

# REPORT OF THE COMMITTEE ON ZONING

Charles K. Djou, Chair; Rod Tam, Vice-Chair  
Romy M. Cachola, Ann H. Kobayashi, Barbara Marshall, Members

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Committee Meeting Held  
February 3, 2004

Honorable Donovan Dela Cruz  
Chair, City Council  
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning, to which was referred Bill 5 (2004) entitled:

" 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,"

transmitted by Departmental Communication No. 48, dated January 13, 2004, and which passed First Reading at the January 28, 2004 Council meeting, reports as follows:

The purpose of Bill 5 (2004) is to amend the Flood Hazard District provisions of the Land Use Ordinance (LUO) to conform those provisions to current language in the National Flood Insurance Program (NFIP) regulations.

Your Committee finds that the Planning Commission, after a public hearing held on January 7, 2004 at which no testimony in opposition to the proposed LUO amendment was received, voted to recommend approval of the proposal in agreement with the recommendation of the Department of Planning and Permitting (DPP).

Your Committee finds that this bill would do the following:

- A. The bill (Section 2) would amend LUO provisions for the establishment of flood hazard districts to match those districts with the special flood hazard area designations used on federal flood maps. The flood hazard districts and corresponding areas of special flood hazard (the "flood maps")

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**CITY COUNCIL**  
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HONOLULU, HAWAII

ADOPTED ON \_\_\_\_\_

COMMITTEE REPORT NO. 41

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identified by the Federal Emergency Management Agency (FEMA), and any subsequent revisions and amendments, would be "hereby adopted and declared to be part of this section."

- B. The bill (Section 3) would amend LUO provisions for development standards in the floodplain to include NFIP definitions for "basement," "development" and "structure," which differ from standard LUO definitions. Also, certain uses that are regulated by the LUO but not by the NFIP would be exempted from LUO Flood Hazard District regulations. These uses would include: carnivals, circuses, luaus, fairs and camping tents "of a temporary nature which are not in a floodway"; non-fenced, non-elevated outdoor swimming pools; signs; demolition; fences and retaining walls that are not in the floodway or coastal high hazard district; and temporary structures and uses incidental to building construction or land development that are not in a floodway, "provided the structures and uses are removed upon completion of the work, or as directed by the department [DPP]."
- C. The bill (Section 4) would amend LUO provisions for the Floodway District to "follow the language in the NFIP regulations."
- D. The bill (Section 5) would amend LUO provisions for the Coastal High Hazard District by adding new language to require a registered professional architect or engineer to certify that any development in the Coastal High Hazard District, including structures and improvements, would not affect the regulatory flood nor aggravate existing flood-related erosion hazards. DPP reports this amendment would "clarify the certification requirement applicable to work in the district."

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- E. The bill (Sections 6 and 7) would amend LUO provisions for the General Floodplain District and for Developments Adjacent to Drainage Facility Outside the Flood Hazard District to delete references to the Chief Engineer and add references to the DPP Director. DPP reports these amendments would "reflect the current organization of the City."
- F. The bill (Sections 8 and 9) would amend LUO provisions for Flood Hazard Variances to "expand the list of structures and uses that the NFIP requires to be permitted only as a flood hazard variance if not meeting flood requirements." Such structures and uses would include: reconstruction or rehabilitation of historic structures; improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications; and accessory parking structures (detached garages), except in the Coastal High Hazard District. The bill would also delete references to the Chief Engineer and Building Superintendent, which would "reflect the current organization of the City."
- G. The bill (Section 10) would repeal existing ROH Section 21-9.10-13 ("Exemptions") in its entirety, "since the NFIP does not recognize specific 'exemptions.'" New ROH Section 21-9.10-13 ("Certification Standards") would specify "the certification requirements for pre- and post-construction of improvements that the NFIP requires to be documented." Such requirements for pre-construction certification would relate to: certification of building plans; flood hazard district certification; flood proofing certification; and certification of no-rise determination. For post-construction certification, as a condition for closing the building permit or issuance of a certificate of occupancy for a new or substantially improved structure in the Flood Hazard District, the FEMA's "Elevation Certificate" would have to be completed and signed and stamped by a licensed land surveyor, engineer or architect.

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In the Attachment to Departmental Communication No. 48 (2004), the DPP reported the Federal Emergency Management Agency and the State Department of Land and Natural Resources regularly conduct joint assessments of the City's enforcement of the National Flood Insurance Program (NFIP) and the City's floodplain ordinance. During the assessment, the FEMA reviews the ordinance and determines if it meets current federal requirements.

The DPP further reported that, in January 2003, the FEMA raised a concern that portions of the LUO's Flood Hazard District provisions were less restrictive than the NFIP regulations. The City was not able to resolve this concern, and the concern became a requirement to amend the City's ordinance. Under NFIP regulations, a community can be automatically suspended from the NFIP if, following due notice, it fails to adopt revisions to its floodplain ordinance to meet federal criteria. The DPP stated suspension from the NFIP may result in the following:

1. The non-renewal of existing flood insurance policies.
2. No federal grants or loans for development may be made in identified flood hazard areas under programs administered by federal agencies.
3. No federal disaster assistance may be provided to repair insurable buildings located in identified flood hazard areas for damage caused by a flood.
4. No federal mortgage insurance or loan guarantees may be provided in identified flood hazard areas.
5. Federally insured or regulated lending institutions must notify applicants for loans for insurable buildings in flood hazard areas that: (a) there is a flood hazard; and (b) the property is not eligible for federal disaster relief.

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6. The State may lose federal flood mitigation grants.

In the Attachment to Departmental Communication No. 48 (2004), the DPP reported it had submitted a draft amendment to the floodplain ordinance to the FEMA in October 2003. The FEMA found this draft to be acceptable in November 2003.

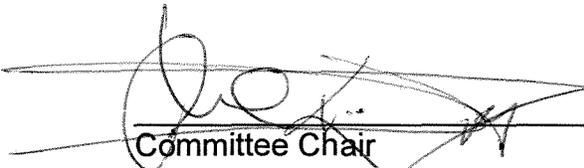
In response to a question from a member of your Committee, a representative of the DPP agreed to provide the Council with a copy of correspondence from the FEMA concerning the FEMA's expectations about the bill's effective date. The DPP representative stated this correspondence would be provided prior to the Council's meeting of February 18, 2004.

Your Committee plans to consider these matters further after receiving public testimony on the bill at the public hearing to be held as required by law.

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 is in accord with the intent and purpose of Bill 5 (2004), and recommends that it pass Second Reading, be scheduled for public hearing, and be referred back to Committee. (Ayes: Djou, Kobayashi, Marshall, Tam - 4; Noes: None; Excused: Cachola -1.)

Respectfully submitted,

  
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Committee Chair

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ADOPTED ON

FEB 18 2004

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