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## RESOLUTION

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PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), AS AMENDED, RELATING TO JOINT DEVELOPMENT.

WHEREAS, Section 21-5.370 of the Revised Ordinances of Honolulu 1990 ("ROH") allows for the off-site joint development of two or more zoning lots by allowing the transfer of floor area development rights from a zoning lot in a business mixed-use district with a historic site, building, or structure, to up to 10 other lots within a business mixed-use district, subject to certain conditions; thereby enabling qualified property owners to freely sell, trade, broker, or otherwise transfer a portion of the floor area that would normally be permitted under the applicable zoning district regulations on the lot where the historic site is located; and

WHEREAS, the Council desires to allow property owners in the Waikiki Special District and any TOD special district established pursuant to Section 21-9.100 around the Ala Moana rail transit station, to transfer floor area development rights from a zoning lot in the Waikiki Special District or the Ala Moana TOD Special District, to up to five other lots within the same special district, subject to certain zoning precinct or district eligibility and other conditions; and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) ("Charter"), 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 Charter Section 6-1513 includes both amendments to the LUO and to ordinances designating particular parcels of property in terms of the LUO; and

WHEREAS, ROH Chapter 2, Article 24, establishes procedures and deadlines for the processing of Council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; 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 Charter 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



**RESOLUTION**

BE IT FURTHER RESOLVED that the Director of Planning and Permitting is directed to inform the Council upon the transmittal of the Director's report and the proposed Land Use Ordinance amendment to the Planning Commission; and

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, the Clerk shall transmit copies of this resolution and the Exhibit attached hereto to the Director of Planning and Permitting and the Planning Commission of the City and County of Honolulu, and shall advise them in writing of the date by which the Director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.

INTRODUCED BY:

*[Handwritten Signature]*

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DATE OF INTRODUCTION:

**OCT 18 2017**

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Honolulu, Hawaii

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Councilmembers

15 OCT 18 10:05 AM

**FILED**  
**OCT 18 2018**  
PURSUANT TO ROH Sec. 1-2.5

## **EXHIBIT A**



**A BILL FOR AN ORDINANCE**

RELATING TO OFF-SITE JOINT DEVELOPMENT.

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

SECTION 1. Purpose. The purpose of this ordinance is to amend the Land Use Ordinance to allow the off-site transfer of floor area development rights in certain special districts.

SECTION 2. Table 21-3 ("Master Use Table"), Revised Ordinances of Honolulu 1990, is amended by amending the "Commerce and Business Category" to add a new use entitled "Off-site joint development (transfer of development rights) in the Waikiki special district or Ala Moana transit-oriented development special district," to read as follows:

**"TABLE 21-3  
MASTER USE TABLE**

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

- KEY:** Ac = Special accessory use subject to standards in Article 5  
 Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)  
 C = Conditional Use Permit-major subject to standards in Article 5; public hearing required  
 P = Permitted use  
 P/c = Permitted use subject to standards in Article 5  
 PRU = Plan Review Use

ZONING DISTRICTS																					
USES (Note: Certain uses are defined in Article 10.)	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1
COMMERCE AND BUSINESS																					
Off-site joint development (transfer of development rights) in the Waikiki special district or Ala Moana transit-oriented development special district														IC	IC	IC					



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SECTION 3. Chapter 21, Article 5, Revised Ordinances Honolulu 1990 ("Specific Use Development Standards"), is amended by adding a new section to be appropriately designated by the Revisor of Ordinances and to read as follows:

**"Sec. 21-5. Off-site joint development (transfer of development rights) in the Waikiki special district or Ala Moana transit-oriented development special district.**

- (a) This section applies to the joint development of two or more zoning lots in the Waikiki special district or any transit-oriented development special district established pursuant to Section 21-9.100 around the Ala Moana rail transit station. Eligible zoning lots are lots in the resort mixed use precinct of the Waikiki special district and lots in the business and business mixed use districts in any transit-oriented development special district around the Ala Moana rail transit station.
- (b) Off-site joint development of two or more zoning lots is intended to allow the transfer of floor area development rights from a zoning lot in the special districts identified in subsection (a), to up to five other lots within the same special district and with the same zoning precinct or district designation. This enables property owners to freely sell, trade, broker or otherwise transfer a portion of the floor area that would normally be permitted under the applicable zoning district regulations on the donor lot.
- (c) The transferable floor area may be acquired or transferred to be jointly used as part of the development of up to five other zoning lots with the same zoning precinct or district designation, subject to the following:
- (1) The floor area eligible to be transferred will be calculated by determining the maximum allowable floor area for the donor lot, including any applicable density bonuses for open space, and subtracting therefrom the sum of:
- (A) The floor area of all structures to be retained on the donor lot; and
- (B) The floor area of all structures designated in an approved plan for development or redevelopment of the donor lot.
- (2) The unused floor area from the donor lot may be transferred to up to five receiving lots, provided that the donor lot and each receiving lot must be located in the same special district identified in subsection (a) and must have the same zoning precinct or district designation. In no case may the



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maximum floor area on a receiving lot under off-site joint development be more than 15 percent in excess of the maximum floor area that would otherwise be permitted on the lot. Only floor area may be transferred; all other zoning requirements applicable to the receiving lot are not affected.

