



## RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO NONCONFORMING STRUCTURES.

WHEREAS, Section 21-4.110(b) of the City's Land Use Ordinance ("LUO") provides that subject to certain exceptions and restrictions, if a portion of a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it must be reconstructed in conformity with the provisions of the LUO; and

WHEREAS, an exception applies to a nonconforming structure devoted to a conforming use that contains multifamily dwelling units under certain types of ownership, if the nonconforming structure is destroyed by accidental means, including destruction by fire, hurricane, other calamity or act of God, so long as the restoration is permitted by the building code and flood hazard regulations and is started within two years; and

WHEREAS, a restriction provides that a nonconforming structure that is voluntarily razed or required by law to be razed by the owner must be restored in full conformity with the provisions of the LUO; and

WHEREAS, the Council desires to amend the LUO's provisions relating to nonconforming structures to provide that subject to certain conditions, if that portion of a structure that is nonconforming is destroyed by any means, it may be reconstructed and restored to its former condition, in conformance with the standards pursuant to which the structure was legally established; and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973 ("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, the term "zoning ordinances," as used in RCH Section 6-1513, includes both amendments to the LUO and to ordinances designating particular parcels of property in terms of the LUO; and

WHEREAS, Chapter 2, Article 24, Revised Ordinances of Honolulu 1990 ("ROH"), 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



RESOLUTION

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 RCH Section 6-1513, and ROH Chapter 2, Article 24, to process the proposed amendment to ROH Chapter 21 (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 LUO 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:

[Signature]  
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DATE OF INTRODUCTION:

**APR 22 2016**

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Honolulu, Hawaii

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Councilmembers

## **EXHIBIT A**



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## A BILL FOR AN ORDINANCE

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RELATING TO NONCONFORMING STRUCTURES.

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

SECTION 1. Purpose. The purpose of this ordinance is to amend certain provisions relating to nonconforming structures.

SECTION 2. Section 21-4.110, Revised Ordinances Honolulu 1990 ("Nonconformities"), is amended by amending subsection (b) to read as follows:

"(b) Nonconforming Structures.

- (1) If that portion of a structure [which] that is nonconforming is destroyed by any means [to an extent of more than 50 percent of its replacement cost at the time of destruction], it [shall not] may be reconstructed [except in conformity with the provisions of this chapter.] and restored to its former condition, in conformance with the standards pursuant to which the structure was legally established; provided that:
  - (A) [Notwithstanding the foregoing provision, a nonconforming structure devoted to a conforming use which contains multifamily dwelling units owned by owners under the authority of HRS Chapter 514A, 514B or 421H, or units owned by a "cooperative housing corporation" as defined in HRS Section 421I-1, whether or not the structure is located in a special district, and which is destroyed by accidental means, including destruction by fire, hurricane, other calamity, or act of God, may be restored to its former condition, provided that such] The reconstruction and restoration is permitted by the building code and flood hazard regulations and is started within two years[.] of the destruction; and
  - (B) [The burden of proof to establish that the destruction of a structure was due to accidental means as described above and that the structure was legally nonconforming shall be on the owner.
  - (C) Except as otherwise provided in this section, no] No nonconforming structure that is [voluntarily razed or] required by law to be razed by the owner thereof may thereafter be reconstructed and restored except in full conformity with the provisions of this chapter.



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## A BILL FOR AN ORDINANCE

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- (2) If a nonconforming structure is moved, it [shall] must conform to the provisions of this chapter.
- (3) Any nonconforming structure may be repaired, expanded or altered in any manner [which] that does not increase its nonconformity.
- (4) Improvements on private property, which become nonconforming through the exercise of the government's power of eminent domain, may obtain waivers from the provisions of this subsection, as provided by Section 21-2.130.
- (5) Nonconforming commercial use density [shall] will be regulated under the provisions of this subsection. For purposes of this section, "nonconforming commercial use density" means a structure [which] that is nonconforming by virtue of the previously lawful mixture of commercial uses on a zoning lot affected by commercial use density requirements in excess of:
  - (A) The maximum FAR permitted for commercial uses; or
  - (B) The maximum percentage of total floor area permitted for commercial uses."

SECTION 3. Ordinance material to be repealed is bracketed and new ordinance 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.



A BILL FOR AN ORDINANCE

SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

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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  
C E R T I F I C A T E

**RESOLUTION 16-105**

Introduced: 04/22/16

By: IKAIKA ANDERSON

Committee: ZONING AND PLANNING

Title: RESOLUTION PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO NONCONFORMING STRUCTURES.

Voting Legend: \* = Aye w/Reservations

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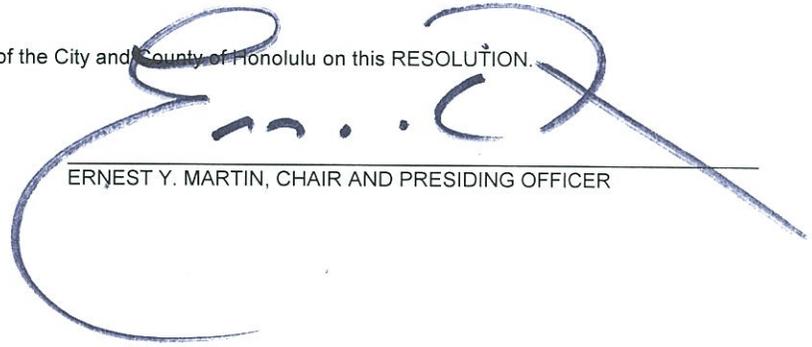
05/19/16	ZONING AND PLANNING	CR-185 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
06/01/16	COUNCIL	CR-185 AND RESOLUTION 16-105 WERE ADOPTED. 8 AYES: ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. 1 ABSENT: ANDERSON.

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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.



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GLEN I. TAKAHASHI, CITY CLERK



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ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER