REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:
Trevor Ozawa, Chair; Ron Menor, Vice-Chair;
Carol Fukunaga, Ann H. Kobayashi, Joey Manahan

Committee Meeting Held
October 20, 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 79 (2015) entitled:

"A BILL FOR AND ORDINANCE TO AMEND CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED (THE LAND USE ORDINANCE), RELATING OT THE LAND USE ORDINANCE,"

transmitted by Departmental Communication 778 (2015) dated November 9, 2015, and which passed First Reading at the December 9, 2015 Council meeting, reports as follows:

The purpose of Bill 79 (2015) is to amend the Land Use Ordinance (LUO), Chapter 21, Revised Ordinances of Honolulu 1990, to make miscellaneous amendments.

The Attachment to Departmental Communication 778 (2015) lists the LUO Section, description, and justification for each amendment. Amendments were proposed in the following sections:

- Section 21-1.20(c) Purpose and Intent
- Section 21-2.20(k)(2)(B) Administrative Procedures
- Figure 21-2.1
- Section 21-2.40-1 Minor Permits
- Section 21-2.140-1(i) Specific Circumstances
- Section 21-2.150-2 Administrative Enforcement

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON NOV 0 2 2016

COMMITTEE REPORT NO. 337

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:
Trevor Ozawa, Chair; Ron Menor, Vice-Chair;
Carol Fukunaga, Ann H. Kobayashi, Joey Manahan

- Section 21-3.20 Zoning Precinct Classifications
- Section 21-3.50-4(c)(2) Agricultural Uses and Development Standards
- Section 21-4.50 Lots in Two Zoning Districts
- Section 21-4.110 Nonconformities
- Section 21-4.110-1 Nonconforming Use Certificates for Transient Vacation Units
- Section 21-4.110-2 Bed and Breakfast Homes-Nonconforming Use Certificates
- Section 21-5.10A Agribusiness Activities
- Section 21-5.160 Convenience Stores
- Section 21-5.380 Joint Development of Two or More Adjacent Subdivision Lots
- Section 21-5.390 Joint Use of Parking Facilities
- Section 21-5.700 Wind Machines
- Section 21-7.40 Specific District Sign Standards
- Section 21-8.20(c) Housing-Ohana Dwellings
- Table 21-9.6(c) Waikiki Special District Project Classification
- Section 21-9.80-3 Prominent View Corridors and Historic Properties
- Section 21-9.80-4(c) General Requirements and Design Controls
- Section 21-9.80-4(d) General Requirements and Design Controls
- Section 21-9.100-5(d) Interim Planned Development-Transit IPD-T Projects
- Section 21-10.1 Definitions

Your Committee finds that the Planning Commission, after a public hearing held on October 28, 2015, at which one person testified and no written testimony was received, voted to recommend approval of the proposal in concurrence with the recommendation of the Department of Planning and Permitting (DPP) in the Attachment to Departmental Communication 778 (2015).

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON NOV 0 2 2016 COMMITTEE REPORT NO. 337

On June 24, 2016, the Planning Commission submitted Departmental Communication 437 (2016), transmitting a proposed revision to Bill 79 (2015) as requested by the DPP. The proposed revision added language that would allow a nonconforming ohana dwelling to be rebuilt or expanded under certain conditions that must all be met.

The Planning Commission, after a public hearing held on May 25, 2016, at which no testimony was received, voted to recommend approval of the proposed revision in concurrence with the recommendation of the DPP in the Attachment to Departmental Communication 437 (2016).

At your Committee's meeting on October 20, 2016, representatives of the DPP testified that the Bill is a housekeeping measure that updates the LUO and makes conforming and clarifying amendments.

At its meeting on October 20, 2016, your Committee received no public testimony.

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

A. Revises the proposed new language in Section 21-2.140-1(i)(1) to add a new subparagraph (D) to read as follows:

"(D) The ohana dwelling was legally established but is no longer allowed pursuant to Sections 21-8.20(c)(2) and (3)."

B. Removes references to bicycle parking requirements in the amendments to ROH Section 21-5.390 regarding joint facility parking.

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:
Trevor Ozawa, Chair; Ron Menor, Vice-Chair;
Carol Fukunaga, Ann H. Kobayashi, Joey Manahan

C. Removes Table 21-9.6(C) ("Waikiki Special District Project Classification") because no amendments were made to this table.

D. Removes revisions to the definitions of "corporate retreat" and "family."

E. Corrects drafting and format errors, and makes various technical amendments for purposes of grammar, clarity and style.

Your Committee believes that additional public testimony at the public hearing recommended herein to be scheduled on this bill will provide further assistance to your Committee and to the Council in their deliberations on this bill.

Your Committee on Zoning and Planning is in accord with the intent and purpose of Bill 79 (2015), as amended herein, and recommends that it pass Second Reading, be scheduled for a public hearing, and thereafter be referred back to Committee in the form attached hereto, as Bill 79 (2015), CD1. (Ayes: Ozawa, Fukunaga, Kobayashi, Manahan, Menor – 5; Noes: None.)

Respectfully submitted,

Committee Chair

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON NOV 0 2 2016

COMMITTEE REPORT NO. 337

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 79 (2015), CD1

A BILL FOR AN ORDINANCE

TO AMEND CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED (THE LAND USE ORDINANCE), RELATING TO THE LAND USE ORDINANCE.

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

SECTION 1. Purpose and Intent. The purpose of this ordinance is to make miscellaneous amendments to the Land Use Ordinance.

SECTION 2. Section 21-1.20, Revised Ordinances of Honolulu 1990 ("Purpose and Intent"), is amended by amending subsection (a) to read as follows:

"(a) The purpose of the LUO is to regulate land use in a manner that will encourage orderly development in accordance with adopted land use policies, including the [Oahu] city's general plan, and development and sustainable communities plans, and, as may be appropriate, adopted neighborhood plans, and to promote and protect the public health, safety and welfare by, more particularly:

(1) Minimizing adverse effects resulting from the inappropriate location, use or design of sites and structures;

(2) Conserving the city's natural, historic and scenic resources and encouraging design [which] that enhances the physical form of the city; and

(3) Assisting the public in identifying and understanding regulations affecting the development and use of land."

SECTION 3. Section 21-2.20, Revised Ordinances of Honolulu 1990 ("Administrative procedures"), is amended by amending subsection (k) to read as follows:

"(k) (1) Except as otherwise provided herein, the director may administratively authorize minor alterations, additions, or modifications to any approved permit required by this chapter, provided that the minor modification request [is]:

(A) Is reasonable, and consistent with the intent of the respective permit; [does]

(B) Does not significantly increase the intensity or scope of the use; and [does]

(C) Does not create adverse land use impacts upon the surrounding neighborhood.

(2) Subdivision (1) [shall] does not apply to:

(A) Zone changes; and

(B) [The following council] Council approvals[,] pursuant to Sections 21-2.110-2 (Planned development) and 21-2.120 et seq. (Plan review uses), except to the extent that minor modifications are permitted by the express language of the council's approving resolution[:

(i) Plan Review Use approvals; and

(ii) Approvals of conceptual plans for Planned Development-Resort and Planned Development-Commercial projects in the Waikiki Special District pursuant to Section 21-9.80-4(d)].

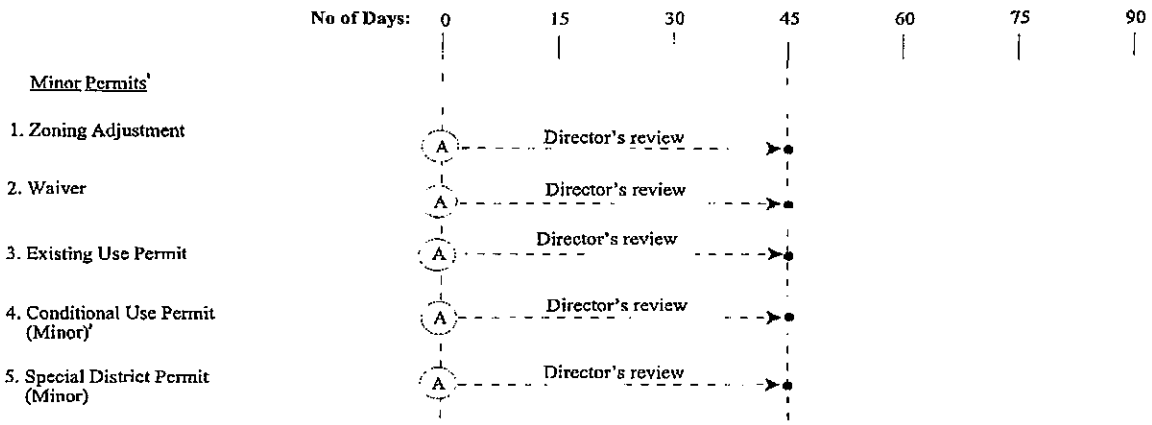
(3) Major alterations, additions, or modifications, and other alterations, additions, or modifications excepted by subdivision (2), [shall] will be processed under the provisions for the applicable permit or approval."

SECTION 4. Figure 21-2.1 ("Permit Application Processing Time"), Revised Ordinances of Honolulu 1990, is repealed.

["Figure 21-2.1 Permit Application Processing Time

Figure 21-2.1

Permit Application Processing Time



Legend
- • Deadline for Director's action
- ➤ Variable time period
- (A) Acceptance of completed application

Note: The processing time suggested for each different permit listed on this exhibit is for illustration purposes only and may vary according to individual circumstances. Applicants should refer to the appropriate section of Article 2 for precise time requirements.

[1]Before submitting an application for a minor permit for the following uses, the applicant must request an opportunity to present the project to the appropriate neighborhood board; (a) transmitting antenna mounted on a building or rooftop in a country, residential, A-1 or AMX-1 district or a freestanding antenna structure; (b) meeting facility; (c) day-care facility; or (d) school (elementary, intermediate and high.) See Sec. 21-2.40-1.

[2]Deadline for Director's action may be extended for permits concerning meeting facilities, day-care facilities and schools (elementary, intermediate and high.) See Sec. 21-2.40-1.

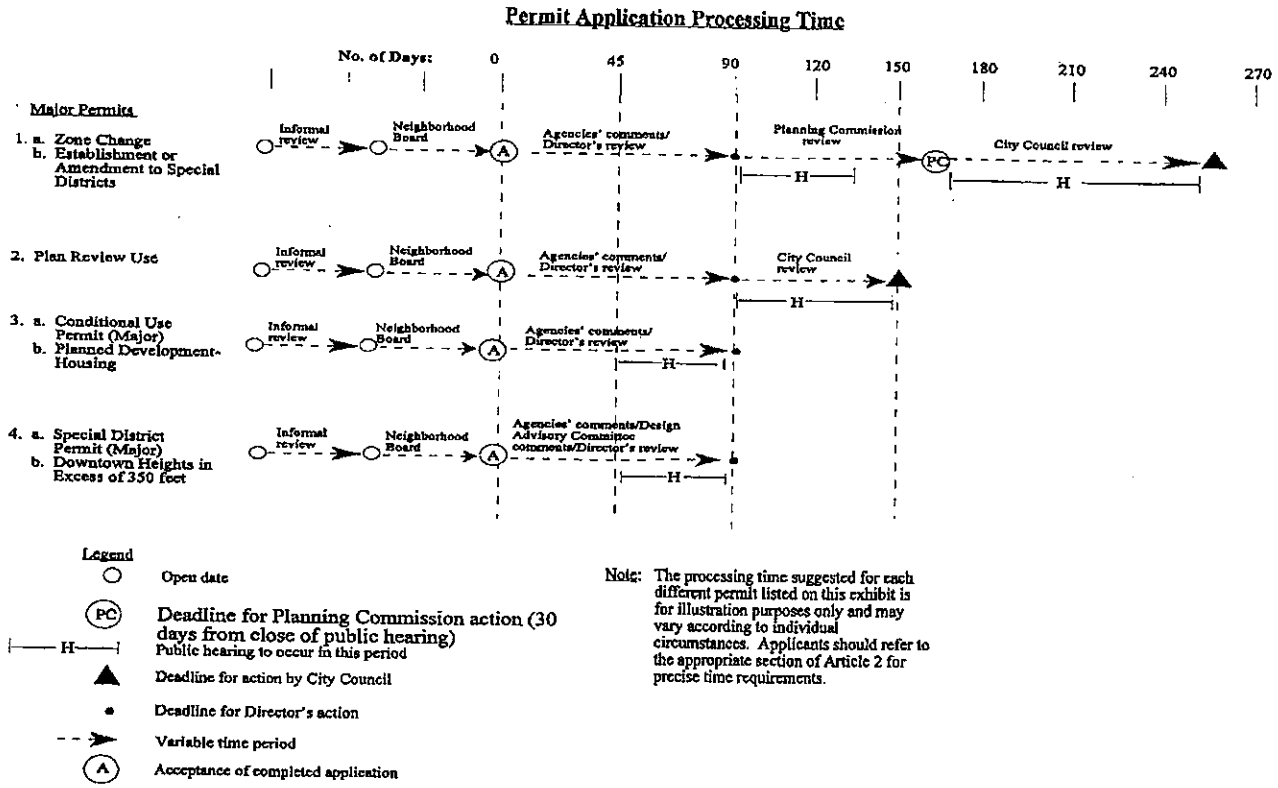
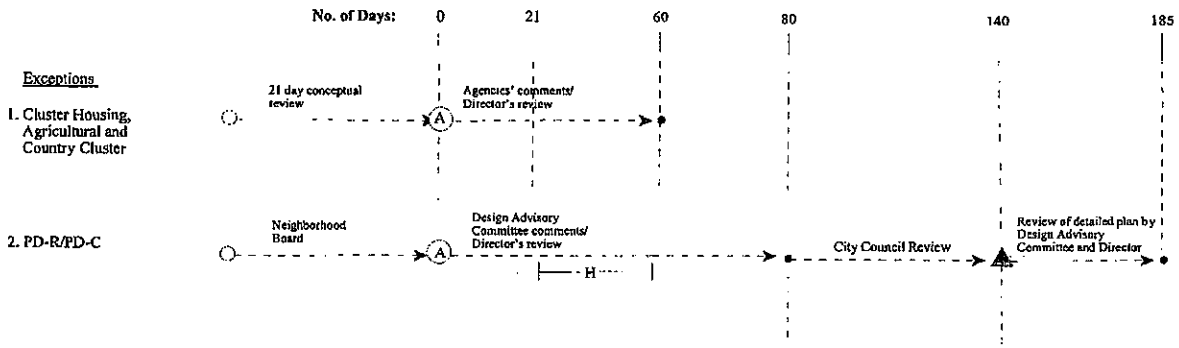


Figure 21-2.1 (continued)

Figure 21-2.1 (continued)

PERMIT APPLICATION PROCESSING TIME



Legend

- Open date
- H — Public hearing to occur in this period
- Deadline for action by City Council
- Deadline for Director's action
- Variable time period
- (A) Acceptance of completed application

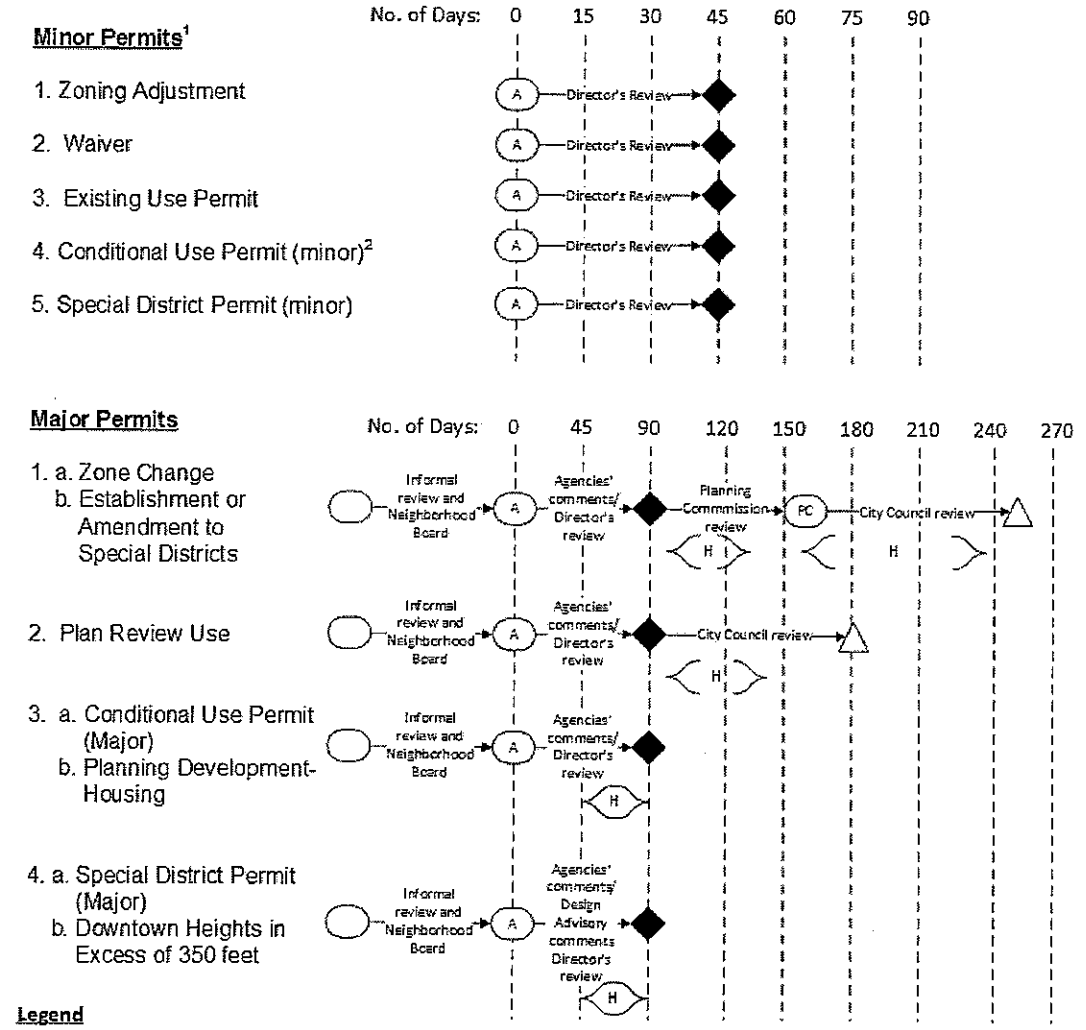
Note: The processing time suggested for each different permit listed on this exhibit is for illustration purposes only and may vary according to individual circumstances. Applicants should refer to the appropriate section of Article 2 for precise time requirements.

