CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 18 - 6

BILL **110 (2017), CD2, FD1**

A BILL FOR AN ORDINANCE

REGULATING FOR AN INTERIM PERIOD THE ISSUANCE OF BUILDING PERMITS FOR THE PLANNING AND DEVELOPMENT OF LARGE RESIDENTIAL STRUCTURES IN RESIDENTIAL DISTRICTS IN ORDER TO PROVIDE TIME FOR THE CITY TO ESTABLISH APPROPRIATE POLICIES IN ITS LONG-RANGE PLANS AND ZONING ORDINANCES TO ADDRESS THE IMPACTS OF SUCH STRUCTURES.

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

SECTION 1. Findings and Purpose.

The Oahu general plan and development and sustainable community plans set forth long-range land use policies to promote and protect the public health, safety, and welfare. In order to encourage orderly development in accordance with adopted land use policies as set forth in the foregoing long-range land use plans, zoning districts are designated for certain uses and restricted for other uses. Such zoning districts, as well as zoning district regulations, are established through the City's zoning maps and the Land Use Ordinance ("LUO") for the utilization of land in the City pursuant to Section 6-1514 of the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) ("Charter").

The residential zoning districts (R-3.5, R-5, R-7.5, R-10, and R-20) are generally intended for development of one- and two-family detached dwelling units. The LUO defines "detached dwelling" as a building containing one or two dwelling units, entirely surrounded by yards or other separation from buildings on adjacent lots. The LUO defines "family" as one or more persons, all related by blood, adoption, or marriage, occupying a dwelling unit or lodging unit; or no more than five unrelated persons. In addition, the LUO provides that eight or fewer persons who reside in an adult residential care home, special treatment facility or other similar facility monitored or licensed by the State of Hawaii are considered a family.

Multifamily dwellings (consisting of three or more dwelling or lodging units) are not permitted in the residential districts. The apartment districts are generally intended for the development of multifamily dwelling units, including walk-up and high-rise apartments.

Communities in residential districts throughout the City have reported development of large residential structures, some with upwards of 20 bedrooms, and multiple kitchens and wet bars, which appear to be intended for use as multifamily dwellings in violation of the LUO.

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In most cases where large residential structures have been built, the Department of Planning and Permitting ("DPP") has approved building permits and certificates of occupancy for such structures based on compliance with zoning regulations, which do not restrict the number of bedrooms or wet bars allowed in residential districts. In cases reported by the community and the media, many of these large residential structures are later illegally converted to use as long-term rental apartment buildings, housing multiple families in violation of law, or are used illegally as short-term transient vacation rentals.

The Council understands that the DPP, when reviewing building plans, will "flag" projects containing layouts deemed suspicious for conversion into illegal rental units, and require the property owner to file an affidavit or restrictive covenant stating that the permitted use will not be altered. Furthermore, the DPP, upon receiving complaints from the community, has cited landowners for violations in cases where the DPP was able to determine that a violation occurred. In spite of such efforts, the rate of construction of large residential structures in residential districts appears to be increasing, resulting in potentially adverse effects on neighborhood character, energy consumption, area infrastructure capacity, and the availability of on-street parking, and, when these structures are used for short-term rentals, adversely affecting the supply of affordable long-term rental housing.

The Council, by Resolution 17-198, adopted on September 6, 2017, urged the DPP to increase enforcement, consider modifying the DPP's administrative rules, and propose to the Council any legislation the DPP Director deems necessary to address the problem of the illegal use of large residential structures in residential zoning districts. At the meeting of the Committee on Zoning and Housing on August 24, 2017, the Acting DPP Director testified in support of Resolution 17-198 and noted that the DPP has been working on the subject issue and is in the process of compiling pertinent statistical information.

The Council, by Resolution 17-276, CD1, adopted on December 6, 2017, directed the DPP Director to process a proposed LUO amendment intended to address the rapidly increasing development of large detached dwellings in residential districts and the impacts thereof on the surrounding communities, by addressing the allowable floor area ratio of, and number of wet bars permitted in, detached dwellings, and increasing the off-street parking requirements for large detached dwellings.

The DPP and the Planning Commission were notified of the Council's adoption of Resolution 17-276, CD1, by Council Communication 400 (2017). In accordance with Charter Section 6-1513 and ROH Chapter 2, Article 24, Part A, the DPP Director must submit the DPP's findings and recommendations, together with the Council's proposal and any alternate DPP proposal, to the Planning Commission. The Planning

Commission must hold a public hearing, then submit its recommendations, together with the Council's proposal, DPP Director's report, and any alternate DPP proposal, to the Council through the Mayor.

The purpose of this ordinance is to provide the City Administration, the Planning Commission, and the Council sufficient time to fully explore and evaluate the rapidly increasing rate of development of large detached dwellings in residential districts and determine what permanent amendments would be appropriate in the City's long-range plans and in its regulatory controls to address this issue. This ordinance will prevent a race of diligence during the interim period while alternative solutions are being explored and evaluated and while additional amendments to City plans and land use controls are being considered.

