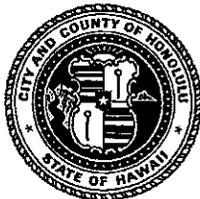


PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8007 • FAX: (808) 768-6743
DEPT. WEB SITE: www.honoluluclpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



January 14, 2016

DEAN I. HAZAMA, Chair
CORD D. ANDERSON, Vice-Chair
KA'IULANI K. SODARO
JAMES C. PACOPAC
ARTHUR B. TOLENTINO
DANIEL S. M. YOUNG
STEVEN S. C. LIM
WILFRID A. CHANG
KEN HAYASHIDA

RECEIVED
CITY CLERK
CITY AND COUNTY OF HONOLULU
JAN 19 AM 11:56

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

Dear Chair Martin and Councilmembers:

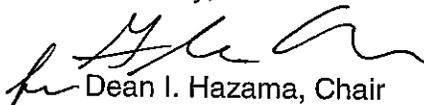
SUBJECT: A Request to Review and Consider Two Alternative Uncodified (Draft) Ordinances for a One-Time Renewal Opportunity for Holders of Nonconforming Use Certificates that Lapsed During the 2014 Renewal Cycle

The Planning Commission held a public hearing on January 6, 2016 on the above subject matter. No public and one written testimony were received. The public hearing was closed on January 6, 2016.

The Planning Commission voted unanimously on January 6, 2016 to accept the Director of the Department of Planning and Permitting's (DPP) recommendation of the DPP's proposed bill, Bill B.

Attached is the report from the Director of the Department of Planning and Permitting and the original copy of the draft Bill.

Sincerely,


Dean I. Hazama, Chair
Planning Commission

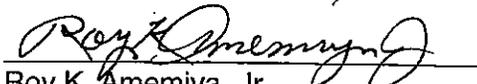
Attachments

APPROVED:


Kirk Caldwell
Mayor

APPROVED:

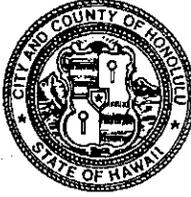

George I. Atta, FAICP, Director
Department of Planning and Permitting


Roy K. Amemiya, Jr.
Managing Director

15 DEC -4 P2:00

KIRK CALDWELL
MAYOR

DEPT OF PLANNING
AND PERMITTING
CITY OF HONOLULU



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

December 4, 2015

MEMORANDUM

TO: Dean I. Hazama, Chair
and Members of the Planning Commission

FROM: *George I. Atta*
George I. Atta, FAICP, Director
Department of Planning and Permitting

SUBJECT: Request to Review and Consider Two Alternative Uncodified (Draft) Ordinances for a One-time Renewal Opportunity for Holders of Nonconforming Use Certificates that Lapsed During the 2014 Renewal Cycle.

Pursuant to Resolution No. 15-230, we are transmitting for your review and consideration two proposed uncodified draft ordinances. The first bill was initiated by the City Council and transmitted to the Department of Planning and Permitting (DPP) for processing via Resolution No. 15-230. The second is an alternative version proposed by the DPP. These bills are attached as "Bill A" and "Bill B" and identified as Exhibits A and B, respectively.

The Council-initiated bill (referenced as Exhibit A to the Resolution) provides only holders of Nonconforming Use Certificates (NUC) of bed and breakfast homes the opportunity for a one-time renewal of certificates that lapsed during the 2014 renewal cycle.

Bill A inaccurately states, "... in 2012, without notice to the NUC holders, the DPP stopped issuing reminder notices" This is the implied reason for providing NUC holders, who are operating bed and breakfast establishments, the special one-time renewal reprieve. The DPP notified NUC holders, by letter in the 2012 renewal cycle, that reminder notices should not be expected with the transition to a computer-based, on-line renewal system. The letter stated, "Please be informed that unlike past renewal cycles, our department will not be making courtesy calls to remind you of the approaching deadline for completion."

Dean I. Hazama, Chair
and Members of the Planning Commission
December 4, 2015
Page 2

As the principal reason to offer the special renewal opportunity, the DPP cites in Bill B the changeover to the new, computer-based renewal process for which many NUC holders had difficulty adjusting. For this reason, the DPP believes that NUC holders operating transient vacation units should also be provided this same opportunity as owners and operators of bed and breakfast homes.