A BILL FOR AN ORDINANCE

SECTION 5. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Figure 21-2.1 to be inserted by the revisor of ordinances and to read as follows:

A BILL FOR AN ORDINANCE

"Figure 21-2.1 Permit Application Processing Time



Legend

- Open date
- A — Acceptance of completed application
- H — Public hearing occurring in this period
- Deadline for action by the Director
- Deadline for action by City Council
- Variable time period
- PC — Deadline for action by Planning Commission (30 days from close of public hearing)

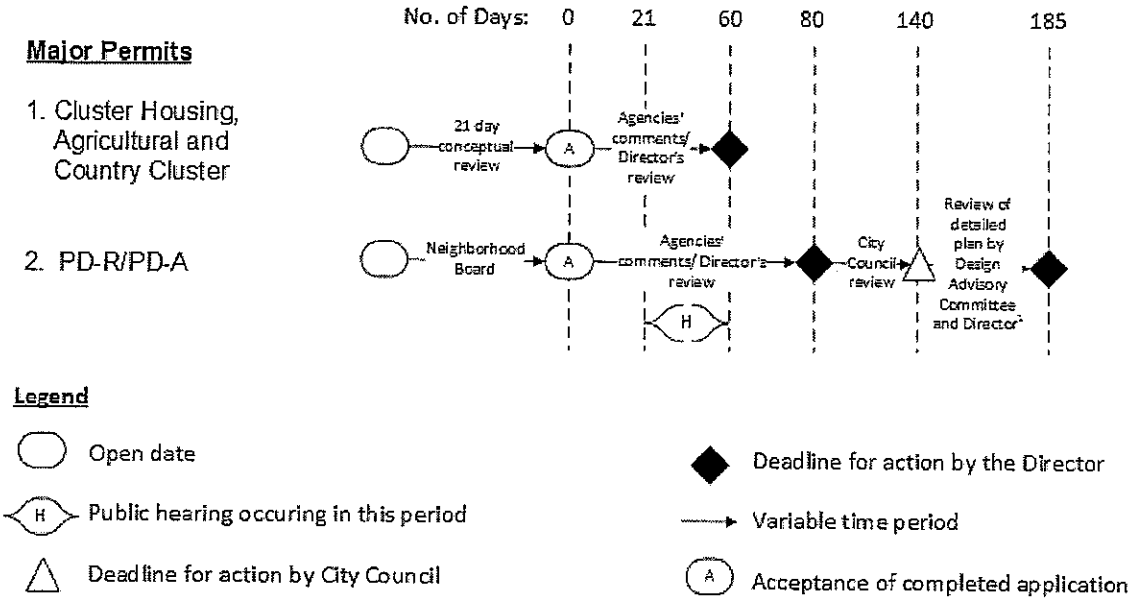
Note: The processing time suggested for each different permit listed on this exhibit is for illustration purposes only and may vary according to individual circumstances. Applicants should refer to the appropriate section of Article 2 for precise time requirements.

[1] Before submitting an application for a minor permit for the following uses, the applicant must request an opportunity to present to the appropriate neighborhood board; (a) transmitting antenna mounted on a building or rooftop in a country, residential, A-1 or AMX-1 District or a freestanding antenna structure; (b) meeting facility; (c) day-care facility; or (d) school (elementary, intermediate and high); or (e) hotel with up to 180 dwelling and/or lodging units in the BMX-3 district. See Sec. 21-2.40-1.

[2] Deadline for Director's action may be extended for permits concerning meeting facilities, day-care facilities and schools (elementary, intermediate and high). See Sec 21-2.40-1.

A BILL FOR AN ORDINANCE

Figure 21-2.1 (continued)



Note: The processing time suggested for each different permit listed on this exhibit is for illustration purposes only and may vary according to individual circumstances. Applicants should refer to the appropriate section of Article 2 for precise time requirements. "

SECTION 6. Section 21-2.40-1, Revised Ordinances of Honolulu 1990 ("Minor permits"), is amended by amending subsection (c) to read as follows:

"(c) Application and Processing. An applicant seeking a minor permit shall submit the appropriate application to the director for processing. Once the director has accepted an application for a conditional use permit (minor) involving a meeting facility, day-care facility, school (elementary, intermediate and high), or hotel with up to 180 dwelling and/or lodging units in the BMX-3 district, the director shall notify adjoining property owners and the appropriate neighborhood board or community association [shall be notified] of receipt of the application. [Adjoining] The director shall ask adjoining property owners [shall be asked] whether they wish to have a public hearing on the proposed project, and any potentially adverse external effects of the proposed project on the immediate neighborhood. If, in the judgment of the director, there is sufficient cause to hold a public hearing, the director shall hold a public hearing, which may be held within the area, no sooner than 45 days after acceptance of the completed application[. Within]; and, the application will thereafter be subject to the provisions of Section 21-2.40-2(c)(2), (3), (4) and (6), and (d). If the director

determines that a public hearing is not necessary, within 45 days of the director's acceptance of the completed application, the director shall either:

(1) Approve the application as submitted;

(2) Approve the application with modifications [and/or] or conditions or both; or

(3) Deny the application and provide the applicant with a written explanation for the denial[; or

(4) Extend the processing period to 90 days in order to conduct a public hearing for a conditional use permit (minor) involving a meeting facility, day-care facility, school (elementary, intermediate and high), or hotel with up to 180 dwelling and/or lodging units in the BMX-3 district.];

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

SECTION 7. Section 21-2.140-1, Revised Ordinances of Honolulu 1990, ("Specific circumstances"), is amended by amending subsection (i) to read as follows:

"(i) [Ohana Dwellings.

(1) Rebuilding. Any ohana dwelling unit that is destroyed by any means to the extent of more than 50 percent of the unit's replacement value may be rebuilt to its previously existing dwelling type under the following conditions:

(A) It can be demonstrated that the ohana dwelling unit was legally constructed.

(B) It can be demonstrated that the replacement ohana dwelling unit will meet all current underlying district standards including but not limited to height limits, required yards and setbacks, maximum building area and parking.

(C) Any ohana dwelling unit rebuilt under the provisions of this subdivision (1) shall not be expanded to increase the floor area beyond the larger of:

(i) The floor area shown on approved building plans prior to its destruction; or

(ii) The floor area allowable under the current maximum building area development standard in the applicable zoning district.

(2) Expansion.

(A) Notwithstanding subdivision (1), an ohana dwelling unit owned under the provisions of HRS Chapter 514A may be expanded; provided that:

(i) The declaration of condominium property regime or declaration of horizontal property regime was filed with the bureau of conveyances of the State of Hawaii on or before December 31, 1988; and

(ii) The building permit was issued prior to April 28, 1988, the effective date of Ordinance No. 88-48 which placed floor area restrictions on ohana dwellings.

(B) Expansion of an ohana dwelling unit pursuant to this subdivision (2) is subject to the following conditions:

(i) The maximum building area for each dwelling unit on the zoning lot shall not exceed the ratio of that unit's proportionate share of the common interest to the total common interest of all units on the same zoning lot multiplied by the maximum building area of the zoning lot. The common interest shall be as specified in the applicable condominium property regime documents.

(ii) Any such expansion shall conform to yard requirements and other development standards for the applicable zoning district.

(iii) In the event the maximum building area has already been reached or exceeded, no additional expansion shall be permitted.

(3) Notwithstanding the provisions of Section 21-8.20(c), requiring all new ohana units to be attached units, detached ohana dwelling units for which the building permit was issued prior to September 10, 1992 may be rebuilt and/or expanded as provided by subdivision (1) and (2).]

Rebuilding or Expansion of a Nonconforming Ohana Dwelling. Nonconforming ohana dwellings may be altered, enlarged, repaired, or rebuilt under the following conditions (all must apply):

(1) The ohana dwelling is a nonconforming structure or dwelling unit. An ohana dwelling will be deemed nonconforming when an "ohana" building permit was issued, and any of the following circumstances applies:

(A) The ohana dwelling is no longer in an ohana-eligible area pursuant to Section 21-2.110-3;

(B) The ohana dwelling unit is occupied by persons who are not related by blood, marriage, or adoption to the family residing in the first dwelling, and the building permit for the ohana dwelling was issued prior to September 10, 1992 (the effective date of Ordinance 92-101, which established the family occupancy requirement);

(C) A declaration of condominium property regime or declaration of horizontal property regime was filed with either the bureau of conveyances of the State of Hawaii or the land court of the State of Hawaii on or before December 31, 1988; or

(D) The ohana dwelling was legally established but is no longer allowed pursuant to Sections 21-8.20(c)(2) and (3).

(2) The building area of the ohana dwelling in combination with the building area of the primary dwelling does not exceed the current maximum building area development standard for the underlying zoning district.

(3) The ohana dwelling complies with all other development standards for the underlying zoning district, including off-street parking standards.

(4) Unless the ohana dwelling was lawfully established prior to December 31, 1988, the owner or owners shall comply with Section 21-8.20(c)(8) prior to approval of any building permit."

A BILL FOR AN ORDINANCE

SECTION 8. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-2.150-2 Administrative enforcement.

In lieu of or in addition to enforcement pursuant to Section 21-2.150-1, if the director determines that any person is violating any provision of this chapter, any rule adopted thereunder or any permit issued pursuant thereto, the director may have the person served, by registered or certified mail [or], restricted delivery, return receipt requested, or by hand delivery with a written notice of violation and order pursuant to this section. However, if the whereabouts of such person is unknown and cannot be ascertained by the director in the exercise of reasonable diligence and the director provides an affidavit to that effect, then a notice of violation and order may be served by publication once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.

(a) Contents of the Notice of Violation. The notice [shall] must include at least the following information:

(1) Date of the notice;

(2) The name and address of the person noticed;

(3) The section number of the provision or rule, or the number of the permit [which] that has been violated;

(4) The nature of the violation; and

(5) The location and time of the violation.

(b) Contents of Order.

(1) The order may require the person to do any or all of the following:

(A) Cease and desist from the violation;

(B) Correct the violation at the person's own expense before a date specified in the order;

(C) Pay a civil fine not to exceed $1,000.00 in the manner, at the place and before the date specified in the order;

(D) Pay a civil fine not to exceed $1,000.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.

(2) The order [shall] must advise the person that the order [shall] will become final 30 days after the date of its mailing or delivery. The order [shall] must also advise that the director's action may be appealed to the zoning board of appeals.

(c) Effect of Order—Right to Appeal. The provisions of the order issued by the director under this section [shall] will become final 30 days after the date of the mailing or delivery of the order. The person may appeal the order to the zoning board of appeals as provided in Section 6-1516 of the city charter. However, an appeal to the zoning board of appeals [shall] will not stay any provision of the order.

(d) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been paid."

SECTION 9. Section 21-3.20, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-3.20 Zoning precinct classifications and map designations.

To carry out the purposes and provisions of this chapter, the following zoning precincts are established:

Title	**Map Designation**
Waikiki Special District	
Apartment	Apartment precinct
Apartment mixed use	Apartment mixed use subprecinct
Resort mixed use	Resort mixed use precinct
[Resort commercial]	[Resort commercial precinct]
Public	Public precinct"

A BILL FOR AN ORDINANCE

SECTION 10. Section 21-3.50-4, Revised Ordinances of Honolulu 1990 ("Agricultural uses and development standards"), is amended by amending subsection (c) to read as follows:

"(c) Additional Development Standards.

(1) Height. The maximum height may be increased from 15 to 25 feet if height setbacks are provided.

(2) Height Setbacks. Any portion of a structure exceeding 15 feet [shall] must be set back from every front, side, and rear buildable area boundary line one foot for each two feet of additional height above 15 feet (see Figure 21-3.1)."

SECTION 11. Section 21-4.50, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.50 Lots in two zoning districts.

The following [shall] apply to lots within two or more zoning districts or precincts:

(a) For a use common to the districts or precincts, district or precinct boundary lines may be ignored for the purpose of yard, height setback, and height requirements.

(b) For uses not common to the districts or precincts, yard, height setback, and height regulations of each individual district or precinct [shall] will be applicable from the lot lines on the portions of the lot lying within that district or precinct.

(c) Where a lot lies in two zoning districts and a permitted use is common to both districts, but the floor area ratios differ, the floor area ratios [shall] will be calculated by the following formula, where:

A = FAR for total parcel in most intense district.
B = FAR for total parcel in least intense district.
C = Area of parcel in most intense district.

$$FAR = (A - B) \times \frac{C}{\text{Total Lot Area}} + B$$

(d) Where a lot lies in two zoning districts and a permitted use is common to both districts, but the maximum building area differs, the maximum building area will be calculated by the following formula, where:

A' = Maximum building area (percent of) for zoning lot A.
B' = Maximum building area (percent of) for zoning lot B.

A' x (Lot area of zoning lot A) + B' x (Lot area of zoning lot B)"

SECTION 12. Section 21-4.110, Revised Ordinances of Honolulu 1990 ("Nonconformities"), is amended by amending subsection (d) to read as follows:

"(d) Nonconforming Dwelling Units. With the exception of ohana dwelling units, which are subject to the provisions of Section 21-2.140-1(i), nonconforming dwelling units are subject to the following provisions:

(1) A nonconforming dwelling unit may be altered, enlarged, repaired, extended or moved, provided that all other provisions of this chapter are met[, except the requirements of Section 21-8.30].

(2) If a nonconforming dwelling unit 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] cannot be reconstructed.

(3) When detached dwellings constructed on a zoning lot prior to January 1, 1950 exceed the maximum number of dwelling units currently permitted, they [shall] will be deemed nonconforming dwelling units."

SECTION 13. Section 21-4.110-1, Revised Ordinance of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-1 Nonconforming use certificates for transient vacation units.

(a) The purpose of this section is to treat certain transient vacation units [which] that have been in operation since prior to October 22, 1986, or that are units in existing or former nonconforming hotels or time share units, as nonconforming uses, and to allow them to continue subject to obtaining a nonconforming use certificate [as provided by] and complying with the other requirements of this section.

(b) The owner, operator, [or] proprietor, or licensed rental agent of any transient vacation unit [which] that is operating in an area where [such] the use is not

expressly permitted by this chapter shall, within nine months [of] after December 28, 1989, establish to the satisfaction of the director that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, or shall cease its operation[.], as follows:

(1) The owner, operator, [or] proprietor, or licensed rental agent shall have the burden of proof in establishing that the use is nonconforming.

(2) Documentation substantiating existence 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] or State of Hawaii income tax returns, or both, for the years 1986 to 1989.

(3) Failure to obtain a nonconforming use certificate within nine months after December 28, 1989 means that the alleged nonconforming use, as of December 28, 1989:

(A) Is not a bona fide nonconforming use;

(B) Does not continue as a nonconforming use; and

(C) Will be treated as an illegal use.

Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.

(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.] The owner, operator proprietor or licensed rental agent of a unit within a nonconforming hotel, a former nonconforming hotel, or nonconforming time share unit, may apply for a nonconforming use certificate to establish a transient vacation unit after the September 28, 1990 deadline pursuant to subsection (b), provided that:

(1) The applicant has the burden of proof in establishing that the unit is within an existing or former nonconforming hotel or is a nonconforming time share unit;

(2) In the case of a former nonconforming hotel or time share unit, the applicant shall prove that the transient use of the unit began prior to the loss of the nonconformity and has continued uninterrupted from the time that the hotel or time sharing nonconformity was lost;

(3) Documentation substantiating existence includes records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal or State of Hawaii income tax returns; and

(4) "Uninterrupted" transient use means transient occupancies (occupancies of less than 30 days duration) that occurred for a total of at least 35 days during each calendar year, with no period of 12 consecutive months without a transient occupancy.

Upon a determination that the use was in existence prior to the hotel or time share unit's nonconformity and has continued uninterrupted through the date of the application for a nonconforming use certificate, the director shall issue a nonconforming use certificate for the transient vacation unit.

(d) The owner, operator, [or] proprietor or licensed rental agent of any transient vacation unit who has obtained a nonconforming use certificate under this section shall [apply] submit an application 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.]

no later than September 30 of each year. Each application to renew [shall] 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 during each calendar year covered by the nonconforming use certificate being renewed and [that] there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 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 transient occupancy. If the applicant does not reside on Oahu, the application must include the name, address, and phone number of an on-island licensed rental agent for receipt of any notices or complaints, which must be kept current with the department. Failure to meet these conditions will result in the denial of the

application for renewal of the nonconforming use certificate[.]; except where the applicant establishes good cause for failing to meet conditions of renewal. The applicant shall notify the director in writing of the reason for failing to meet conditions of renewal. Thereafter, the director shall make a decision and notify the applicant of the decision in writing. If the director determines the applicant had good cause for failing to meet conditions of renewal, an additional fee of $1,000 will be assessed against the applicant upon approval of each application. In no case will an application for renewal received 45 days after the expiration of the renewal period be approved. The requirement for the 35 days of transient occupancies [shall] will be effective on January 1, 1995 and [shall] will apply to renewal applications submitted on or after January 1, 1996.

(e) The owner, operator, [or] proprietor, or licensed rental agent of any transient vacation unit 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. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead."

SECTION 14. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"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] that 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] and complying with the requirements of this section.

(b) The owner, operator, [or] proprietor or licensed rental agent of any bed and breakfast home shall, within nine months [of] after 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[.]as follows:

(1) The owner, operator, [or] proprietor [shall have],or licensed rental agent has the burden of proof in establishing that the use is nonconforming.

(2) 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] or State of Hawaii income tax returns, for the year proceeding December 28, 1989.

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

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, or licensed rental agent 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.]

no later than September 30 of each year. Each application to renew [shall] must include proof that: [(i) there]

(1) 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]

(2) 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[.], except where the applicant establishes good cause for failing to meet conditions of renewal. The applicant shall notify the director in writing of the reason for failing to meet conditions of renewal. Thereafter, the director shall make a decision and notify the applicant in writing. If the director determines the applicant had good cause for failing to meet conditions of renewal, an additional fee of $1,000 will be assessed against the applicant upon approval of each application. In no case will an application for renewal received 45 days after the expiration of the renewal period or later be approved. The requirement for the 28 days of bed and breakfast occupancies [shall] will be effective on January 1, 1995 and [shall] will apply to renewal applications submitted on or after January 1, 1996.

