CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 15-72

RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), AS AMENDED, RELATING TO BED AND BREAKFAST HOMES.

WHEREAS, the Council finds that Bed and Breakfast homes are a popular form of temporary lodging for visitors to the City; and

WHEREAS, there are a number of unpermitted Bed and Breakfast homes in the City, and operation of these unpermitted establishments at times adversely impact the neighborhoods in which they are located because they are unregulated; and

WHEREAS, the Council wishes to amend the Land Use Ordinance to permit a limited number of new Bed and Breakfast homes, and to strengthen the regulation of those homes to mitigate the impact of Bed and Breakfast homes on surrounding neighborhoods; 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, Section 6-1513, RCH, further provides that "[a]ny such revision or amendment shall be referred to the director and the planning commission by resolution, which resolution shall be accompanied by supporting documentation sufficient to satisfy the director's usual requirements for the commencement of processing"; and

WHEREAS, for the purposes of the RCH, the term "zoning ordinances" refers both to the codification of land use standards in the Land Use Ordinance and to ordinances zoning and rezoning particular parcels of property (Section 6-1514, RCH); and

WHEREAS, ROH Chapter 2, Article 24, establishes procedures and deadlines for the processing of 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; and

WHEREAS, it is the desire of the Council that the Director of Planning and Permitting and the Planning Commission process the proposed amendment to Chapter

RESOLUTION

21, Revised Ordinances of Honolulu (ROH) 1990, as amended, attached hereto as Exhibit "A"; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting is directed, pursuant to Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended, 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

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:

DATE OF INTRODUCTION:

MAR 1 1 2015
Honolulu, Hawaii

Councilmembers

EXHIBIT A

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

RELATING TO BED AND BREAKFAST HOMES.

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

SECTION 1. Findings and Purpose. The purpose of this ordinance is to amend the Land Use Ordinance by removing the prohibition on new bed and breakfast homes and to establish bed and breakfast homes as a conditional use in the residential, apartment, and country districts subject to standards and restrictions, and to require a conditional use permit (minor) for the use. The standards and restrictions and the permitting process are intended to minimize the impact of bed and breakfast homes in residential, apartment, and country districts and maintain the integrity and character of such neighborhoods.

SECTION 2. Section 21-2.40-1, Revised Ordinances of Honolulu 1990, as amended ("Minor permits"), is amended by adding a new subsection (d) as follows:

"(d) Application and Processing for a Bed and Breakfast Home.

(1) Only persons having a real property tax home exemption under Section 8-10.4 for the tax map key parcel proposed for a bed and breakfast home are eligible for a conditional use permit (minor) for the bed and breakfast home.

(2) All permit applications for bed and breakfast homes must include:

(A) The name, address, and phone number of the applicant and verification that the applicant is the owner of the zoning lot;

(B) The tax map key number of the tax map key parcel on which the bed and breakfast is proposed;

(C) Certification that the owner's primary residence is on the same tax map key parcel as the bed and breakfast home; and

(D) A site and/or floor plan identifying the location of guest parking on the tax map key parcel and any bedrooms to be used by the guests.

(3) An applicant seeking a permit for a bed and breakfast home shall submit an application to the director for processing. The director shall number stamp the application and process it in the order in which it is received.

(4) Notwithstanding Section 6-41.1(a)(8), the fee for a conditional use permit (minor) for a bed and breakfast home is $500.00. All fees for bed and breakfast home permits, including all renewals thereof, are to be used for the city's regulation of short-term rental accommodations. As used herein, "short-term rental accommodations" means provision of accommodations for compensation for less than 30 consecutive days, but does not include a hotel room, units operated as a condominium hotel as defined in Section 467-30, Hawaii Revised Statutes, or a time share unit.

(5) Within 45 days of the director's acceptance of the completed application, the director shall either:

(A) Approve the application as submitted;

(B) Approve the application with modifications and/or conditions; or

(C) Deny the application and provide the applicant with a written explanation for the denial.

Provided, however, that if an applicant substantially amends an application after acceptance by the director, the director has up to 45 days from the date of such amendment to act on the application as provided in this section."