In addition to the foregoing, Bill B is proposed because Bill A contains several date references that are incorrect. Mention is made of NUCs that lapsed on September 30, 2012, when the lapsing of NUCs on September 30, 2014, is actually meant. The expiration of the NUCs prevented those holders from legally continuing their operations from October 1, 2014.

GIA:tlh

Attachments

cc: City Council

Planning
Commission
Written Testimony

KANEOHE BAY BNB

45-302 Puuloko Place, Kaneohe, HI 96744 Phone (808) 235-4214 Fax (808) 234-1164

January 5, 2016

Mr. Dean I Hazama, Chair
Planning Commission
City & County of Honolulu Planning Commission
550 South King Street
Honolulu, Hawaii

2015 DEC 30 PM 1 40
DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

RE: A REQUEST TO REVIEW AND CONSIDER TWO ALTERNATIVE UNCODIFIED (DRAFT) ORDINANCES FOR A ONE-TIME RENEWAL OPPORTUNITY TO HOLDERS OF NONCONFORMING USE CERTIFICATES THAT LAPSED DURING THE 2014 RENEWAL CYCLE

Dear Chair Hazama and Members of the Planning Commission:

We appreciate the opportunity to comment on this proposed Exhibit B. We favor the proposed redraft and urge its passage to resolve this issue.

Respectfully Submitted,

Gail A. Morris
Owner

P.S. We would further urge the Commission to look at in the future of the entire Non Conforming Use Certificate process that would ultimately provide the planning department the administrative power to resolve the late or nonrenewal of certificate by paying a late fee and provide "due process" when cancelling a permit. The public is stymied by the current procedure.

EXHIBIT A



RESOLUTION

PROPOSING AN UNCODIFIED ORDINANCE RELATING TO THE RENEWAL OF CERTAIN NONCONFORMING USE CERTIFICATES FOR BED AND BREAKFAST HOMES.

WHEREAS, the City's Land Use Ordinance prohibits bed and breakfast homes in all zoning districts, however, bed and breakfast homes in operation prior to December 28, 1989 are permitted to continue to operate so long as they possess a Nonconforming Use Certificate (NUC); and

WHEREAS, the owner, operator, or proprietor of a bed and breakfast home must apply to renew the NUC between September 1 and October 15 of every even-numbered year; and

WHEREAS, prior to 2012, the Department of Planning and Permitting (DPP) issued reminder notices to NUC holders about the renewal deadline; and

WHEREAS, since 2012, the DPP has stopped issuing reminder notices, which caused several long-standing bed and breakfast homes to lose their NUC because they lapsed; and

WHEREAS, the Council feels that it should be recognized that the bed and breakfast homes that recently lost their NUCs solely due to non-renewal were in continuous operation since at least 1989 and that these establishments support the visitor industry and local economy; and

WHEREAS, the Council wishes to provide relief to those bed and breakfast homes that lost their NUC solely for failing to apply for a renewal after the DPP stopped issuing reminder notices; 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 and Revised Ordinances of Honolulu Chapter 2, Article 24, to process the proposed uncodified ordinance relating to the renewal of certain nonconforming use certificates for bed and breakfast homes, 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 uncodified ordinance to the Planning Commission; and



RESOLUTION

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, the Clerk will 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 will 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:

Councilmembers

DATE OF INTRODUCTION:

AUG 14 2015

Honolulu, Hawaii



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 Council finds that bed and breakfast homes are currently prohibited in all zoning districts, except for those in operation prior to December 28, 1989, and that possess a nonconforming use certificate. Subsection 21-4.110-2(d) of the Land Use Ordinance provides that the owner, operator, or proprietor of bed and breakfast homes must apply to renew the nonconforming use certificate (NUC) between September 1 and October 15 of every even-numbered year.

Prior to 2012, the Department of Planning and Permitting (DPP) issued reminder notices to NUC holders about the renewal deadline. However, in 2012, without notice to the NUC holders, the DPP stopped issuing reminder notices. As a result, several long-established bed and breakfast homes, all of which were in continuous operation for over twenty-five years, lost their NUCs because they inadvertently lapsed at the end of September 30, 2012.

The purpose of this ordinance is to provide one-time relief to those owners of bed and breakfast homes who lost their NUCs after September 30, 2012, solely for failing to apply for renewal.

SECTION 2. Renewal of bed and breakfast home Nonconforming Use Certificates.

