory Dwelling permits in Santa Cruz jumped to approximately 50% of the number of single family permits issued. Comparatively:



- Santa Cruz's ADU permits = 50% of New Dwelling permits
- Maui's ADU permits = 16% of New Dwelling permits
- Honolulu's Ohana permits = 1% of New

[17] Honolulu Dept. of Planning & Permitting: http://www.honoluludpp.org/daily/calendaryear/yearly2009.pdf
[18] Legislative Reference Bureau: http://lrbhawaii.info/lrbrpts/88/88ohana.pdf
[19] Data compiled from Maui County website: http://www.mauicounty.gov/DocumentCenterII.aspx?FID=139
Although the chart shows declining numbers of Accessory Dwelling Permits, the overall construction industry experienced a decline and is reflected in a reduced number of permits in single family construction as well.

Dwelling permits... we need to change!

According to a Legislative Reference Bureau study, "[Even] when used for non-family members, [Ohana units] help to alleviate the housing shortages experienced by all four counties. The family restriction works as long as there are family members who are available to occupy the Ohana Dwelling Unit. But young couples may eventually move to their own home, and elderly relatives will eventually pass on. If the unit must remain vacant because no family member is available to live there, not only is a valuable resource wasted, but the family may be caught in a financial bind if it is unable to realize any income at all from the unit to offset the payments on the debt incurred to build the unit. In a worst-case situation, this restriction could devastate the family if the loss of income from the unit that must remain vacant leads to foreclosure on the entire lot."[20]

Benefits of ADUs

Flexibility of Use: Multifamily living allows families to save while pooling their resources, yet owners also have the option to rent if family moves out. Multigenerational living works best when there is a separation between units.

Affordable Rentals: ADUs also supplement the inventory of affordable rentals. ADUs rent for close to or below Department of Housing and Urban Development established rental rates. This is due in part to the requirement that ADUs require the owner to occupy either the main house or the ADU unit versus absentee owners. Landlords that live on the premises tend to be more selective of their tenant and willing to compromise on the rent for a better tenant.

Create New Housing Units: If Honolulu allowed ADUs and had similar adoption rates as Santa Cruz, it could expect approximately 428[21] new affordable housing units per year. These units would be built and managed without any government subsidy and in fact would generate reoccurring tax revenue and fees for the county and state.

Workforce Housing: An alternative analysis of the number of anticipated ADUs is to consider Honolulu's historical average of 1,500 new single family dwellings permitted each year x 25%[22] = 375 new ADUs per year (privately funded). Comparatively, Hawaii Housing Finance and Development Corporation (HHFDC) plans to deliver 380 (government subsidized) new or preserved housing units in 2010.[23] As the Department of Business, Economic Development, and Tourism (DBEDT) acknowledges, "market forces alone will not deliver necessary housing." Statewide, approximately 23,000 affordable and workforce housing units are needed.[24]

Ease of Implementation: ADUs will use existing infrastructure, not only utilities such as roads and sewer lines, but also personnel. Existing government policies and personnel can readily be adapted to administer ADUs with minimal changes required. Ohana zones have already been mapped to identify areas where ADUs can be added.

Built Green: The proposed State Building Codes will require all additions/alteration work to be energy efficient. ADUs are consistent with Smart Growth principles. Most ADUs will be located within the urban core of Honolulu, reducing commute time and congestion. Also, ADUs are

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[20] Legislative Reference Bureau study. http://lrbhawaii.info/lrbrpts/88/88ohana.pdf

[21] According to City and County of Honolulu Dept. of Planning and Permitting website, 856 building permits were issued for new dwelling units in 2009. 50% of this amount is 428 new ADUs.

[22] 25% is percentage of new Ohana Dwelling Units built in first year they were legalized in 1982-83.

[23] DBEDT: HHFDC 2010 Yearly Activity Plan. http://hawaii.gov/dbedt/programs/2010/yap-hhfdc.pdf

[24] DBEDT: HHFDC 2009 Yearly Activity Plan. http://hawaii.gov/dbedt/programs/2009/yap-hhfdc.pdf

urban infill, meaning they are built within existing neighborhoods and use existing utility and roadway infrastructure. Without infill development, the only alternative is to up-zone residential to apartment density or rezoning of conservation or agricultural land, converting green fields into urban use. In 1984, the number of Ohana Dwelling Units built at that time helped reduce sprawl: "theoretically, about 45 acres of additional land would have been required had these additional units been constructed in a typical subdivision."[25]

Economic Stimulus: In a slow economy, ADUs can provide a more cost-effective option for homeowners. Interior Alterations generally cost less than building a New Addition. Also, since the ADU is built on the same property, there is no land acquisition cost. A 1984 program evaluation of Ohana housing reiterates: "It was a slow year for single family residential construction on Oahu in 1982-83. However, in the program's first year of implementation, Ohana units comprised roughly one-fourth of all single family construction. Without the Ohana zoning provisions, these units probably would not have been built."[26]

Increase Government Revenue: ADUs can help stimulate the construction industry, which will produce a ripple effect as homeowners secure financing, purchase, build and rent their homes. Increasing property taxes, permit fees, sewer fees are all byproducts of installing ADUs.

Senior Income Supplement: ADUs support aging in place by providing a supplemental source of (rental) income and thus enhancing a sense of independence. ADUs can also provide a companion living arrangement for security and where a reduced rent is exchanged for assistance with chores or maintenance around the home. For seniors, risk of falls and fears about neighborhood crime rates may be reduced by having someone they can trust living in the ADU.

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[25] Office of Information and Complaint "Ohana Housing: A Program Evaluation" (1984) http://www.scribd.com/full/43559663?access_key=key-2607mkbu6vqcx63e7b6q

[26] Ibid

Comparison of **ADU** vs **Ohana Unit** vs **Rec Room**

5/28/11

		Accessory Dwelling Unit *(proposed)*	Ohana (currently allowed)	Rec Rooms (as illegal rental unit)
Min Lot Size req'd	R-3.5:	- Not allowed	- Not allowed	*Allowed (on any lot size)*
	R-5:	5,000 sq ft	5,000 sq ft	*Allowed (on any lot size)*
	R-7.5:	7,500 sq ft	7,500 sq ft	*Allowed (on any lot size)*
	R-10:	10,000 sq ft	10,000 sq ft	*Allowed (on any lot size)*
	Country	1 acre	1 acre	*Allowed (on any lot size)*
	AG-1	- Not allowed	5 acres	- Not allowed
	AG-2	- Not allowed	2 acres	- Not allowed
Max Floor Area Max Lot Coverage		To be determined - 50% max lot coverage	Unlimited - 50% max lot coverage, 25% in Country	+/- 1,000 sq ft or what would be "Accessory" to Main House. - 50% max lot coverage, 25% in Country
Attached or Detached to main house?		Attached or Detached	Attached (Detached Ohana's are nonconforming)	Attached or Detached
Parking Req'd		1 stall min; 1 stall per bedroom	2 stalls min	None (in general: 1 stall if increasing floor area of house over 3,000 sf - As per LUO table 21-6.1)
Occupancy		Unrestricted	Restricted to occupants related by blood, marriage, or adoption to family living in main house	Often rented as a dwelling unit illegally.
Kitchen		Full Kitchen	Full kitchen	Bar Area only, but often illegal full kitchen
Floor Plan restrictions		none	none	Bedrms/Closets not allowed; subsequent alterations often made without a permit
Legal Forms req'd		Declaration of Restrictive Covenants	Declaration of Restrictive Covenants	Affidavit or Declaration of Restrictive Covenants
Sewer Connection Fee		None	$5,541	None
Monthly Sewer Fee		Additional $68.39/mo for 2nd dwelling + usage fee	Additional $68.39/mo for 2nd dwelling + usage fee	No additional charge, depending on configuration when inspected
BWS 2nd meter		Allowed (extra charges apply)	Allowed (extra charges apply)	- Not allowed
HECO 2nd meter		Allowed (extra charges apply)	Allowed (extra charges apply)	- Not allowed
Trash		grey, blue and green bin	grey, blue and green bin	Increased use/demand, no added bins

CONCLUSION:

- Rec Rooms that are rented illegally, have all the benefits of Ohana Units, w/o contributing taxes or paying the required fees.
- Ohana Units are the most restrictive and have the highest fees.
- ADU's – remove major incentives to create illegal rental units; help ease housing affordability.

EXHIBIT A

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

RELATING TO ACCESSORY DWELLING UNITS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. The purpose of this ordinance is permit accessory dwelling units in certain zoning districts.

SECTION 2. Section 14-1.6, Revised Ordinances of Honolulu 1990 ("Use of public sewers"), is amended by amending subsection (b) to read as follows:

"(b) Permit to Connect.

(1) A permit to connect shall be obtained from the department before any connection or reconnection may be made to a public sewer.

(2) Said permit is issued only for the facility or improvement shown on the original plans and specifications or application.

(3) Where any money or payment is due the department for a connection, the full amount shall be paid before the connection is made.

(4) Said permit will be issued only after an application for a building permit has been filed.