SECTION 3. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-2.150-3 to read as follows:

"**Sec. 21-2.150-3 Information required in advertisement for bed and breakfast home—Notice and penalty.**

(a) If an advertisement does not have the information required by Section 21-5. (n), the owner or the rental agent of the bed and breakfast home being advertised shall, within seven business days of receiving such notice, terminate the dissemination of any advertisements that do not contain the required information, and shall, within seven business days of receiving such notice, take action to cure the violation. Failure to do so subjects the owner or rental agent to the civil fines provided in subsection (b).

(b) Any person violating this section shall be subject to the following civil fines:

(1) For a first violation, an initial fine of $1,000; and daily fines of $1,000 per day until the violation is corrected;

(2) For a second violation occurring within a twelve month period, a fine of $3,000; and daily fines of $3,000 per day until the violation is corrected. Recurring violations occur when the previous violation has been corrected and a subsequent infraction of the same code occurs;

(3) For a third violation occurring within a twelve-month period, an initial fine of $5,000; and daily fines of $5,000 per day until the violation is corrected.

(c) Except as otherwise provided in this section, the provisions of Section 21-2.150-2 shall apply to the administrative enforcement for violations of Sections 21-5. (n)."

SECTION 4. Table 21-3, Revised Ordinances of Honolulu, as amended ("Master Use Table"), is amended by adding a "Bed and breakfast homes" use entry in the "Dwellings and Lodgings" 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																					
Bed and breakfast homes				Cm	Cm	Cm	Cm	Cm	Cm												

"

A BILL FOR AN ORDINANCE

SECTION 5. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is repealed.

"[**Sec. 21-4.110-2 Bed and breakfast homes—Nonconforming use certificates.**

(a) The purpose of this section is to prohibit bed and breakfast homes, while permitting certain bed and breakfast homes which have been in operation since prior to December 28, 1989 to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section.

(b) The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence of a bed and breakfast home as of December 28, 1989 may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.

(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use, but shall be treated as an illegal use.

(d) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:

(1) between September 1, 2000 and October 15, 2000; then

(2) between September 1 and October 15 of every even-numbered year thereafter.

Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28

days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 28 days of bed and breakfast occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

(e) Except those bed and breakfast homes which are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts. Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.

(f) Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:

(1) Detached dwellings used as bed and breakfast homes shall be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.

(2) No more than two guest rooms shall be rented to guests, and the maximum number of guests permitted within the bed and breakfast home at any one time shall be four.

(3) There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.

(4) One off-street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.

(g) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises.]"

SECTION 6. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended ("Specific Use Development Standards"), is amended by adding a new section to be appropriately designated by the revisor of ordinances and to read as follows:

A BILL FOR AN ORDINANCE

"**Sec. 21-5. Bed and breakfast homes.**

(a) As used in this section:

"Permit" means the conditional use permit (minor) for a bed and breakfast home; and

"Owner" means the person having a real property tax home exemption under Section 8-10.4 for the tax map key parcel on which the bed and breakfast home is located.

(b) The number of permits issued and outstanding will be limited as follows:

(1) City-wide limit. The total number of permits in the city cannot exceed one-half of one percent of the total number of properties classified as residential by the director of budget and fiscal services pursuant to Section 8-2.2 for the 2009-2010 fiscal year. This 2009-2010 number is the permanent city-wide limit for purposes of this subsection.

(2) Limit in each council district. The number of permits issued for properties located in each council district cannot exceed one-third of the city-wide limit established in subdivision (1). The council districts in existence on the effective date of this ordinance will hereafter be used for determining these limits, notwithstanding subsequent reapportionment.

(3) The director shall time stamp each permit application upon acceptance thereof, and shall process each application in the order received. Applications received after the applicable permit limits have been reached will be placed on a waiting list and be eligible for processing in the order received.

(c) The permit for the bed and breakfast home must be in the name of the owner. The owner, or in the event of real property held jointly, by the entirety, or in common, at least one individual owner, shall be present on the property at all times that the property is being used as a bed and breakfast home.

(d) The owner shall hold a current transient accommodations tax (TAT) license and a general excise tax (GET) license for the bed and breakfast home in his or her name.

(e) No more than three bedrooms in a bed and breakfast home may be rented to guests, and the maximum number of guests per bedroom is two.

(f) An owner may not hold more than one permit at one time.

(g) Section 21-2.90-2(c) and Section 21-7.40(c) notwithstanding, there can be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.

(h) Section 21-2.90-2(c) notwithstanding, off-street parking spaces must be provided for the guests staying at the bed and breakfast home.

(i) The permit cannot run with the land and will terminate upon the sale or transfer of the real property. A new owner may apply for a permit pursuant to the requirements of this chapter.

(j) The owner shall promptly notify the director in writing of the transfer of any interest in the bed and breakfast home or if he or she will no longer be residing in the bed and breakfast home.

(k) The bed and breakfast home must be operated in accordance with the following standards:

(1) The owner shall provide his or her name and contact telephone number to the director and the residents on all adjoining properties.

(2) The owner shall maintain a register setting forth the names of all guests, the dates of their respective stays, and the year, make, model and license plate number of the vehicles used by the guests. The register shall be preserved for the term of the permit and until such time as the permit is renewed or is terminated. The director, the director's authorized agent, or the police department shall be provided access to the register upon request.

(3) The current permit must be posted in the interior entryway of the bed and breakfast home.

(4) The owner shall establish and enforce written house rules, copies of which shall be provided to each guest and posted in a prominent location in the bed and breakfast home. The rules must, at a minimum, prohibit any activity or noise that is in violation of Chapter 342F, Hawaii Revised Statutes, and any rules promulgated pursuant thereto. A copy of the house rules must be submitted with the application for the permit or any renewal thereof.

(l) The owner shall respond promptly to any complaint received from neighboring residents regarding the operation of the bed and breakfast home. The owner shall maintain a log of every complaint received from neighboring residents, including the name and address of the neighbor, the date and time of the complaint, a detailed description of the complaint, and a detailed description of the response to the complaint. The owner shall keep the neighbor informed as to how the complaint was handled. Upon request, the director or the director's authorized agent must be provided access to the complaint log.

(m) If the director receives a complaint regarding a disruption by guests staying in a bed and breakfast home, the director shall make an investigation into the alleged violation, provided the director has verifiable proof that a violation has occurred. "Verifiable proof" means a valid police report number or other documentation from the police department, or documentation that a report was filed with the Department of Health or other agency charged with enforcing the conduct contained in the complaint, stating that an infraction has occurred. If the director finds that the owner did not resolve the issue in an appropriate manner, the director shall:

(1) For the first violation within the permit period, issue a warning to the owner that a violation has occurred;

(2) For the second violation of the same kind within the permit period, issue a fine of $500.00;

(3) For the third violation of the same kind within the permit period, issue a fine of $1,000.00;

(4) For the fourth violation of the same kind within the permit period, terminate the permit.

(n) Advertisements.

(1) Information required: The owner and any rental agent thereof, shall include, in all advertisements for occupancy of the unit, the permit number of the bed and breakfast home. For the purpose of this subsection and Section 21-2.150-3:

(A) "Advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by or at the direction of the owner or the owner's lessee of a bed and breakfast home in any manner or by

any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and through the internet; and

(B) "Rental agent" means any person who lists, solicits for prospective lessees or renters for, leases or offers to lease, or rents or offers to rent, a bed and breakfast home owned by another person.

(o) Upon a showing of reasonable cause that a violation under this article has occurred, and upon 24 hours' prior written notice by certified mail, return receipt requested delivered to and received by the owner, the director or the director's authorized agent must be granted access to the bed and breakfast home solely for the purpose of inspecting the premises to ensure compliance with the section pertaining to the alleged violation.

(p) Permit expiration and renewal.

(1) The permit expires two years after issuance, unless revoked prior to expiration. If a permit is suspended, time shall continue to run for measuring the period of that permit's validity.