Notwithstanding ROH Sections 21-4.110-2 or 6-41.1(a)(16), or any administrative rule or policy of the department of planning and permitting:

- (a) An owner, operator, or proprietor of a bed and breakfast home who held a valid and current nonconforming use certificate for a bed and breakfast home on September 30, 2012, and who lost the nonconforming use certificate solely for failing to timely apply for renewal, may apply to renew the nonconforming use certificate prior to October 15, 2016.
- (b) The application to renew must 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 that expired on September 30, 2012, and that there were bed and



A BILL FOR AN ORDINANCE

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 that expired on September 30, 2012, without a bed and breakfast occupancy.

- (c) The renewed certificate takes effect as of the date of issuance and will be for a term expiring on September 30, 2018.
- (d) The fee for the renewal application will be as specified in Section 6-41.1(a)(16), plus, if applicable, a prorated portion of such fee based on the time the certificate will be in effect prior to September 30, 2016.
- (e) When applying for renewal between September 1, 2018 and October 15, 2018, the applicant will be required to demonstrate compliance with subsection 21-4.110-2(d) for the period beginning October 1, 2016.
- (f) The Director of Planning and Permitting shall notify owners, operators, and proprietors of bed and breakfast homes who held a nonconforming use certificate prior to September 30, 2012, but who subsequently failed to renew the certificate, of the renewal deadline established by this ordinance.



A BILL FOR AN ORDINANCE

SECTION 3. Effective Date.

This ordinance takes 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____.

KIRK CALDWELL, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 15-230

Introduced: 08/14/15 By: ERNEST MARTIN

Committee: ZONING AND PLANNING

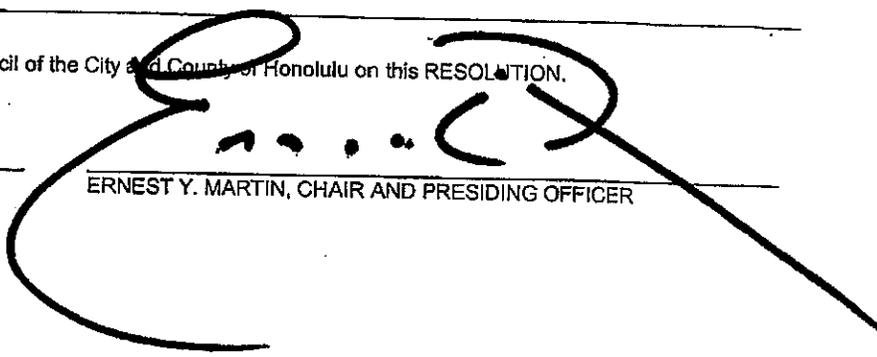
Title: RESOLUTION PROPOSING AN UNCODIFIED ORDINANCE RELATING TO THE RENEWAL OF CERTAIN NONCONFORMING USE CERTIFICATES FOR BED AND BREAKFAST HOMES.

Voting Legend: * = Aye w/Reservations

08/20/15	ZONING AND PLANNING	CR-342 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
09/02/15	COUNCIL	CR-342 AND RESOLUTION 15-230 WERE ADOPTED. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, OZAWA, PINE. 1 ABSENT: MARTIN.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


GLEN TAKAHASHI, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER

BILL A



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 Council finds that bed and breakfast homes are currently prohibited in all zoning districts, except for those in operation prior to December 28, 1989, and that possess a nonconforming use certificate. Subsection 21-4.110-2(d) of the Land Use Ordinance provides that the owner, operator, or proprietor of bed and breakfast homes must apply to renew the nonconforming use certificate (NUC) between September 1 and October 15 of every even-numbered year.

Prior to 2012, the Department of Planning and Permitting (DPP) issued reminder notices to NUC holders about the renewal deadline. However, in 2012, without notice to the NUC holders, the DPP stopped issuing reminder notices. As a result, several long-established bed and breakfast homes, all of which were in continuous operation for over twenty-five years, lost their NUCs because they inadvertently lapsed at the end of September 30, 2012.

The purpose of this ordinance is to provide one-time relief to those owners of bed and breakfast homes who lost their NUCs after September 30, 2012, solely for failing to apply for renewal.

SECTION 2. Renewal of bed and breakfast home Nonconforming Use Certificates.

Notwithstanding ROH Sections 21-4.110-2 or 6-41.1(a)(16), or any administrative rule or policy of the department of planning and permitting:

- (a) An owner, operator, or proprietor of a bed and breakfast home who held a valid and current nonconforming use certificate for a bed and breakfast home on September 30, 2012, and who lost the nonconforming use certificate solely for failing to timely apply for renewal, may apply to renew the nonconforming use certificate prior to October 15, 2016.
- (b) The application to renew must 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 that expired on September 30, 2012, and that there were bed and



A BILL FOR AN ORDINANCE

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 that expired on September 30, 2012, without a bed and breakfast occupancy.

- (c) The renewed certificate takes effect as of the date of issuance and will be for a term expiring on September 30, 2018.
- (d) The fee for the renewal application will be as specified in Section 6-41.1(a)(16), plus, if applicable, a prorated portion of such fee based on the time the certificate will be in effect prior to September 30, 2016.
- (e) When applying for renewal between September 1, 2018 and October 15, 2018, the applicant will be required to demonstrate compliance with subsection 21-4.110-2(d) for the period beginning October 1, 2016.
- (f) The Director of Planning and Permitting shall notify owners, operators, and proprietors of bed and breakfast homes who held a nonconforming use certificate prior to September 30, 2012, but who subsequently failed to renew the certificate, of the renewal deadline established by this ordinance.



A BILL FOR AN ORDINANCE

SECTION 3. Effective Date.

This ordinance takes 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____.

KIRK CALDWELL, Mayor
City and County of Honolulu

BILL B



A BILL FOR AN ORDINANCE

RELATING TO NONCONFORMING USE CERTIFICATES.

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

SECTION 1. Findings and Purpose.

The Council finds that bed and breakfast homes and transient vacation units are currently prohibited in all zoning districts, except for those in operation prior to December 28, 1989, and that possess a nonconforming use certificate. Subsections 21-4.110-1(d) and 21-4.110-2(d) of the Land Use Ordinance provides that the owner, operator, or proprietor of bed and breakfast homes and transient vacation units must apply to renew the nonconforming use certificate (NUC) between September 1 and October 15 of every even-numbered year.

Up until the renewal cycle in 2010, the Department of Planning and Permitting (DPP) conducted its renewals using paper forms through the United States Postal System and issued reminder notices to NUC holders about the renewal deadline. However, beginning in the 2012 renewal cycle, through to the 2014 renewal cycle, the DPP transitioned to a more automated system that requires NUC holders to complete their renewal applications using a computer to access a customized and secure website operated by the DPP. As a result of this change, several long established bed and breakfast homes and transient vacation units, all of which were in continuous operation for over twenty-five years, lost their NUCs because they lapsed at the end of September 30, 2014, without the holders taking timely action for renewal.

The purpose of this ordinance is to provide one-time relief to those owners of bed and breakfast homes and transient vacation units who lost their NUCs after September 30, 2014, solely for failing to apply for renewal through the newly automated system.

SECTION 2. Renewal of bed and breakfast home and transient vacation unit Nonconforming Use Certificates.

Notwithstanding ROH Sections 21-4.110-1, 21-4.110-2, or 6-41.1 (a)(1 6), or any administrative rule or policy of the department of planning and permitting:

- (a) An owner, operator, or proprietor of a bed and breakfast home or transient vacation unit who held a valid and current nonconforming use certificate on September 30, 2014, and who lost the nonconforming use certificate solely for



A BILL FOR AN ORDINANCE

failing to timely apply for renewal, may apply to renew the nonconforming use certificate prior to October 15, 2016.

- (b) The application to renew must 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 that expired on September 30, 2014, and that there were 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 that expired on September 30, 2014, without a bed and breakfast or transient vacation unit occupancy.
- (c) The renewed certificate takes effect as of the date of issuance and will be for a term expiring on September 30, 2018.
- (d) The fee for the renewal application will be as specified in Section 6-41.1 (a)(16), plus, if applicable, a prorated portion of such fee based on the time the certificate will be in effect prior to September 30, 2016.
- (e) When applying for renewal between September 1, 2018, and October 15, 2018, the applicant will be required to demonstrate compliance with subsection 21-4.110-1(d), or 21-4.110-2(d), for the period beginning October 1, 2016.
- (f) The Director of Planning and Permitting shall notify owners, operators, and proprietors of bed and breakfast homes and transient vacation units who held a nonconforming use certificate prior to September 30, 2014, but who subsequently failed to renew the certificate, of the renewal deadline established by this ordinance.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 3. Effective Date.

This ordinance takes 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 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu