CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 20-56, FD1

RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO NONCONFORMING USES.

WHEREAS, the zoning maps and the Land Use Ordinance ("LUO") of the City and County of Honolulu ("City") establish zoning districts and zoning district regulations 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"); and

WHEREAS, each zoning district is designated for certain uses and restricted for other uses in order to encourage orderly development in accordance with adopted land use policies, including the Oahu general plan, and the applicable development plans or sustainable community plans, and to promote and protect the public health, safety, and welfare; and

WHEREAS, Section 21-4.110(c) of the Revised Ordinances of Honolulu 1990 ("ROH") places strict limits on nonconforming uses to discourage the perpetuation of these uses and to facilitate the timely conversion to conforming uses; and

WHEREAS, subject to certain exceptions, ROH Section 21-4.110(c)(1) provides that a nonconforming use may not extend to any part of a structure or lot that was not arranged or designed for that use, nor may the nonconforming use be expanded in any manner, or the hours of operation increased; and

WHEREAS, an exception in ROH Section 21-4.110(c)(3) provides that work may be done on any structure devoted in whole or in part to a nonconforming use; provided that work on the nonconforming use portion of the structure is limited to "ordinary repairs," which are defined as (1) the repair or replacement of existing walls, floors, roofs, fixtures, wiring, or plumbing; (2) work required to comply with federal, State, or City mandates (such as the Americans with Disabilities Act); or (3) interior or exterior alterations if there is no physical expansion nor intensification of the nonconforming use; and

WHEREAS, ROH Section 21-4.110(c)(3) further limits ordinary repairs to not more than 10 percent of the current replacement cost of the structure within a 12-month period; provided that the floor area of the structure must not be increased; and

RESOLUTION

WHEREAS, the Council desires to amend the LUO provisions relating to what constitutes an ordinary repair to provide that the 10 percent of the current replacement cost limitation does not apply when the work is necessary to comply with governmental mandates, or to work involving that portion of a structure devoted to nonconforming hotel use; and

WHEREAS, this proposed amendment would allow nonconforming use hotels to undertake major renovation work all at once, instead of having to plan for multiple minor repairs over a period of time to comply with the 10 percent of the current replacement cost limitation for ordinary repairs; and

WHEREAS, Charter Section 6-1513 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, Part A, establishes procedures and deadlines for the processing of the 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, Part A, 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

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

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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:

Ikaika Anderson

DATE OF INTRODUCTION:

February 21, 2020
Honolulu, Hawaii

Councilmembers

EXHIBIT A

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

RELATING TO NONCONFORMING USES.

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

SECTION 1. Purpose. The purpose of this ordinance is to amend certain provisions relating to nonconforming uses.

SECTION 2. Section 21-4.110, Revised Ordinances Honolulu 1990 ("Nonconformities"), is amended by amending subsection (c) to read as follows:

"(c) Nonconforming Uses. Strict limits are placed on nonconforming uses to discourage the perpetuation of these uses, and [~~thus~~] to facilitate the timely conversion to conforming uses.

(1) A nonconforming use [~~shall~~] may not extend to any part of [~~the~~] a structure or lot [~~which~~] that was not arranged or designed for such use at the time of adoption of the provisions of this chapter or subsequent amendment; nor [~~shall~~] may the nonconforming use be expanded in any manner, or the hours of operation increased[~~. Notwithstanding the foregoing,~~]; provided that a recreational use that is accessory to the nonconforming use may be expanded or extended if the following conditions are met:

(A) The recreational accessory use will be expanded or extended to a structure in which a permitted use also is being conducted, whether that structure is on the same lot or on an adjacent lot; and

(B) The recreational accessory use is accessory to both the permitted use and the nonconforming use.

(2) Any nonconforming use that is discontinued for any reason for 12 consecutive months, or for 18 months during any three-year period, [~~shall~~] may not be resumed; [~~however,~~] provided that a temporary cessation of the nonconforming use for purposes of ordinary repairs for a period not exceeding 120 days during any 12-month period [~~shall~~] will not be considered a discontinuation.

(3) Work may be done on any structure devoted in whole or in part to [~~any~~] a nonconforming use[~~,~~]; provided that work on the nonconforming use portion [~~shall~~] of the structure must be limited to ordinary repairs. For purposes of this subsection, the term "ordinary repairs" [~~shall~~] means only [~~be construed to include~~] the following:

(A) The repair or replacement of existing walls, floors, roofs, fixtures, wiring, or plumbing; [~~or~~]

(B) [~~May include work~~] Work required to comply with city, state, or federal mandates [~~such as~~], including but not limited to[~~,~~] the Americans with Disabilities Act (ADA) or the National Environmental [~~Protection~~] Policy Act (NEPA); or

(C) [~~May include interior~~] Interior and exterior alterations, provided that there is no physical expansion [~~of the nonconforming use or~~] nor intensification of the nonconforming use[~~.~~];

[~~Further,~~] provided that ordinary repairs [~~shall~~] must not exceed 10 percent of the current replacement cost of the structure within a 12-month period, and the floor area of the structure, as it existed on October 22, 1986, or on the date of any subsequent amendment to this chapter pursuant to which a lawful use became nonconforming, [~~shall~~] must not be increased[~~.~~]; and further provided that the 10 percent of the current replacement cost limitation does not apply to work described in paragraph (B), or to work involving that portion of a structure devoted to nonconforming hotel use.

(4) Any nonconforming use may be changed to another nonconforming use, subject to the prior approval of the director[~~,~~]; provided that:

(A) The change in use [~~may be made~~] is only permitted if any adverse effects on neighboring occupants and properties will not be greater than if the original nonconforming use were to be continued; and

(B) The director may impose conditions on the change in nonconforming use necessary or appropriate to minimize impact [~~and/or~~] or prevent greater adverse effects related to a proposed change in use. Other than as provided as "ordinary repairs" under subdivision (3), improvements intended to accommodate a change in nonconforming use or tenant [~~shall~~] are not [~~be~~] permitted.

(5) Any action taken by an owner, lessee, or authorized operator [~~which~~] that reduces the negative effects associated with the operation of a nonconforming use [~~— such as~~], including but not limited to[~~,~~] reducing hours of operation or exterior lighting intensity[~~— shall~~], may not be reversed."

SECTION 3. 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.

SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

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DATE OF INTRODUCTION:

_____
Honolulu, Hawaii

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Councilmembers

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

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KIRK CALDWELL, Mayor
City and County of Honolulu