(2) Not more than 90, but not less than 45 days before the expiration of a permit, the owner may apply for a renewal of the permit on an appropriate application form provided by the director. The renewal is subject to the same requirements as an application for a new permit. The renewal application must be accompanied by satisfactory evidence, such as a tax clearance certificate signed by the State of Hawaii director of taxation, showing that the owner does not owe the State of Hawaii any delinquent general excise taxes, transient accommodations taxes, penalties, or interest, in connection with operation of the bed and breakfast home.

(3) A grace period of not less than thirty days will be granted for an owner who does not renew his or her permit by its expiration date, during which period the bed and breakfast home permit shall continue in full force and effect. The owner shall pay a late fee of $100 in addition to any renewal fees.

(4) The renewal application must be accompanied by a renewal fee that is the same as the fee for a new permit application.

(5) A violation of any provision of this section during the term of the previous permit period may be grounds for nonrenewal of the permit if the violation has not been corrected at the time of renewal.

(q) Revocation or suspension of permit hearing.

(1) The director may revoke or suspend a permit for:

(A) Violation of this article; or

(B) Misrepresentations, or willful, substantial omissions of material facts in the permit application.

The director shall provide the owner written notice of a revocation or suspension decision, stating the grounds for the suspension or revocation. The suspension or revocation takes effect 10 days following the receipt of notice of the revocation or suspension, unless a timely appeal has been filed."

SECTION 7. Section 21-5.350, Revised Ordinances of Honolulu 1990, as amended ("Home occupations") is amended by amending subsection (i) to read as follows:

"(i) The following activities are not permitted as home occupations:

(1) Automobile repair and painting. However, any repair and painting of vehicles owned by household members shall be permitted, provided that the number of vehicles repaired or painted shall not exceed five per year per dwelling unit. A household member providing any legal document showing ownership of an affected vehicle shall be deemed to satisfy this requirement.

(2) Contractor's storage yards.

(3) Care, treatment or boarding of animals in exchange for money, goods or services. The occasional boarding and the occasional grooming of animals not exceeding five animals per day shall be permitted as home occupations.

(4) Those on-premises activities and uses which are only permitted in the industrial districts.

(5) Use of dwellings or lots as a headquarters for the assembly of employees for instructions or other purposes, or to be dispatched for work to other locations.

(6) Sale of guns and ammunition.

(7) Mail and package handling and delivery businesses.

(8) Use of the dwelling as a bed and breakfast home."

SECTION 8. Definition of Bed and Breakfast Homes. Sec. 21-10.1 ("Definitions"), is amended by amending the definition of "bed and breakfast home" as follows:

""Bed and breakfast home" means a use in which overnight accommodations are provided to guests for compensation, for periods of less than 30 days, [in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling.] on the same tax map key parcel as that which has been granted a real property tax home exemption for the bed and breakfast owner under Section 8-10.4."

SECTION 9. Ordinance material to be deleted or 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.

SECTION 10. An owner of a bed and breakfast home who holds a valid and current nonconforming use certificate, issued pursuant to Section 21-4.110-2 on the day before the effective date of this ordinance, may continue to operate the bed and breakfast home thereunder until the nonconforming use certificate's expiration date. If the owner wishes to continue to operate the bed and breakfast home after expiration of the nonconforming use certificate, he or she shall apply for, and must be permitted to apply for, either of the following permits under Chapter 21, Revised Ordinances of Honolulu, not less than 45 days prior to the expiration of the nonconforming use certificate:

(a) A conditional use permit (minor) for a bed and breakfast home; or

(b) An existing use permit.

If neither of the foregoing permits is obtained, the owner of the bed and breakfast home shall cease its operation upon the expiration of the nonconforming use certificate.

A BILL FOR AN ORDINANCE

SECTION 11. This ordinance takes effect six months after its approval, provided that the following takes effect upon approval:

Within 90 days of the enactment of this ordinance, the director shall mail notice of the enactment of this ordinance and of Section 10 thereof to all holders of a current nonconforming use certificate for a bed and breakfast home.

INTRODUCED BY:

_____

_____

_____

_____

_____

_____

_____

_____

_____

DATE OF INTRODUCTION:

_____
Honolulu, Hawaii

_____
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

APPROVED this _____ day of _____, 20___.

_____
KIRK CALDWELL, Mayor
City and County of Honolulu