



A BILL FOR AN ORDINANCE

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

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 provisions of the Land Use Ordinance pertaining to Condominiums and Condominium Property Regimes. The amendments will reference the Hawaii Revised Statutes (HRS) regulations relating to Condominium Property Regimes more broadly, rather than identifying specific portions of the code.

SECTION 2. Section 21-4.110, Revised Ordinances of Honolulu (ROH) 1990 ("Nonconformities"), as amended by Ordinance 17-59, is amended by amending subsection (b) to read as follows:

"(b) Nonconforming Structures.

- (1) If that portion of a structure that is nonconforming is destroyed by any means to an extent of more than 90 percent of its replacement cost at the time of destruction, it may not be reconstructed except in conformity with the provisions of this chapter. All reconstruction and restoration work must comply with building code and flood hazard regulations, and commence within two years of the date of destruction.
 - (A) Notwithstanding the foregoing provision, a nonconforming structure devoted to a conforming use ~~[which]~~ that contains multifamily dwelling units owned by owners under the authority of the State of Hawaii Condominium Property Act or HRS Chapter [514A, 514B or] 421H, or units owned by a "cooperative housing corporation" as defined in HRS Section 4211-1, whether or not the structure is located in a special district, and which is destroyed by any means, may be fully reconstructed and restored to its former permitted condition~~[-];~~ provided that such restoration is permitted by the current building code and flood hazard regulations and is started within two years from the date of destruction.
 - (B) ~~[No]~~ A nonconforming structure that is required by law to be razed by the owner thereof may not thereafter be reconstructed and restored except in full conformity with the provisions of this chapter.



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

SECTION 3. Section 21-5.720, Revised Ordinances of Honolulu 1990 ("Accessory Dwelling Units"), is amended by amending subsection (c) to read as follows:

"(c) One accessory dwelling unit may be located on a zoning lot in the country, R-3.5, R-5, R-7.5, R-10, and R-20 zoning districts, subject to the following conditions:

- (1) The maximum size of an accessory dwelling unit [~~shall be~~] is as follows:

Lot Area	Maximum Floor Area
3,500 to 4,999 sq. ft.	400 sq. ft.
5,000 sq. ft. or more	800 sq. ft.

- (2) Accessory dwelling units are not permitted:
 - (A) On zoning lots with a lot area of less than 3,500 square feet;



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- (B) On zoning lots that have more than one dwelling unit, including but not necessarily limited to, more than one single-family dwelling, two-family dwelling, accessory authorized ohana dwelling, guest house, multi-family dwellings, planned development housing, cluster housing, or group living facility; or
- (C) On lots that are landlocked.
- (3) The property owner [~~or owners~~], or persons [~~who are~~] related by blood, marriage, or adoption to the property owner [~~or owners~~], or a designated authorized representative, shall occupy the primary dwelling unit or the accessory dwelling unit; except in unforeseen hardship circumstances (e.g., active military deployment, serious illness) that prevent the continued occupancy of the primary dwelling unit or the accessory dwelling unit, subject to confirmation by the director.
- (4) One off-street parking space per accessory dwelling unit must be provided in addition to the required off-street parking for the primary dwelling unit, except for accessory dwelling units located within one-half mile of a rail transit station. For purposes of this section, the minimum distance requirement is measured as the shortest straight line distance between the edge of the station area and the zoning lot [~~line(s)~~] lines of the project site.
- (5) The owner [~~or owners~~] of the zoning lot shall record covenants running with the land with the State of Hawaii bureau of conveyances, or the office of the assistant registrar of the land court of the State of Hawaii, or both, as is appropriate, stating that:
- (A) Neither the owner [~~or owners~~], nor the heirs, successors, or assigns of the owner [~~or owners~~], will submit the zoning lot or any portion thereof to a condominium property regime [~~under the provisions of HRS Chapter 544A~~] pursuant to the State of Hawaii Condominium Property Act to separate the ownership of an accessory dwelling unit from the ownership of its primary dwelling unit;
- (B) The property owner [~~or owners~~], or persons [~~who are~~] related by blood, marriage, or adoption to the property owner [~~or owners~~], or a designated authorized [~~representative(s)~~] representative, shall occupy the primary dwelling unit or the accessory dwelling unit so long as the other unit is being rented or otherwise occupied; except in cases of unforeseen hardship circumstances (e.g., active military



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deployment, serious illness) that prevent the continued occupancy of the primary dwelling unit or the accessory dwelling unit, subject to confirmation by the director. For purposes of this section, "~~designated authorized [representative(s)]~~ representative" means the person ~~[or persons]~~ designated by the property owner ~~[or owners]~~ to the department ~~[of planning and permitting, who are]~~ as being responsible for managing the property;

- (C) The accessory dwelling unit may only be used for long-term rental or otherwise occupied for periods of at least six months, and ~~[cannot]~~ must not be used as a bed and breakfast home or transient vacation unit;
- (D) If the property owner ~~[or owners]~~, or persons who are related by blood, marriage, or adoption to the property owner ~~[or owners]~~, or a designated authorized ~~[representative(s)]~~ representative, choose to receive rent for the primary dwelling unit and occupy the accessory dwelling unit, the primary dwelling unit may only be used for long-term rental or otherwise occupied for a minimum period of six months, and ~~[cannot]~~ must not be used as a bed and breakfast home or transient vacation unit;
- (E) The accessory dwelling unit is limited to the approved size in accordance with the provisions of ~~[Chapter 21]~~ this chapter; and
- (F) The deed restrictions lapse upon removal of the accessory dwelling unit, and all of the foregoing covenants are binding upon any and all heirs, successors, and assigns of the owner ~~[or owners]~~.

The covenant must be recorded ~~[on]~~ in 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 will be grounds for enforcement by the director pursuant to Section 21-2.150, et seq.

- (6) All other provisions applicable to the zoning district apply.
- (7) All rentals of an accessory dwelling unit, or of the primary dwelling unit if the property owner ~~[or owners]~~, or persons who are related by blood, marriage, or adoption to the property owner ~~[or owners]~~, or a designated authorized ~~[representative(s)]~~ representative, choose to receive rent for



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the primary dwelling unit and occupy the accessory dwelling unit, must be evidenced by a written rental agreement signed by the owner and the tenant for a lease period of at least six months; provided that after the initial lease period is concluded, the owner may allow the same tenant to continue renting the accessory dwelling unit on a consecutive month-to-month basis."

SECTION 4. 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 zoning lot [~~zoned for~~] in the residential, country, or agricultural [use] zoning districts, with the following limitations:
- (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 district[s], or on duplex unit 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 unit 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, provided that an ohana dwelling [units] unit for which a building permit was obtained before September 10, 1992, [are] is not subject to this subdivision and [their] its 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 for the ohana dwelling unit is issued apply and the provision of this parking is a continuing duty of the owner[-]; and~~



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- (8) The owner ~~[or owners]~~ of the zoning lot shall record in the State of Hawaii 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,]~~ the office of the assistant registrar of the land court of the State of Hawaii, or both, as is appropriate, a covenant stating that neither the owner ~~[or owners]~~, nor the heirs, successors, or assigns of the owner ~~[or owners]~~ shall submit the zoning lot or any portion thereof to the condominium property regime ~~[established by HRS Chapter 514B.]~~ pursuant to the State of Hawaii Condominium Property Act. The covenant ~~[shall]~~ must be recorded ~~[or]~~ in a form approved ~~[by]~~ or provided by the ~~[Director]~~ 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 this chapter and will be grounds for enforcement of the covenant by the ~~[Director]~~ director pursuant to Section 21-2.150, et seq., and ~~[shall be]~~ grounds for an action by the ~~[Director]~~ director to require the owner or owners to remove, pursuant to ~~[HRS Section 514B-47]~~ the State of Hawaii Condominium Property Act, the property from a submission of the lot or any portion thereof to the condominium property regime made in violation of the covenant."

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 Reviser 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 20-6

BILL 63 (2019), CD1

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SECTION 6. This ordinance takes effect upon its approval.

INTRODUCED BY:

Ikaika Anderson (br)

DATE OF INTRODUCTION:

November 26, 2019
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel **MOLLY A. STEBBINS**

APPROVED this 20 day of May, 20 20.

Kirk Caldwell, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE **20-6**

BILL 63 (2019), CD1

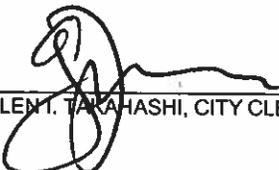
Introduced: 11/26/19 By: IKAIKA ANDERSON – BY REQUEST Committee: ZONING, PLANNING AND HOUSING

Title: A BILL FOR AN ORDINANCE TO AMEND CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED (THE LAND USE ORDINANCE), RELATING TO CONDOMINIUM PROPERTY REGIMES.

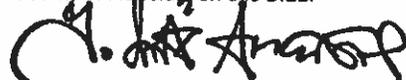
Voting Legend: * = Aye w/Reservations

12/04/19	COUNCIL	BILL PASSED FIRST READING AND REFERRED COMMITTEE ON ZONING, PLANNING AND HOUSING. 6 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, TSUNEYOSHI, WATERS. 3 ABSENT: MANAHAN, MENOR, PINE.
01/23/20	ZONING, PLANNING AND HOUSING	CR-28(20) – EXTENSION OF TIME REPORTED OUT OF COMMITTEE FOR ADOPTION. 3 AYES: ELEFANTE, KOBAYASHI, MENOR. 2 EXCUSED: MANAHAN, WATERS.
01/29/20	COUNCIL	CR-28(20) WAS ADOPTED. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, PINE, TSUNEYOSHI, WATERS. 1 ABSENT: MENOR.
02/06/20	ZONING, PLANNING AND HOUSING	CR-61(20) – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING AS AMENDED IN CD1 FORM. 5 AYES: ELEFANTE, KOBAYASHI, MANAHAN, MENOR, WATERS.
02/08/20	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
02/19/20	COUNCIL/PUBLIC HEARING	CR-61(20) ADOPTED. BILL PASSED SECOND READING AS AMENDED, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON ZONING, PLANNING AND HOUSING. 8 AYES: ANDERSON, ELEFANTE, KOBAYASHI, MANAHAN, MENOR, PINE, TSUNEYOSHI, WATERS. 1 ABSENT: FUKUNAGA.
02/26/20	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
04/15/20	COUNCIL	D-230 APPROVED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, PINE, TSUNEYOSHI, WATERS.
04/23/20	ZONING, PLANNING AND HOUSING	CR-109(20) – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING. 5 AYES: ELEFANTE, KOBAYASHI, MANAHAN, MENOR, WATERS.
05/06/20	COUNCIL	CR-109(20) ADOPTED AND BILL 63 (2019), CD1 PASSED THIRD READING. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, PINE, TSUNEYOSHI, WATERS.

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.



GLENN T. TAKAHASHI, CITY CLERK



IKAIKA ANDERSON, CHAIR AND PRESIDING OFFICER