

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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CITY AND COUNTY OF HONOLULU
Nov 7 8 11 AM '05

MUFI HANNEMANN
MAYOR



Author: <u>Henry Eng</u>
Adopted: <u>11-4-05</u>
Public Hearing: <u>11-16-05</u>

HENRY ENG, FAICP
DIRECTOR

DAVID K. TANOUÉ
DEPUTY DIRECTOR

(bm)

November 3, 2005

MEMORANDUM

TO: DIANE PETERS-NGUYEN, CHAIR
AND MEMBERS OF THE PLANNING COMMISSION

FROM: HENRY ENG, FAICP, DIRECTOR
DEPARTMENT OF PLANNING AND PERMITTING

SUBJECT: TWO (2) BILLS TO AMEND THE LAND USE ORDINANCE
RELATING TO OHANA DWELLINGS

I am submitting for your review and consideration two bills which would amend certain sections of the Land Use Ordinance (LUO) regulating Ohana Dwellings. The first is a City Council-initiated bill transmitted to the Department of Planning and Permitting (DPP) by Resolution No. 04-300. The second is an alternative version proposed by the DPP. These bills are attached as Bill A and Bill B, respectively.

The Council-initiated bill, Bill A, would amend the LUO to:

1. Eliminate the existing provision governing Zoning Adjustments for certain Ohana dwelling units.

Currently, the LUO allows a Zoning Adjustment (an administrative permit) for certain Ohana dwelling units that are nonconforming, e.g., those that do not meet existing regulations but were built lawfully under zoning regulations in effect at that time. The Zoning Adjustment process, under certain specified criteria, permits an applicant to rebuild or expand a lawful nonconforming Ohana unit.

2. Delete existing maximum size restrictions for all Ohana dwelling units.

The DPP supports the basic intent of Bill A, which is to maximize the use of Ohana dwelling units in providing affordable housing in general and, in particular, to offer housing options for extended family living. In that regard, DPP is proposing to expand and standardize size restrictions for all Ohana dwelling units in all zoning districts.

DIANE PETERS-NGUYEN, CHAIR
AND MEMBERS OF THE PLANNING COMMISSION
NOVEMBER 3, 2005
PAGE 2

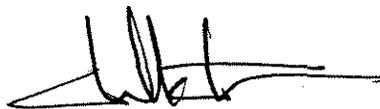
In summary, DPP's bill (Bill B) proposes to:

1. Retain existing Zoning Adjustment provisions; and
2. In lieu of deleting all maximum size restrictions, to establish a single maximum size standard of 1,000 square feet for all Ohana dwelling units.

The Zoning Adjustment allows any ohana unit, which was legally constructed, to be rebuilt to its previously existing dwelling type, provided the construction complies with the residential district standards. This includes non-attached units no longer permitted today.

A detailed analysis of the history and purpose of Ohana dwelling units, areas currently eligible for this housing option, and further discussion of both Bill A and Bill B follow.

I recommend your approval of the DPP version of the bill (Bill B).



for Henry Eng, FAICP, Director
Department of Planning and Permitting

HE:fm
Attachments

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**Rationale: A Bill to Amend the Land Use Ordinance (LUO)
Relating to Ohana Dwelling Units**

1. Background: History and Legislative Intent (Refer to Exhibit 1)

- State Enabling Legislation

Act 229 (1981) amended Section 46-4 of the Hawaii Revised Statutes (HRS) to require that counties permit two dwellings on any residential lot with adequate public facilities. The stated purposes of the law were (a) to assist families to obtain affordable housing, and (b) to encourage the extended family. All four counties adopted ordinances to implement Act 229. The administration of Honolulu Mayor Eileen Anderson coined the phrase "Ohana Dwelling" to describe the second units authorized by the State Legislature.

- LUO Legislative Intent/Amendments

The LUO legislative intent and purpose for Ohana dwelling units is as follows:

"Sec. 21-8.20 Housing – Ohana (accessory) dwellings.

- (a) The purpose of this section is to encourage and accommodate extended family living, without substantially altering existing neighborhood character.
- (b) It is intended that "ohana" units be accessory to the principal permitted single-family dwelling on the zoning lot and that they be allowed only in areas where wastewater, water supply and transportation facilities are adequate to support additional density.
- (c) One Ohana accessory dwelling unit may be located on a lot zoned for residential, country, or agricultural use, with the following limitations:
 - (1) The maximum size of an ohana accessory dwelling unit shall be as follows:"

Zoning District	Maximum Floor Area
AG-1 restricted agricultural	1,000 sq. ft.
AG-2 general agricultural	1,000 sq. ft.
Country	1,000 sq. ft.
R-20 residential	1,000 sq. ft.
R-10	900 sq. ft.
R-7.5	700 sq. ft.
R-5	700 sq. ft.

These optional housing provisions have a long history of LUO amendments, described more fully in Exhibit 1. The zoning concern is, and has always been, the need to fulfill the basic intent, but to balance the intent with potential impacts on neighborhoods. This has been a struggle of long-standing complexity, as illustrated by LUO amendment history. It should be noted, however, that every county in the state has adopted Ohana dwelling provisions and none has ever taken action to have them repealed. It has been, instead, a process of continual refinements toward the goal of balancing housing needs with potential land use impacts.

It should also be noted that neither of the proposed bills would eliminate the “balancing” aspects of current LUO provisions, including:

- Ohana dwelling units are restricted to conforming lots;
- They must meet a “family” occupancy requirement ;¹
- Applicants for Ohana dwelling units must file a restrictive covenant agreeing not to CPR the property; and
- Newly-established units must be attached within a single residential structure.

¹ Source: LUO; “Family” means one or more persons, all related by blood, adoption or marriage, occupying a dwelling unit or lodging unit. A family may also be defined as not more than five unrelated persons.

2. Other Jurisdictions

"Accessory dwelling units" have been a common housing option since the 1950's in other municipalities. A detailed comparison of zoning regulations in other jurisdictions is not included in this report, because of the number of variables found in the regulations, and because Oahu differs significantly in terms of available land, lot sizes, development costs, and other cultural preferences. Comparisons with other jurisdictions are therefore expressed in general observations as follows:

- These units are typically referred to as "granny flats" in other jurisdictions. They are generally restricted as to size, smaller than the principal single-family dwelling, and were originally supported by housing advocates as a means of providing affordable housing for the elderly.
- There appears to be a major revival of this housing option, especially on the West Coast (California, Washington) with developers of new subdivisions including accessory units to attract people from diverse age and income groups. The units are no longer marketed as elderly housing, but are being designed and built to accommodate either an older generation or a newer generation seeking affordable units, with the principal appeal to a buyer who has this particular family need. The option is popular in markets where housing costs have risen significantly, and where extended family living is not necessarily a cultural practice, but a very real social and economic necessity.
- In general, the City's Ohana dwelling unit provisions are comparatively stringent. In particular, the requirement for family occupancy is not a common element of zoning regulations regulating accessory dwelling units elsewhere. The prohibition against selling off a unit through the CPR process, and thereby abusing legislative intent, is also uncommon.
- All jurisdictions are careful to regulate basic infrastructure requirements, such as water, sewers, and road adequacy.

3. Ohana-Eligible Areas/Affordable Housing and Neighborhood Impacts (Refer to Exhibit 2)

Exhibit 2 summarizes basic data about Ohana dwelling units, both existing and potential, by two geographical divisions: Development/Sustainable Community Plan (DP/SCP) areas and Neighborhood Board (NB) districts.

The total number of building permits issued for Ohana dwelling units on Oahu is 2,000, with the largest number (1,300) issued within the Primary Urban Center DP area. Manoa has the most permits issued (318), by far, among NB areas.

It is of note that while the total number of units built is 2,000, the total number of estimated Ohana eligible parcels on Oahu is 17,098. This is an indication that the Ohana dwelling provisions have not been fully utilized for affordable extended family living. There are a number of factors which may account for this: the prohibition against selling off an accessory unit via the CPR process; the "family" occupancy requirement; and the overall economic climate with its many variables, e.g. mortgage interest rates, housing supply and demand factors, and gradual demographic changes. Existing size restrictions on Ohana dwelling units may have had an influence, but there is no clear evidence that they played a major role in the gap between units built and those that could potentially be built. Again, it is important to note that the availability of adequate infrastructure is the major controlling factor in obtaining a building permit for an Ohana dwelling unit.

Finally, Exhibit 2 also notes that the average size of a single-family dwelling on Oahu is 1,584 square feet. This should be considered within the context of: (a) establishing a maximum size restriction, and (b) maintaining the policy of an Ohana unit as an accessory unit to the principal dwelling.

The lack of affordable housing is well-documented. According to the Self-Help Housing Corporation of Hawaii, there is a current lack of 28,000 affordable housing units required statewide, with most of that need identified on Oahu. Families whose incomes are below 80 percent of the median income represent 40 percent of the population on Oahu. It is also noted that even families earning the median income cannot afford to purchase housing in today's conventional market, and the lack of affordable housing is exacerbated by a highly-active investment climate. As shown in Exhibit 2, Ohana dwelling units are an option for homeowners with families to address this need.

4. Discussion of Council-Initiated Bill A and DPP's Bill B (Exhibits 3A and 3B)

a. Zoning Adjustment Provisions

Council-initiated Bill A would eliminate Zoning Adjustments for rebuilding nonconforming Ohana dwelling units.

DPP does not agree with this aspect of Bill A, because the equity provisions for nonconforming Ohana dwelling units - those built lawfully under previous regulations - are needed. Eliminating this process would

result in confusion about their status, and would also remove requirements for proof of nonconformity, which is an important enforcement tool.

b. Maximum Size Restrictions

Council-initiated Bill A would delete existing maximum size restrictions for all Ohana dwelling units.