[(e)](d) Except those bed and breakfast homes [which] that 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] by this section, bed and breakfast homes are prohibited in all zoning districts. Section 21-5.350 relating to home occupations [shall] does not apply to bed and breakfast homes.

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

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

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

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

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

[(g)](f) The owner, operator, [or] proprietor, or licensed rental agent of any bed and breakfast home who has obtained a nonconforming use certificate under this

section [shall] must display the certificate issued for the current year in a conspicuous place on the premises."

SECTION 15. Section 21-5.10A, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.10A Agribusiness activities.

(a) Except as otherwise specified under principal uses, retail activities in an enclosed structure [shall be] may be allowed, but are limited to [a structure not exceeding] not more than 500 square feet of floor area, and all products for sale therein [shall] must be [(i)] predominantly agricultural products grown [on the parcel, (ii) agricultural products grown] or produced on the site, in the [City and County of Honolulu, (iii) jams, jellies, candies and pickled or dried produce] city or elsewhere in the State of Hawaii, and finished foods, drinks or other goods substantially made from those products. [A minimum of 50 percent of the floor area of the structure used for the display of products for sale shall display only agricultural products grown on the premises or the aforesaid products made therefrom; and the remainder of the floor area used for display purposes shall display only agricultural products grown in the City and County of Honolulu or the aforesaid products made therefrom.] Non-food items may be sold, provided that these items are made primarily from agricultural products grown or produced on the site, in the city or elsewhere in the State of Hawaii. An incidental amount of general merchandise that features the brand, name or logo of the agribusiness operator may also be sold, provided that the items occupy no more than five percent of the floor area permitted for and devoted to retail sales, as provided in this section. The limitations enumerated above notwithstanding, an agribusiness activity may also include facilities for the preparation, sale, and consumption of food and drink on the site, which must feature agricultural products grown or produced on the site, in the city or elsewhere in the State of Hawaii.

(b) A non-motorized, or motorized transportation system such as, but not limited to, tramways, trains, and other forms of connected, motorized vehicles used for guided or self-guided tours may be permitted only if in conjunction with and incidental to the existing agricultural operation on the same site.

(c) [One] No more than one farmer's market for the growers and producers of agricultural products to display and sell agricultural products grown in the [City and County of Honolulu shall] city or elsewhere in the State of Hawaii may be permitted on a zoning lot. [Jams, jellies, candies, and pickled or dried produce

or similar items made] Finished products produced primarily from these agricultural products also may be included for display [or] and sale.

(1) Markets [shall operate] may be operated only during daylight hours and [shall not operate] cannot be operated on parcels of less than five (5) acres[.]; and

(2) Structures in the farmer's market may have a wall area, but any wall [shall] must be at least 50 percent open and all structures [shall] must have a rural or rustic appearance.

[(3) The market shall be on a scale appropriate to the size of the lot and surrounding area, and adequate parking and vehicular access shall be provided as determined by the director.]

(d) Agribusiness activities must always be accessory and incidental to the primary agricultural use of the lot. Permitted agribusiness activities, individually and collectively, must be on a scale appropriate to the size of the lot and the surrounding area; and adequate parking and vehicular access for agribusiness activities, as determined by the director, must be provided.

(e) As a condition of approval, dedication of [a] 50 percent or more of the project site, as the director determines is necessary to preserve the purpose and intent of the agricultural districts, for a minimum of 10 years to active agricultural use [shall] will be required by way of an agricultural easement or comparable mechanism acceptable to the director."

SECTION 16. Section 21-5.160, Revised Ordinances of Honolulu 1990 ("Convenience stores"), is amended by amending subsection (c) to read as follows:

"(c) Floor area [shall] will be limited to 2,500 square feet[.] in the apartment mixed use and industrial districts."

SECTION 17. Section 21-5.380, Revised Ordinances of Honolulu 1990 ("Joint development of two or more adjacent subdivision lots"), is amended by amending subsection (a) to read as follows:

"(a) Whenever two or more subdivision lots are developed in accordance with the provisions of this section, they [shall] will be considered and treated as one zoning lot[.]; provided that whenever the lots involve two or more zoning districts, the lots will be subject to the provisions enumerated in Section 21.4-50."

A BILL FOR AN ORDINANCE

SECTION 18. Section 21-5.390, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.390 Joint use of parking facilities.

(a) Joint use of private off-street parking facilities in satisfaction of appropriate portions of off-street parking or loading area requirements may be allowed, provided the requirements of the following subsections are met.

(b) The distance of the entrance to the parking or loading facility from the nearest principal entrance of the establishment or establishments involved in [such] the joint use [shall not] cannot exceed 400 feet by normal pedestrian routes.

(c) The amount of off-street parking [which] or loading area that may be credited against the requirements for the use or uses involved [shall not] cannot exceed the number of spaces reasonably anticipated to be available during differing periods of peak demand.

(d) [A] All parties involved with a joint parking or loading facility shall execute a written agreement assuring continued availability of the number of spaces at the periods indicated [shall be drawn and executed by the parties involved], and file a certified copy [shall be filed] with the department. In [such] these cases, no change in use or new construction [shall] will be permitted [which] if the change increases the requirements for [off street] off-street parking or loading area space unless [such] the required additional space is provided. The agreement [shall] will be subject to the approval of the corporation counsel.

(e) When joint parking or loading facilities serving eating or drinking establishments adjoin a zoning lot in a residential, apartment, or apartment mixed use district, the director shall require a solid fence or wall six feet in height to be erected and maintained on the common property line. The director may modify the requirements of this subsection if warranted by topography."

SECTION 19. Section 21-5.700, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.700 Wind machines.

(a) All horizontal-axis wind machines [shall] and ground-mounted vertical-axis wind machines must be set back from all property lines a minimum distance equal to the height of the system. Height [shall include] includes the height of the tower or its vertical support structure and the farthest vertical extension of the wind

machine. Section 21-4.60(c)(7) notwithstanding, for rooftop mounted vertical-axis wind machines, the machinery must be set back pursuant to the height setbacks enumerated in articles 3 and 9 for the underlying zoning district or special district precinct.

(b) In residential zoning districts, in addition to the above, the following [shall be applicable] apply:

(1) [Tower] For any ground-mounted wind machine, the tower climbing apparatus and blade tips of the wind machine [shall] cannot be [no] lower than 15 feet from ground level, unless enclosed by a six-foot high fence, and [shall not] cannot be within seven feet of any roof or structure unless the blades are completely enclosed by a protective screen or fence[.];

(2) A public safety sign [shall] must be posted at the base of the tower warning of high voltage and dangerous moving blades[.];

(3) The system base and rotor blade [shall] must be a minimum of 15 feet from any overhead electrical transmission or distribution lines[.];

(4) Anchor points for guy wires for [the] any wind machine [shall] must be located within property lines and not on or across any overhead electrical transmission or distribution lines. Guy wires [shall] must be equipped with devices that will, in a safe manner, prevent them from being climbed and [shall] must be securely fastened[.];

(5) The applicant shall provide manufacturer's specifications [which] that certify the safety of the machine; provided[,] that the appropriate [tower was] equipment, structures, and devices were used and proper installation procedures followed, as outlined in the manufacturer's manual[.];

(6) The wind machine [shall] must be operated so that no disruptive electromagnetic interference is caused. If [it can be demonstrated to] the director determines that the system is causing harmful interference, the operator shall promptly mitigate the interference[.];

(7) The system [shall] must be kept in good repair and operating condition at all times[.]; and

(8) [The system shall be deemed abandoned if not in continuous use for at least one year. Upon determination that the use is abandoned, the

structure shall be dismantled and removed within 30 days upon written notice.

(9)] The system [shall] will be restricted to a rated capacity of no more than 15 kilowatts.

(c) In the agricultural and country zoning districts, accessory wind machines [shall] must have a rated capacity of no more than 100 kilowatts. Wind machines with a rated capacity of more than 100 kilowatts [shall] require a conditional use permit (minor).

(d) In the business zoning districts, wind machines [shall] may have a rated capacity of no more than 15 kilowatts.

(e) In all zoning districts, a wind machine will be deemed abandoned if not in continuous use for at least one year. Upon determination by the director that a wind machine has been abandoned, the structure must be dismantled and removed within 30 days after written notice thereof."

SECTION 20. Section 21-7.40, Revised Ordinances of Honolulu 1990 ("Specific district sign standards"), is amended as follows:

1. By amending subsections (e) to (g) to read as follows:

"(e) Resort District.

(1) In connection with any use permitted other than one- and two-family dwellings, only one wall or marquee fascia sign, not directly illuminated and not exceeding [12] 24 square feet in area, [shall] will be permitted for each ground floor establishment with building frontage.

One nonilluminated ground sign for identification or directory purposes, not exceeding eight square feet in area and not exceeding six feet in height, [shall] will also be permitted for each street front having a principal pedestrian or vehicular entrance. If the above ground sign is not used and all buildings on the street frontage of the zoning lot are set back a minimum of 50 feet from the property line, one ground identification or directory sign, not directly illuminated and not exceeding [12] 24 square feet in area, [shall] will also be permitted on each side of the building where a principal pedestrian or vehicular entrance is situated. Instead of the above ground signs, one garden sign may be permitted.

(2) This subsection [shall] does not apply to the Waikiki special district, which [shall be] is governed by subsection (l).

(f) B-1 Neighborhood Business District.

(1) One wall or hanging sign on the building frontage side for each ground floor establishment is permitted. The sign [shall not] cannot be directly illuminated. The maximum sign area per establishment for each building side on which the sign is permitted [shall not] cannot exceed one square foot of sign area for each lineal foot of building frontage, nor exceed 100 square feet in sign area. No illuminated signs [shall] may be [so] placed or erected so as to be visible in any portion of an adjoining residential lot after [10] 10:00 p.m.

(2) One garden sign per zoning lot instead of the signs permitted above.

(3) One wall or ground sign per building frontage, not directly illuminated and not exceeding 12 square feet in area, may be erected for building identification or directory purposes [as part of the total sign area permitted on the building side on which it is located]. When used, this ground sign [shall not] cannot be illuminated and [shall not] cannot exceed six feet in height.

(4) For each second floor establishment with building frontage, one wall identification sign may be permitted. The maximum sign area [shall be] is six square feet and the sign [shall not] cannot be illuminated.

(g) B-2 Community Business and BMX-3 Community Business Mixed Use Districts.

(1) Two business signs on the building frontages for each ground floor establishment may be erected. The signs may be illuminated and of the following types: hanging, marquee fascia, projecting or wall signs.

(2) The maximum sign area per establishment for each building side on which signs are permitted [shall not] cannot exceed one and one-half square feet for each lineal foot of building frontage; provided that [no such] the sign area [shall] cannot exceed 250 square feet [in area nor shall the total sign area exceed 15 percent of the wall area on which it is displayed or attached].

(3) One ground sign, not directly illuminated, per zoning lot for identification or directory purposes may be erected [as part of the total sign area permitted on the building side on which it is located], provided that:

(A) A maximum 24-square-foot sign is permitted if all buildings on the street frontage of the zoning lot are set back greater than 50 feet from the front property line[.]; and

(B) [The ground sign shall be counted as one of the two permissible business signs against all ground floor establishments within the zoning lot on which it is located.

(C)] No portion of the sign [shall] may be located in or overhang any required yard or public right-of-way.

(4) One garden sign per zoning lot[; provided that such sign shall be counted as one of the signs permitted in subdivision (1).] may be erected.

(5) One wall, ground or projecting sign per building frontage, which may be illuminated but not exceed 12 square feet in area, may be erected for building identification or directory [purpose as part of the total sign area permitted on the building side on which it is located, provided that the sign shall be counted as one of the signs permitted in subdivision (1) for each establishment.] purposes. When used, this ground sign [shall not] cannot be directly illuminated and [shall not] cannot exceed six feet in height.

(6) For each second floor establishment with building frontage, one wall identification sign may be permitted. The maximum sign area [shall be] is six square feet and the sign [shall not] cannot be illuminated."

2. By amending subsection (i) to read as follows:

"(i) Industrial and Industrial-Commercial Mixed Use Districts.

(1) Two business signs on the building frontage for each ground floor establishment[.] may be erected. The signs may be illuminated or moving and of the following types: hanging, marquee fascia, projecting, roof or wall signs.

(2) The maximum sign area per establishment for each building side on which signs are permitted [shall not] cannot exceed two square feet for

each lineal foot of building frontage, provided that [no] the sign area [shall] cannot exceed 250 square feet [nor shall the total sign area exceed 15 percent of the wall on which displayed].

(3) One ground sign, not directly illuminated, per zoning lot for identification or directory purposes may be erected as part of the total sign area permitted on the building side on which it is located, provided that:

(A) A maximum 32-square-foot sign is permitted if all buildings on the street frontage of the zoning lot are set back greater than 50 feet from the front property line[.]; and

(B) [The ground sign shall be counted as one of the two permissible business signs against all ground floor establishments within the zoning lot on which it is located.

(C)] No portion of the sign [shall] may be located in or overhang any required yard or public right-of-way.

(4) One garden sign per zoning lot[, provided that such sign shall be counted as one of the signs permitted in subdivision (1).] may be erected.

(5) One wall, ground or projecting sign per building frontage, which may be illuminated but not exceed 12 square feet in area, may be erected for building identification or directory [purpose as part of the total sign area permitted on the building side on which it is located, provided that the sign shall be counted as one of the signs permitted in subdivision (1) for each establishment] purposes. When used, this ground sign [shall not] cannot be directly illuminated and [shall not] cannot exceed six feet in height.

(6) For each second floor establishment with building frontage, one wall identification sign may be permitted. The maximum sign area [shall be] is six square feet and the sign [shall not] cannot be illuminated."

SECTION 21. Section 21-8.20, Revised Ordinances of Honolulu 1990 ("Housing—Ohana dwellings"), is amended by amending subsection (c) to read as follows:

"(c) One ohana dwelling unit may be located on a lot zoned for residential, country, or agricultural use, with the following limitations:

A BILL FOR AN ORDINANCE

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

(2) Ohana dwelling units are not permitted on lots within a zero lot line project, cluster housing project, agricultural cluster, country cluster, planned development housing, R-3.5 zoning districts, or on duplex units lots.

(3) An ohana dwelling unit is not permitted on any nonconforming lot.

(4) The ohana dwelling unit and the first dwelling may be located within a single structure, i.e., within the same two-family detached dwelling, or the ohana dwelling unity may be detached from the first dwelling and located on the same lot as the first dwelling.

(5) The ohana dwelling unit must be occupied by persons who are related by blood, marriage or adoption to the family residing in the first dwelling. Notwithstanding this provision, ohana dwelling units for which a building permit was obtained before September 10, 1992 are not subject to this [restriction] subdivision and their occupancy by persons other than family members is permitted.

(6) All other provisions of the zoning district apply.

(7) The parking provisions of this chapter applicable at the time the ohana building permit is issued apply and the provision of [such] this parking is a continuing duty of the owner.

(8) 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 their heirs, successors or assigns of the owner or owners shall submit the lot or any portion thereof to the condominium property regime established by HRS Chapter [514A] 514B. The covenant must 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 will be deemed a violation of [Chapter 21] this chapter and be grounds for enforcement of the covenant by the director pursuant to Section 21-2.150, et seq., and will be grounds for an action by the director to

require the owner or owners to remove, pursuant to HRS Section [514A-21] 514B-47, the property from a submission of the lot or any portion thereof to the condominium property regime made in violation of the covenant."

SECTION 22. Section 21-9.80-3, Revised Ordinances of Honolulu 1990 ("Prominent view corridors and historic properties"), is amended by amending subsection (b) to read as follows:

"(b) Development should preserve, maintain and enhance these views whenever possible. Additional yard area and spacing between buildings may be required by the director, in connection with the issuance of special district permits, and the council [and/or] or the director, or both, in connection with planned development-resort and [planned development-commercial] planned development-apartment approvals pursuant to Section 21-2.110-2, to protect these significant views."

SECTION 23. Section 21-9.80-4, Revised Ordinances of Honolulu 1990 ("General requirements and design controls"), is amended by amending subsections (c) and (d) to read as follows:

"(c) Design Guidelines.

(1) General Guidelines. All structures, open spaces, landscape elements and other improvements within the district [shall] must conform to the guidelines specified on the urban design controls marked Exhibit 21-9.15, set out at the end of this article, the design standards contained in this section and other design guidelines promulgated by the director to further define and implement these standards.

(2) Yards. Yard requirements [shall] will be as enumerated under development standards for the appropriate zoning precinct under Table 21-9.6(B).

(3) [Automobile Service Stations and] Car Rental Establishments. [Automobile service stations and car] Car rental establishments [shall] must comply with the following requirements:

(A) A minimum side and rear yard of five feet [shall] will be required with a solid fence or wall at least six feet in height on the property line with the required yard substantially landscaped with planting and maintained.

(B) The [station shall] car rental establishment must be illuminated so that no unshielded, unreflected, or undiffused light source is visible from any public area or private property immediately adjacent to the [station.] establishment.

(C) All areas not landscaped [shall] must be provided with an all-weather surface.

(D) No water produced by activities on the zoning lot [shall] will be permitted to fall upon or drain across public streets or sidewalks.

(4) Utility Installations. Except for antennas, utility installations [shall] must be designed and installed in an aesthetic manner so as to hide or screen wires and equipment completely from view, including views from above; provided that any antenna located at a height of 40 feet or less from existing grade should take full advantage of stealth technologies in order to be adequately screened from view at ground level without adversely affecting operational capabilities.

(5) Building Materials. Selection and use of building materials should contribute to a Hawaiian sense of place through the use of subdued and natural materials, such as plaster finishes, textured concrete, stone, wood and limited use of color-coated metal. Freestanding walls and fences should be composed of moss rock, stucco-finished masonry or architectural concrete whenever possible. Colors and finishes [shall] should be characterized as being absorptive rather than reflective. The use of shiny metal or reflective surfaces, including paints and smooth or plastic-like surfaces should be avoided.

(6) Building Scale, Features and Articulation. Project designs should provide a human scale at ground level. Buildings composed of stepped forms are preferred. Articulated facades are encouraged to break up building bulk. Use of the following building features is encouraged: sunshades; canopies; eaves; lanais; hip-form roofs for low-rise, freestanding buildings; recessed windows; projecting eyebrows; and architectural elements that promote a Hawaiian sense of place.

(7) Exterior Building Colors. Project colors should contribute to a tropical resort destination. They should complement or blend with surrounding colors, rather than call attention to the structure. Principal colors, particularly for high-rise towers, should be of neutral tones with more

vibrant colors relegated to accent work. Highly reflective colors [shall] are not [be] permitted.

(8) Ground Level Features.

(A) Within a development, attention should be given to pedestrian-oriented ground level features. A close indoor-outdoor relationship should be promoted. Design priority should include the visual links through a development connecting the sidewalk and other public areas with on-site open spaces, mountains and the ocean.

(B) Building facades at the ground level along open spaces and major streets (including Kalakaua Avenue, Kuhio Avenue, Kapahulu Avenue, Ala Wai Boulevard and Ala Moana Boulevard) [shall] must be devoted to open lobbies, arcade entrances, and display windows, and to outdoor dining where it is permitted.

(C) Where commercial uses are located at ground level, other than as required by paragraph (B), at least one-half of the total length of the building facade along streets [shall] must be devoted to open lobbies, arcade entrances, display windows and outdoor dining where permitted.

(D) The street facades of ground level hotel lobbies should include wide, open entryways. Ventilation in these lobbies should primarily depend on natural air circulation.

(E) Where buildings are situated between a street and the shoreline or between a street and open spaces, ground level lobbies, arcades and pedestrian ways should be provided to create visual links between the street and the shoreline or open space.

(F) Where blank walls must front a street or open space, they [shall] must be screened with heavy landscaping or appropriately articulated exterior surfaces.

(G) Ground level parking facilities should not be located along any street, park, beachfront, public sidewalk or pedestrian way. Where the site plan precludes any other location, the garage may front these areas provided landscaping is provided for screening.

Principal landscaping [shall] must include trees, and secondary landscape elements may include tall hedges and earth berms.

(H) For purposes of the Waikiki special district, an "open lobby" [shall mean] means a ground-floor lobby [which shall] that is not [be] enclosed along the entire length of at least two of its sides or 50 percent of its perimeter, whichever is greater, and [which shall provide] that provides adequate breezeways and views to interior [and/or] or prominent open spaces, or both, intersecting streets, gateways or significant pedestrian ways.

(9) Outdoor Lighting. Outdoor lighting [shall] must be subdued or shielded so as to prevent glare and light spillage onto surrounding properties and public rights-of-way. [It shall not] Outdoor lighting cannot be used to attract attention to structures, uses, or activities; provided, however, that indirect illumination [which shall be] that is integrated with the architectural design of a building may be allowed when it is utilized to highlight and accentuate exterior building facades, and architectural [and/or] or ground level features, or both. Rotating, revolving, moving, flashing and flickering lights [shall not] cannot be visible to the public, except lighting installed by a public agency for traffic safety purposes or temporary lighting related to holiday displays.

(d) Planned Development-Resort (PD-R) and Planned Development-Apartment (PD-A) Projects. The purpose of the PD-R and PD-A options is to provide opportunities for creative redevelopment not possible under a strict adherence to the development standards of the special district. Flexibility may be provided for project density, height, precinct transitional height setbacks, yards, open space and landscaping when timely, demonstrable contributions benefiting the community and the stability, function, and overall ambiance and appearance of Waikiki are produced.

Reflective of the significance of the flexibility represented by this option, it is appropriate to approve projects conceptually by legislative review and approval prior to more detailed review and approval by the department. PD-R and PD-A projects [shall] will be subject to the following:

(1) PD-R and PD-A Applicability.

(A) PD-R projects [shall] are only [be] permitted in the resort mixed use precinct, and PD-A projects [shall] are only [be] permitted in the apartment precinct.

(B) The minimum project size [shall be] is one acre. Multiple lots may be part of a single PD-R or PD-A project if all lots are under a single owner [and/or] and lessee holding leases with a minimum of 30 years remaining in their terms. Multiple lots in a single project must be contiguous, provided that lots that are not contiguous may be part of a single project if all of the following conditions are met:

(i) The lots are not contiguous solely because they are separated by a street or right-of-way that is not a major street as shown on Exhibit 21-9.15; and

(ii) Each noncontiguous portion of the project, whether comprised of a single lot or multiple contiguous lots, [shall] must have a minimum area of 20,000 square feet, but subject to the minimum overall project size of one acre.

When a project consists of noncontiguous lots as provided above, bridges or other design features connecting the separated lots are strongly encouraged, to unify the project site. Multiple lots that are part of an approved single PD-R or PD-A project [shall] will be considered and treated as one zoning lot for purposes of the project, provided that no conditional use permit-minor for a joint development [shall] will be required therefor.

(2) PD-R and PD-A Use Regulations. Permitted uses and structures [shall] will be as enumerated for the underlying precinct in Table 21-9.6(A).

(3) PD-R and PD-A Site Development and Design Standards. The standards set forth by this subdivision are general requirements for PD-R and PD-A projects. When, in the paragraphs below, the standards are stated to be subject to modification or reduction, [such] the modification or reduction [shall] must be for the purpose of accomplishing a project design consistent with the goals and objectives of the Waikiki special district and this subsection [(d)].

(A) In PD-R projects, the maximum project floor area [shall not] cannot exceed [an] a FAR of 4.0, except:

(i) If the existing FAR is greater than 3.33, then an increase in maximum density by up to 20 percent may be allowed, up to but not exceeding a maximum FAR of 5.0; or

(ii) If the existing FAR is greater than 5.0, then the existing FAR may be the maximum density.

In computing project floor area, the FAR may be applied to the zoning lot area, plus one-half the abutting right-of-way area of any public street or alley. Floor area devoted to acceptable public uses within the project, such as a museum or performance area (e.g., stage or rehearsal area), may be exempt from floor area calculations.

The foregoing maximum densities may be reduced.

(B) In PD-A projects, the maximum project floor area [shall not] cannot exceed [an] a FAR of 3.0, except:

(i) If the existing FAR is greater than 3.0, then an increase in maximum density by up to 20 percent may be allowed, up to but not exceeding a maximum FAR of 4.0; or

(ii) If the existing FAR is greater than 4.0, then the existing FAR may be the maximum density.

In computing project floor area, the FAR may be applied to the zoning lot area, plus one-half the abutting right-of-way area of any public street or alley. Floor area devoted to acceptable public uses within the project, such as a museum or performance area (e.g., stage or rehearsal area), may be exempt from floor area calculations.

The foregoing maximum densities may be reduced.

[(B) Maximum] (C) The maximum building height [shall be] is 350 feet, but this standard may be reduced.

[(C) Precinct] (D) The precinct transitional height setbacks [shall] will be as set forth in Table 21-9.6(B), but these standards may be modified.

[(D) Minimum] (E) The minimum yards [shall be] is 15 feet, but this standard may be modified.

[(E) Minimum] (F) The minimum open space [shall be] is at least 50 percent of the zoning lot area, but this standard may be modified when beneficial public open spaces and related amenities are provided.

[(F) Landscaping] (G) The landscaping requirements [shall] will be as set forth in subsection (f), but these standards may be modified.

[(G)](H) Except as otherwise provided in this subdivision, all development and design standards applicable to the precinct in which the project is located [shall] will apply.

(4) Approval of PD-R or PD-A Projects.

(A) Application Requirements. An application for approval of a PD-R or PD-A project [shall] must contain:

(i) A project name;

(ii) A location map showing the project in relation to the surrounding area;

(iii) A site plan showing the locations of buildings and other major structures, proposed open space and landscaping system, and other major activities. [It shall] The site plan must also note property lines, the shoreline, shoreline setback lines, beach access and other public and private access, when applicable;

(iv) A narrative description of the overall development and design concept; the general mix of uses; the basic form and number of structures; the estimated number of proposed hotel and other dwelling or lodging units; general building height and density; how the project achieves and positively contributes to a Hawaiian sense of place; proposed public amenities, development of open space and landscaping; how the project achieves a pedestrian orientation; and potential impacts on, but not necessarily limited to, traffic circulation, parking and loading, security, sewers, potable water, and public utilities;

(v) An open space plan and integrated pedestrian circulation system;

(vi) A narrative explanation of the project's architectural design relating the various design elements to a Hawaiian sense of place and the requirements of the Waikiki special district; and

(vii) A parking and loading management plan.

(B) Procedures. Applications for approval of PD-R or PD-A projects [shall] will be processed in accordance with Section 21-2.110-2.

(C) No project [shall] will be eligible for PD-R or PD-A status unless the council has first approved a conceptual plan for the project.

(D) Guidelines for Review and Approval of the Conceptual Plan for a Project. Prior to its approval of a conceptual plan for a PD-R or PD-A project, the council shall find that the project concept, as a unified plan, is in the general interest of the public, and that:

(i) Requested project boundaries and design flexibility with respect to standards relating to density (floor area), height, precinct transitional height setbacks, yards, open space and landscaping are consistent with the Waikiki special district objectives and the provisions of this subsection [(d)];

(ii) Requested flexibility with respect to standards relating to density (floor area), height, precinct transitional height setbacks, yards, open space, and landscaping is commensurate with the public amenities proposed; and

(iii) When applicable, there is no conflict with any visitor unit limits for Waikiki as set forth under Chapter 24.

(E) Deadline for Obtaining Building Permit for Project.

(i) A council resolution of approval for a conceptual plan for a PD-R or PD-A project [shall] must establish a deadline within which the building permit for the project [shall] must be obtained. For multiphase projects, deadlines [shall] must be established for obtaining building permits for each

phase of the project. The resolution [shall] must provide that the failure to obtain any building permit within the prescribed period [shall] will render null and void the council's approval of the conceptual plan and all approvals issued thereunder; provided that in multiphase projects, any prior phase that has complied with the deadline applicable to that phase [shall] will not be affected. A revocation of a building permit pursuant to Section 18-5.4 after the deadline [shall] will be deemed a failure to comply with the deadline.

(ii) The resolution [shall] must further provide that a deadline may be extended as follows: The director may extend the deadline if the applicant demonstrates good cause, but the deadline [shall not] cannot be extended beyond one year from the initial deadline without the approval of the council, which may grant or deny the approval in its complete discretion. If the applicant requests an extension beyond one year from the initial deadline and the director finds that the applicant has demonstrated good cause for the extension, the director shall prepare and submit to the council a report on the proposed extension, which report [shall] must include the director's findings and recommendations thereon and a proposed resolution approving the extension. The council may approve the proposed extension or an extension for a shorter or longer period, or deny the proposed extension, by resolution. If the council fails to take final action on the proposed extension within the first to occur of:

(aa) 60 days after the receipt of the director's report; or

(bb) the applicant's then-existing deadline for obtaining a building permit, the extension [shall] will be deemed [to be] denied. The director shall notify the council in writing of any extensions granted by the director that do not require council approval.

(F) Approval by Director. Upon council approval of the conceptual plan for the PD-R or PD-A project, the application for the project, as approved in concept by the council, [shall] will continue to be processed by the director as provided under Section 21-2.110-2.

Additional documentation may be required by the director as necessary. The following criteria [shall] will be used by the director to review applications:

(i) The project [shall] must conform to the approved conceptual plan and any conditions established by the council in its resolution of approval;

(ii) The project also [shall] must implement the objectives, guidelines, and standards of the Waikiki special district and this subsection [(d)];

(iii) The project [shall] must exhibit a Hawaiian sense of place. The document "Restoring Hawaiianness to Waikiki" (July 1994) and the supplemental design guidebook to be prepared by the director should be consulted by applicants as a guide for the types of features [which] that may fulfill this requirement;

(iv) The project [shall] must demonstrate a high level of compliance with the design guidelines of this special district and this subsection [(d)];

(v) The project [shall] must contribute significantly to the overall desired urban design of Waikiki;

(vi) The project [shall] must reflect appropriate "contextual architecture";

(vii) The project [shall] must demonstrate a pedestrian system, open spaces, and landscaping and water features (such as water gardens and ponds) [which are] that must be integrated and prominently conspicuous throughout the project site at ground level;

(viii) The open space plan [shall] must provide useable open spaces, green spaces, water features, public places, and other related amenities that reflect a strong appreciation for the tropical environmental setting reflective of Hawaii;

(ix) The system of proposed pedestrian elements [shall] must contribute to a strong pedestrian orientation [which shall]

that must be integrated into the overall design of the project, and [shall] must enhance the pedestrian experience between the project and surrounding Waikiki areas; and

(x) The parking management plan [shall] must minimize impacts upon public streets where possible, [shall] must enhance local traffic circulation patterns, and [shall] must make appropriate accommodations for all anticipated parking and loading demands. The approved parking management plan [shall] will constitute the off-street parking and loading requirements for the project."

SECTION 24. Section 21-9.100-5 Revised Ordinances of Honolulu 1990 ("Interim planned development-transit (IPD-T) projects"), is amended by amending subsection (d) to read as follows:

"(d) Site Development and Design Standards. The standards set forth by this subsection are general requirements for IPD-T projects. When, in the [paragraphs] subdivisions below, the standards are stated to be subject to modification or reduction, [such] the modification or reduction [shall] must be for the purpose of accomplishing a project design consistent with the goals and objectives of Section 21-9.100-4 and this subsection. Also, pursuant to [Section 21-9.100-5(b),] subsection b, the modification or reduction in the following standards [shall] must be commensurate with the contributions provided in the project plan, and the project [shall] must be generally consistent with the draft or approved neighborhood TOD plan for the area.

(1) Density.

(A) The maximum floor area ratio (FAR) may be up to twice that allowed by the underlying zoning district or 7.5, whichever is lower; provided that where a draft or approved neighborhood TOD plan identifies greater density for the site, a project on that site [shall] must be consistent with the specified density contained in the plan and may be considered for that density; and

(B) For lots in the B-2, BMX-3, BMX-4, and IMX-1 districts, the maximum increase [shall] will apply in addition to any eligible density bonuses for the underlying zoning district; that is, the increase [shall] will apply to the zoning lot plus any applicable floor area bonuses.

(2) Height.

(A) For project sites where there is no draft neighborhood TOD plan, the maximum building height may be up to twice that allowed by the underlying zoning district, or 450 feet, whichever is lower; and

(B) Where there is a draft or approved neighborhood TOD plan, the maximum height [shall not] cannot exceed the maximum height specified in the plan[,]; provided that where existing height limits exceed those in the plans, the existing height limit [shall] will prevail.

(3) Transitional height [and/or] or street setbacks may be modified where adjacent uses and street character will not be adversely affected.

(4) Buildable Area. Yards [shall] and the maximum building area will be as specified by the approved conceptual project plan[,]; provided that building placement will not cause adverse noise, sunlight blockage, privacy [and/or] or wind [affects] effects to adjacent uses, or both, and street character will not be adversely affected.

(5) Open Space.

(A) Project open space [shall] will be as specified in the approved conceptual project plan, with a preference for publicly accessible highly usable parks and gathering spaces rather than buffering or unusable landscaped areas.

(B) Where appropriate, usable open space may be:

(i) Transferred to another accessible site within the vicinity of the project that [shall] will be utilized as public park, plaza, or gathering place for the affected community; or

(ii) Provided in the form of connections or improvements, or both, to nearby open spaces, pedestrian ways or trails, such as, but not necessarily limited to, streetscape and intersection improvements, pedestrian walkways or bridges, arcades, or promenades;

or both.

(6) Landscaping and screening standards [shall] will be as specified in the approved conceptual project plan and project landscaping [shall] must include adjacent rights-of-way. Streetscape landscaping, including street trees or planting strips, or both, should be provided near the edge of the street, rather than adjacent to the building, unless infeasible.

(7) Parking and loading standards [shall be] are as follows:

(A) The number of parking and loading spaces provided [shall] will be as specified in the approved conceptual project plan;

(B) Service areas and loading spaces [shall] must be located at the side or rear of the site, unless the size and configuration of the lot renders this infeasible;

(C) Vehicular access [shall] must be provided from a secondary street whenever possible and placed in the location least likely to impede pedestrian circulation; and

(D) The provision of car-sharing programs and vehicle charging stations is encouraged.

(8) Bicycle parking [shall] must be accommodated on the project site, subject to the following:

(A) The number of bicycle parking spaces provided [shall] will be as specified in the approved conceptual project plan;

(B) Long-term bicycle parking [shall] must be provided for residents of on-site dwelling units in the form of enclosed bicycle lockers or easily accessible, secure, and covered bicycled storage;

(C) Bicycle parking within enclosed parking structures [shall] must be located as close as is feasible to an entrance of the facility so that it is visible from the street or sidewalk. The provision of a fenced and gated area for secure bicycle parking within the structure is encouraged;

(D) Each bicycle parking space [shall] must be a minimum of 15 inches in width and six feet in length, with at least five feet of clearance between bicycle and vehicle parking spaces. Each

bicycle must be easily reached and movable without moving another bicycle; and

(E) The provision of space for bicycle-sharing stations is encouraged either on the exterior of the building or within a parking structure, provided the area is visible and accessible from the street.

(9) Signs.

(A) Sign standards and requirements [shall] will be as specified in the approved conceptual project plan. The sign standards and requirements may deviate from the strict sign regulations of this chapter[,]; provided that the flexibility is used to achieve good design, compatibility, creativity, consistency, and continuity in the utilization of signs on a pedestrian scale;

(B) All projects [shall] must include appropriate measures to accommodate TOD-related way-finding signage[, which shall] that will be considered "public signs" for purposes of Article 7; and

(C) Where signage is not otherwise specified by the approved conceptual plan for the project, the project signage [shall] must comply with the underlying sign regulations of this chapter."

SECTION 25. Section 21-10.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definition of "family" to read as follows:

""Family" means one or more persons, all related by blood, adoption, or marriage, occupying a dwelling unit or lodging unit. A family may also be defined as no more than five unrelated persons.

In addition, eight or fewer persons who reside in an adult residential care home, a special treatment facility or other similar facility monitored [and/or], registered, certified, or licensed by the State of Hawaii [shall] will be considered a family. Resident managers or supervisors [shall] are not [be] included in this resident count."

SECTION 26. 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.

A BILL FOR AN ORDINANCE

SECTION 27. This ordinance takes effect upon its approval.

INTRODUCED BY:

Ernest Martin (br)

DATE OF INTRODUCTION:

November 17, 2015
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