

# REPORT OF THE COMMITTEE ON ZONING AND PLANNING

## Voting Members:

Ikaika Anderson, Chair; Trevor Ozawa, Vice-Chair;  
Carol Fukunaga, Ann H. Kobayashi, Joey Manahan

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Committee Meeting Held  
March 3, 2016

Honorable Ernest Y. Martin  
Chair, City Council  
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning and Planning, to which was referred Bill 6 (2016) entitled:

"A BILL FOR AN ORDINANCE RELATING TO NONCONFORMING USE CERTIFICATES,"

which passed Second Reading on, and was the subject of a Public Hearing held at the Council's meeting of February 17, 2016, reports as follows:

The purpose of Bill 6 (2016) is to provide one-time relief to owners of bed and breakfast homes and transient vacation units whose nonconforming use certificates (NUCs) lapsed on September 30, 2014, solely for failing to apply for renewal through the new computer-based, online system. Bill 6 (2016) was initiated by the Department of Planning and Permitting (DPP) as an alternative to Council-initiated Bill 5 (2016).

Your Committee finds that the Planning Commission, after a public hearing held on January 6, 2016 at which no public and one written testimony were received on both the Council-initiated and the DPP-initiated proposals, voted to recommend approval of the DPP-initiated Bill 6 in concurrence with the recommendation of the DPP in the attachment to Departmental Communication No. 27 (2016).

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON

**MAR 16 2016**

COMMITTEE REPORT NO.

**78**

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Your Committee finds that at a public hearing held on February 17, 2016 by the City Council, oral and written testimony in support of the proposed LUO amendment was received from a representative of Kaneohe Bay BNB.

In Committee Report No. 51, which the Council adopted at its meeting on February 17, 2016, your Committee set forth background information on the subject bill.

At your Committee's meeting on March 3, 2016, a representative of the DPP requested that the Bill be amended to include a \$1000 processing fee to cover the additional anticipated costs to the Department.

No public testimony was received.

Your Committee has prepared a CD1 version of the bill that makes the following amendments:

- A. Provides that the renewal applicant shall pay a processing fee of \$1,000 in addition to any renewal fees.
- B. Makes various technical and non-substantive amendments.

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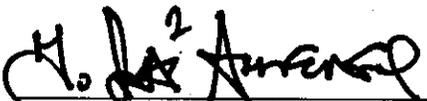
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Your Committee on Zoning and Planning is in accord with the intent and purpose of Bill 6 (2016), as amended herein, and recommends that it pass Third Reading in the form attached hereto as Bill 6 (2016), CD1. (Ayes: Anderson, Ozawa, Fukunaga, Kobayashi, Manahan – 5; Noes: None.)

Respectfully submitted,

  
Committee Chair

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON

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## A BILL FOR AN ORDINANCE

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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 homes and transient vacation units nonconforming use certificates.

Notwithstanding ROH Sections 21-4.110-1, 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 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 failing to timely apply for renewal, may apply to renew the nonconforming use certificate prior to October 15, 2016.



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**A BILL FOR AN ORDINANCE**

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- (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 (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. The renewal applicant shall pay a processing fee of \$1,000 in addition to any renewal fees.
- (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.



A BILL FOR AN ORDINANCE

SECTION 3. This ordinance takes effect upon its approval.

INTRODUCED BY:

Ernest Martin (BR)

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DATE OF INTRODUCTION:

January 20, 2016  
Honolulu, Hawaii

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Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

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KIRK CALDWELL, Mayor  
City and County of Honolulu