- (3) The owner, owners, duly authorized agents of the owners, or duly authorized lessees holding leases with a minimum of 30 years remaining in their terms, of zoning lots who believe that the transfer of floor area in the manner described in this section will result in more efficient use of the zoning lots may apply for a conditional use permit (major) to undertake off-site joint development.
  - (4) The donor and receiving lots will be jointly developed as a unified project. The department shall not issue a building permit for a building or structure utilizing the transferred floor area on the receiving lot or lots unless and until the department has issued a conditional use permit for the joint development.
  - (5) Additional floor area may be developed on the donor lot, provided there is sufficient remaining permitted floor area that has not been used or designated in an approved plan for development of the donor lot, or transferred to any receiving lots.
- (d) When applying for the conditional use permit, the applicants shall submit the following:
- (1) Zoning lot area calculations for all donor and receiving lots;
  - (2) A plan for the development or redevelopment of the receiving lots, which may be phased, including information as to the effect of the development or redevelopment on properties in the vicinity of the receiving lots; and
  - (3) A proposed agreement running with the land for all donor and receiving lots, binding all owners of these lots and their lessees, mortgagees, heirs, successors and assigns, individually and collectively, to comply with the plan described in subdivision (2) for a minimum of 30 years, subject to subsections (g) and (h). The proposed agreement must be in recordable form and must provide that it is enforceable by the city. The proposed agreement must state the consideration to be given for the proposed transfer of density.



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- (e) The director shall grant approval of the application if the director determines that:
- (1) All proposed donor and receiving lots meet the requirements of this section;
  - (2) The transfer of density to the receiving lots will not cause the density of any of the receiving lots to exceed the maximum density permitted under subdivision (2) of subsection (c); and
  - (3) The plan for development or redevelopment of the receiving lots will not create adverse effects on lots in the vicinity of a receiving lot that are inconsistent with the purpose of the zoning designation of those lots.
- (f) Until the applicants have recorded with the bureau of conveyances or the land court of the State of Hawaii, or both as appropriate, the agreement specified in subdivision (3) of subsection (d), for all donor and receiving lots, no building permit or construction permit may be issued for a building or structure that would not conform to the development standards applicable in the absence of the conditional use permit.
- (g) Notwithstanding any provision of this section to the contrary, the owner, owners, duly authorized agents of the owners, or duly authorized lessees of all donor and receiving lots of an approved off-site joint development may jointly apply to the director for revocation of the conditional use permit if:
- (1) Plans for development of the receiving lots have changed so that a transfer of density from the donor lot under off-site joint development is no longer required for the planned development of the receiving lots; or
  - (2) The receiving lots have been developed in accordance with the plans described in the agreement, but due to:
    - (A) Demolition of buildings or structures on the receiving lots;
    - (B) Expansion of the lot area of receiving lots;
    - (C) Amendments to density or other zoning regulations applicable to the receiving lots;
    - (D) Rezoning of the receiving lots; or
    - (E) Other factors;



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the buildings and structures on the receiving lots meet the maximum density restrictions and other development standards applicable to the receiving lots without the necessity of off-site joint development.

An application for the revocation of a conditional use permit for off-site joint development will be processed in the same manner as an application for a conditional use permit for off-site joint development pursuant to this section. Upon the director's approval of the revocation, the agreement recorded pursuant to subsection (f) may be rescinded or revoked if it has not expired.

(h) Notwithstanding any provision of this section to the contrary, all of the owners of all of the donor and receiving lots may jointly apply to the director for modification of the conditional use permit and, after receiving the director's approval, modify the agreement recorded pursuant to subsection (f) in accordance with the director's approval. The application for the modification of a conditional use permit for off-site joint development will be processed in the same manner as an application for a conditional use permit for off-site joint development pursuant to this section. The director may grant the modification only if the modification meets all of the requirements of this section for the initial approval of a conditional use permit for off-site development.

(i) If, after:

(1) Approval of a conditional use permit for off-site joint development; and

(2) Issuance of a building or construction permit for a structure on the receiving lot that would permit development in excess of the maximum floor area permitted without the benefit of off-site joint development;

a building or structure on the donor lot is destroyed by any means, the donor lot may be developed in accordance with this chapter and other applicable laws; provided that the maximum floor area permitted on the donor lot will be reduced by any floor area that has been transferred to a receiving lot;

(j) The director may impose any reasonable conditions on the development and maintenance of any donor and receiving lots, including but not limited to additional yards or setbacks, in order to mitigate any potential adverse effects of the planned off-site joint development on the surrounding neighborhood, and to facilitate the enforcement of the plan referred to in subdivision (2) of subsection (d), and of the agreement referred to in subdivision (3) of subsection (d).



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(k) Notwithstanding the expiration of the approved agreement referred to in subdivision (3) of subsection (d), the donor lot will not thereafter be entitled to any floor area that has been transferred to a receiving lot. This subsection does not apply if the conditional use permit for off-site joint development is revoked pursuant to subsection (g)."

SECTION 4. Table 21-9.6(A) ("Waikiki Special District Permitted Uses and Structures"), Revised Ordinances of Honolulu 1990, is amended to add a new use category entitled "Off-site joint development (transfer of development rights) in the Waikiki special district or Ala Moana transit-oriented development special district," to read as follows:

Table 21-9.6(A)  
Waikiki Special District Precinct  
Permitted Uses and Structures

Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
<u>Off-site joint development (transfer of development rights) in the Waikiki special district or Ala Moana transit-oriented development special district</u>		C	

SECTION 5. Ordinance material to be repealed is bracketed and stricken. 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 material that has been bracketed and stricken, or the underscoring.



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

ORDINANCE \_\_\_\_\_

BILL \_\_\_\_\_

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SECTION 6. 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\_\_\_\_.

\_\_\_\_\_  
Mayor  
City and County of Honolulu