The Council deems the adoption of this ordinance under its general police and home rule powers to be in the best interest of the community and its health, safety, and general welfare.

SECTION 2. Definitions.

For the purposes of this ordinance the definitions in Section 21-10.1, Revised Ordinances of Honolulu 1990 will apply and, additionally:

"Bathroom" means a room that is equipped for taking a bath or shower and that includes a sink and toilet. A 0.5 bathroom means a room that is equipped with a sink and toilet.

"Large detached dwelling" means a one-family or two-family detached dwelling with a floor area that exceeds a floor area ratio of 0.70 for the zoning lot.

"Laundry room" means a utility room in a dwelling unit that is used for washing and cleaning clothes and other fabrics, and which contains items such as a washing machine, utility sink, and clothes dryer.

"Wet bar" means a serving counter in a dwelling or lodging unit that is equipped with a small single compartment sink that is not part of a kitchen, bathroom, or laundry room.

SECTION 3. Applicability.

A. From the effective date of this ordinance until the enactment of an ordinance explicitly repealing or superseding this ordinance, or two years after the effective date of this ordinance, whichever occurs first, no building permit applications may

be accepted, and no building permits may be issued by the Department of Planning and Permitting for:

1. A new large detached dwelling;

2. The conversion of an existing structure into a large detached dwelling;

3. A new accessory dwelling unit located on the same lot as an existing large detached dwelling; or

4. A two-family detached dwelling in the R-5 residential district on a zoning lot with a lot area of less than 10,000 square feet;

in any residential zoning district in the City and County of Honolulu, except as specifically stated herein.

B. The Department of Planning and Permitting may accept and process a building permit application, and issue a building permit, for a large detached dwelling, accessory dwelling unit, or two-family detached dwelling in the R-5 residential district that is otherwise subject to the restriction in subsection A if the application demonstrates that the large detached dwelling, accessory dwelling unit, or two-family detached dwelling in the R-5 residential district satisfies all of the following development standards:

1. The number of wet bars in each dwelling unit cannot exceed two;

2. The number of laundry rooms in each dwelling unit cannot exceed one;

3. Applicable side and rear yard requirements are as follows:

Dwelling size (square feet) including the area of lanais and covered parking areas	Required side and rear setbacks (feet)
Up to 4,000	7
4,001 to 5,000	9
5,001 to 6,000	11
6,001 to 7,500	13
7,501 and up	15

; and

4. Applicable off-street parking requirements are as follows:

Dwelling size (square feet) including the area of lanais	Required off-street parking spaces
Up to 2,500	2
2,501 to 3,500	3
3,501 to 4,500	5
4,501 to 5,500	7
5,501 to 6,500	9
6,501 to 7,500	11
7,501 and up	11 plus one for every 1,000 square feet of floor area or portion thereof above 7,501

provided that where four or more parking spaces are required:

a. All vehicles must be able to exit from the parking space via a driveway onto the access road in a forward manner; and

b. Tandem parking is limited to two stacked parking stalls.

5. The number of bathrooms in each dwelling unit cannot exceed the following:

Lot size (square feet)	Number of bathrooms cannot exceed:
Up to 4,000	2.5
4,001 to 5,000	3.5
5,001 to 6,000	4.5
6,001 to 7,000	5.5
7,001 to 8,000	6.5
8,001 and up	7.5 plus one for every 1,000 square feet of lot area or portion thereof above 8,001

C. Subsection A does not apply to the application for or issuance of a building permit in the following instances, provided that the application otherwise qualifies under all other applicable laws, rules, and regulations:

1. To perform work to make an existing building or structure conform to or comply with applicable laws or rules;

2. To perform maintenance and repair to an existing structure or building;

3. Any development that is not a large detached dwelling, and will not become a large detached dwelling, when constructed in accordance with the submitted and approved plans, except for a new accessory dwelling unit located on the same lot as an existing large detached dwelling; or

4. Any of the following developments, for which a discretionary permit has been lawfully issued by any government agency, and is in effect on the effective date of this ordinance:

   a. Projects under HRS Section 201H-38;

   b. Plan review use approvals;

   c. Special management area use permits;

   d. Cluster housing;

   e. Planned development housing; or

   f. Zero lot line housing;

   provided that the discretionary permit describes or incorporates plans describing the size of each detached dwelling approved under the permit.

D. This ordinance does not affect the application for or issuance of a building permit for:

1. Any development for which a building permit has been lawfully issued by any government agency, and is in effect on the effective date of this ordinance;

2. Any development for which a building permit application has been submitted to and accepted as complete by any government agency for processing as of the effective date of this ordinance; and

3. Any development that is not located within a residential zoning district.

SECTION 4. Administrative actions.

Upon enactment of this ordinance:

1. The Department of Planning and Permitting shall strictly enforce the Land Use Ordinance and building codes, and rules adopted thereunder, with a focus on large detached dwellings;

2. The Department of Planning and Permitting shall initiate post-construction inspections of large detached dwellings for which complaints have been filed, with a focus on construction alterations and illegal uses; and

3. The City Administration shall convene a multi-agency enforcement team to strictly enforce City ordinances and rules adopted thereunder, relating to the construction and use of large detached dwellings.

SECTION 5. Penalties.

Any person, firm, entity, or corporation using, constructing, erecting, enlarging, or structurally altering, any building or structure in violation of the provisions of this ordinance shall be subject to the penalties and enforcement procedures set forth in Section 21-2.150-1 and 21-2.150-2 of the Revised Ordinances of Honolulu 1990, as may be amended from time to time, and other pertinent laws. The City Administration shall strictly enforce this section.

SECTION 6. Task Force.

There is established a task force on large detached dwellings to be composed of the following:

1. A representative from the Department of Planning and Permitting's Residential Code Enforcement Branch;

2. A representative from the Honolulu Police Department;

3. A representative from the Honolulu Fire Department;

4. A representative from the Building Industry Association of Hawaii;

5. A representative from the American Institute of Architects Honolulu;

6. A representative from the Department of Transportation Services;

7. A representative from the Department of Environmental Services; and

8. Three members of the public to be appointed by the Presiding Officer of the Council and approved by Council resolution.

The task force shall provide input and advice to the Planning Commission and the Department of Planning and Permitting on long-term solutions to the problems associated with the regulation of large detached dwellings, including but not limited to establishing criteria that would accommodate the use of large detached dwellings by multi-generational families, while deterring the use of large detached dwellings as rental apartment buildings that house multiple families. The task force will be dissolved upon the enactment of an ordinance explicitly repealing or superseding this ordinance, or two years after the effective date of this ordinance, whichever occurs first.

SECTION 7. Severability.

The invalidity of any word, section, clause, paragraph, sentence, part, or portion of this ordinance will not affect the validity of any other part of this ordinance that can be given effect without such invalid part or parts.

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SECTION 8. This ordinance takes effect upon its approval.

INTRODUCED BY:

Ikaika Anderson

DATE OF INTRODUCTION:

December 4, 2017
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this 13th day of March, 2018.

KIRK CALDWELL, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE 18-6

BILL 110 (2017), CD2, FD1

Introduced: 12/04/17 By: IKAIKA ANDERSON Committee: PLANNING

Title: A BILL FOR AN ORDINANCE REGULATING FOR AN INTERIM PERIOD THE ISSUANCE OF BUILDING PERMITS FOR THE PLANNING AND DEVELOPMENT OF LARGE RESIDENTIAL STRUCTURES IN RESIDENTIAL DISTRICTS IN ORDER TO PROVIDE TIME FOR THE CITY TO ESTABLISH APPROPRIATE POLICIES IN ITS LONG-RANGE PLANS AND ZONING ORDINANCES TO ADDRESS THE IMPACTS OF SUCH STRUCTURES.

Voting Legend: * = Aye w/Reservations

12/06/17	COUNCIL	BILL ADDED TO THE AGENDA. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE. 1 ABSENT: OZAWA. BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON PLANNING. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE. 1 ABSENT: OZAWA.
01/20/18	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
01/23/18	PLANNING	CR-2(18) – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING AS AMENDED IN CD1 FORM.
01/31/18	COUNCIL/PUBLIC HEARING	CR-2(18) ADOPTED. BILL PASSED SECOND READING AS AMENDED, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON PLANNING. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN*, MENOR, OZAWA*, PINE*.
02/05/18	SPECIAL PLANNING	CR-65(18) – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING AS AMENDED IN CD2 FORM.
02/10/18	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
02/13/18	SPECIAL COUNCIL	CR-65(18), BILL 110 (2017), CD2 AND PROPOSED AMENDMENTS POSTPONED TO FEBRUARY 28, 2018 COUNCIL MEETING. 5 AYES: ELEFANTE, MANAHAN, MARTIN, MENOR, PINE. 4 NOES: ANDERSON, FUKUNAGA, KOBAYASHI, OZAWA.
02/28/18	COUNCIL	NOTE: THE PROPOSED FD1S POSTED ON THE AGENDA SUBMITTED BY COUNCILMEMBERS OZAWA, FUKUNAGA, ANDERSON, KOBAYASHI AND THE DEPARTMENT OF PLANNING AND PERMITTING WERE NOT CONSIDERED. BILL AMENDED TO HAND-CARRIED FD1 (OCS2018-0235/2/28/2018 2:38 PM). 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. CR-65(18) ADOPTED AND BILL 110 (2017), CD2, FD1 PASSED THIRD READING. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.

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

GLEN I. TAKAHASHI, CITY CLERK

RON MENOR, CHAIR AND PRESIDING OFFICER