(5) All connections for industrial wastewater shall require an industrial wastewater discharge permit before a permit to connect is issued.

(6) Within 15 calendar days of receipt of a permit application to connect an accessory dwelling unit, the director shall approve the application as submitted, approve the application with modifications and/or conditions, or deny the application and provide the applicant with a written explanation for the denial."

SECTION 3. Section 14-10.1, Revised Ordinances of Honolulu 1990 ("Liability for payment of wastewater system facility charges"), is amended by amending subsection (a) to read as follows:

"(a) New Applicants for Service.

(1) All applicants for structures to be completed after the effective date of this article shall be liable for the payment of wastewater system facility

charges, provided, they will be served directly or indirectly by the city's wastewater system.

(2) Applicants for structures on any existing vacant, residential zoned property shall be exempt from paying a system facility charge for connecting one equivalent single-family dwelling unit to the city's wastewater system. In the event more than one equivalent single-family dwelling unit is connected to the system, system facility charges shall be assessed for each additional equivalent single-family dwelling unit connected.

(3) Applicants for structures on any vacant residential zoned property that is created in accordance with city subdivision rules and regulations after the effective date of this article shall be assessed system facility charges for each equivalent single-family dwelling unit connected to the system.

(4) Applicants for structures to be completed after the effective date of this article which will initially be served by either private individual wastewater disposal systems or private wastewater treatment plants shall be subject to a deferred wastewater system facility charge. Payment of the deferred charge shall not be required until such time as connection is actually made either directly or indirectly to the city's wastewater system.

(5) All other applicants for structures to be completed after the effective date of this article which will be served either directly or indirectly by the city's wastewater system shall be subject to the wastewater system facility charge, including federal, state, city, charitable, religious or other tax-exempt entities; except that the wastewater system facility charge shall be reduced for low-income housing projects in accordance with Section 14-10.6[.]; and provided that applicants for accessory dwelling units created in accordance with Section 21-8.__ shall not be subject to the wastewater system facility charge. For the purposes of this subsection, "accessory dwelling unit" shall mean the same as is defined in Section 21-10.2."

A BILL FOR AN ORDINANCE

SECTION 4. Table 21-3, Revised Ordinances of Honolulu 1990, as amended ("Master Use Table"), is amended by amending the "Dwellings and Lodgings" category to add a new "Accessory Dwelling Units" use category to read as follows:

"TABLE 21-3
MASTER USE TABLE

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

KEY:
- Ac = Special accessory use subject to standards in Article 5
- Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
- C = Conditional Use Permit-major subject to standards in Article 5; public hearing required
- P = Permitted use
- P/c = Permitted use subject to standards in Article 5
- PRU = Plan Review Use

	ZONING DISTRICTS																				
USES (Note: Certain uses are defined in Article 10.)	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1
DWELLINGS AND LODGINGS																					
Accessory dwelling units				P[1]	P[1]	P[1]															

[1]See standards in Article 8"

SECTION 5. Chapter 21, Article 8, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new section to be appropriately designated by the revisor of ordinances and to read as follows:

"**Sec. 21-8. Housing–Accessory dwelling units.**

(a) The purpose of this section is to allow the creation of accessory dwellings for the purpose of alleviating housing shortage.

(b) It is intended that accessory dwelling units be allowed only in areas where wastewater, water supply and transportation facilities are adequate to support additional density.

(c) An accessory dwelling unit may be located on a lot in the R-5, R-7.5, R-10 and country zoning districts, with the following limitations:

(1) The maximum size of an accessory dwelling unit shall not be limited but shall be subject to the maximum building development standard in the applicable zoning district.

(2) Accessory dwelling units shall not be permitted on lots within a zero lot line project or on duplex unit lots.

(3) Each primary residence shall have a maximum of one accessory dwelling unit. No more than eight accessory dwelling units shall be permitted on any single lot. More than eight accessory dwelling units shall be processed under the established procedures for cluster housing, planned development housing or subdivision.

(4) An accessory dwelling unit shall not be allowed as an accessory to an ohana unit.

(5) The owner-occupant of the accessory dwelling unit shall occupy the primary residential unit or the accessory dwelling unit.

(6) One off-street parking space shall be provided for the accessory dwelling unit. One additional off-street parking space shall be provided for each bedroom over one in the accessory dwelling unit.

(7) The owner or owners of the lot shall record in the bureau of conveyances of the State of Hawaii, or if the lot is subject to land court registration under HRS Chapter 501, they shall record in the land court, a covenant that neither the owner or owners, nor the heirs, successors or assigns of the owner or owners shall not use the condominium property regime established by HRS Chapter 514A to separate the ownership of an accessory dwelling uni from its primary dwelling. The covenant shall be recorded on a form approved by or provided by the director and may contain such terms as the director deems necessary to ensure its enforceability. The failure of an owner or of an owner's heir, successor or assign to abide by such a covenant shall be deemed a violation of Chapter 21 and be grounds for enforcement of the covenant by the director pursuant to Section 21-2.150, et seq., and shall be grounds for an action by the director to require the owner or owners to remove, pursuant to HRS Section 514A-21, the property from a submission of the lot or any portion thereof to the condominium property regime made in violation of the covenant.

(8) All other provisions of the zoning district shall apply.

(d) An accessory dwelling unit may be located on a nonconforming lot as long as all other applicable development standards are met.

(e) An accessory dwelling unit may be attached or detached from the principal dwelling unit and may have its own entry.

(f) An accessory dwelling unit may have a full kitchen."

SECTION 6. Chapter 21, Article 8, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new section to be appropriately designated by the revisor of ordinances and to read as follows:

"**Sec. 21-8. Procedures for approval of accessory dwelling units.**

The department, with the assistance of other agencies, as appropriate, shall adopt rules relating to accessory dwelling units, including rules to establish the following:

(a) Procedures for designating areas eligible for accessory dwelling units, including rules providing that:

(1) Only those areas that are determined by the appropriate government agencies to have adequate public facilities to accommodate accessory dwelling units shall be eligible thereto.

(2) Upon a finding by the responsible agency that wastewater treatment and disposal, water, or transportation facilities are not adequate to accommodate additional accessory dwelling units in any eligible area, no more accessory dwelling units shall be approved in that area.

(3) Notwithstanding the adequacy of public facilities, if the owners of 60 percent of the residential zoned lots in the same census tract sign a petition requesting that residential-zoned lots in the census tract be excluded from eligibility for accessory dwelling units and submit the petition to the department, no new accessory dwelling units shall be approved on residential-zoned lots in that census tract from the date the department certifies the validity of the petition. For purposes of this subdivision, the term "owners" shall mean the fee owner of property that is not subject to a lease and shall mean the lessee of property that is subject

to a lease. For purposes of this subdivision, the term "lease" shall mean "lease" as that term is defined in HRS Section 516-1.

(4) The director may adopt rules and regulations pursuant to HRS Chapter 91 to establish procedures for, to implement and to further define the terms used in subdivision (3). These rules may include, but not be limited to, provisions relating to the form of petitions, determination of necessary signatures where there is more than one owner or when the owner is an entity, the signing of petitions, validity of signatures, the withdrawal of signatures, the time frame for collection of signatures, verification of signatures, certification of results, duration of the prohibition and procedures upon the change of census tract boundaries.

(b) Standards and criteria for determining adequacy of public facilities, to include but not be limited to:

(1) Width, gradients, curves and structural condition of access roadways.

(2) Water pressure and sources for domestic use and fire flow.

(3) Wastewater treatment and disposal.

(4) Any other applicable standards and criteria deemed to be appropriate for the safety, health and welfare of the community."

SECTION 7. Section 21-10.2, Revised Ordinances of Honolulu 1990, is amended by adding a new definition of "Accessory dwelling unit" to read as follows:

""Accessory dwelling unit" means a second dwelling unit, including separate kitchen, bedroom and bathroom facilities, attached or detached from the primary residential unit."

SECTION 8. On an annual basis, the Director of Planning and Permitting shall submit a written status report to the Council documenting the number of new accessory dwelling units constructed each calendar year, the geographic location of the new accessory dwelling units, and the average size and floor area of new accessory dwelling units. The status report shall be submitted to the Council no later than December 31 of each year.

SECTION 9. The initial areas considered for designation of eligibility of accessory dwelling units shall be those areas that are eligible for ohana accessory dwellings. Within 30 days of the effective date of this ordinance, the Director of Planning

and Permitting shall identify additional areas that have water and wastewater system design capacity sufficient to accommodate additional dwellings without detriment to the water and wastewater systems or to other users. Within 120 days of the effective date of this ordinance, the Director of Planning and Permitting shall prepare maps identifying areas eligible for accessory dwelling units. These maps shall be available for public inspection.

SECTION 10. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material or the underscoring.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 11. This ordinance shall take effect upon its approval.

INTRODUCED BY:

_____

_____

_____

_____

_____

_____

_____

_____

DATE OF INTRODUCTION:

_____
Honolulu, Hawaii

_____
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

_____
PETER B. CARLISLE, Mayor
City and County of Honolulu