While DPP agrees that current maximum size limitations on Ohana dwelling units in some zoning districts do not realistically accommodate extended family living, we do not agree that all size limits should be deleted as proposed in Bill A. The size and bulk of residential structures in some neighborhoods are already a source of concern.

Removing all maximum size restrictions on Ohana dwelling units could have negative impacts on residential districts, especially those with smaller lot sizes. Zoning regulations now permit two (2) dwelling units on any residential lot, but only if the lot is twice the minimum size required in the zoning district. This is to address essential zoning concerns such as light, air, privacy and neighborhood building bulk/scale. In addition, the original concept here, as well as in other jurisdictions, was that of providing an additional dwelling unit that was accessory and incidental to the principal dwelling unit. Deviating from that original concept would be a major land use policy change, with impacts that would not be welcomed in many Ohaná-eligible neighborhoods.

Establishing a 1,000 square feet maximum for Ohana dwelling units is considered a balanced approach, that is, given that the average size of a single-family home is 1,584 square feet, an Ohana dwelling unit would still be considered accessory. The 1,000-square foot unit is also considered a realistic acknowledgement that accessory dwelling units are needed, especially in our current housing market, not just for elderly family members, but for a younger generation, priced out of the housing market, with children.

A secondary benefit of this proposal is that it would establish a single, uniform size standard which would aid future implementation and enforcement efforts.

**HISTORY OF THE OHANA HOUSING
PROGRAM IN HONOLULU
1982 – 2000**

Act 229 (1981)¹

Act 229 (1981) amended Section 46-4 of the Hawaii Revised Statutes (HRS) to require the counties to permit two dwellings on any residential lot with adequate public facilities.

The stated purposes of the law were: 1) to assist families to obtain affordable housing and 2) to encourage the extended family.

All four counties adopted ordinances to implement Act 229.

Ordinance 82-44 (November 12, 1982)

In 1982 Honolulu's Comprehensive Zoning Code was amended by adding new provisions relating to "ohana dwelling regulations." The term "ohana dwelling regulations." The term "ohana dwelling" was coined by Honolulu mayor, Eileen Anderson, to describe the second units authorized by Act 229.

The ordinance included general standards for ohana dwellings and established the public facilities clearance process that is still in effect. Ohana dwellings were not permitted in cluster, zero lot line, duplex lots, and planned development housing projects.

"A Guide to Ohana Housing" which offered design suggestions as well as information about the requirements was prepared and widely distributed.

1985 Assessment Report

Between 1982 and 1985 many ohana-eligible areas on Oahu were closed, primarily because of inadequate sewers. The 1985 Assessment Report, prepared by the Department of Land Utilization identified major infrastructure issues, primarily involving sewers and roads, and recommended amending the ordinance to address them. However, the ordinance was not amended until 1988.

¹ Documents referred to in this summary are located in the boxed Ohana files located in DPP's Regulations and Zone Change Branch.

Ordinance 88-48 (April 28, 1988)

Ordinance 88-48 attempted to address widespread concerns about the impact of ohana development on existing neighborhoods. It placed size limits on ohana dwellings. Maximum floor areas ranging from 700 sf to 1,000 sf, depending on the residential zoning district, were established. Ohana dwellings were also described as "accessory" units.

Act 252 (1988)

The State ohana law was also amended in 1988. Act 252 permitted the counties to adopt "reasonable standards" for ohana units, but it required applicants for ohana permits to place a legal notice in the newspaper.

1989 Ohana Rules (February 10, 1989)

Administrative rules implementing Ordinance 88-48 and Act 252 (above) were adopted and took effect on February 10, 1989.

Act 313 (1989)

In 1989 the State law was amended to make ohana optional rather than mandatory. The notice requirement was also repealed. This put regulation of residential density back into the hands of the counties. To date, no county has repealed its ohana provisions.

Ordinance 89-195 (December 28, 1989)

Ordinance 89-155 made the following changes to Honolulu's ohana provisions:

- Gave the City Council, rather than administrative agencies, the authority to designate ohana-eligible areas;
- Prohibited new ohana dwellings in the R-3.5 Residential district;
- Established a zoning adjustment to permit existing ohana dwellings which had become nonconforming in size pursuant to the size limits in Ordinance 88-48, to be rebuilt following destruction;
- Provided for limited expansion of ohana dwellings that had been registered as condominium prior to December 31, 1988.

Ohana on Hold (1990-1994)

Ordinance 89-155 provided that the City Council would determine ohana-eligible areas by adopting maps showing the areas. In 1990, the City Council considered Bill 154,

adopting maps of ohana-eligible areas, but did not take any action. Without any City Council-approved ohana areas, no permits for ohana dwellings could be issued. The ohana program was on hold from January 1990 until early 1994.

Ordinance 92-101 (September 28, 1992)

In 1991, an attempt to amend Honolulu's ohana provisions and revive the ohana program was unsuccessful. However, in 1992, the City Council adopted Ordinance 92-101 which made the following major changes in the ohana provisions:

- Repealed the provision requiring the City Council to designate the ohana-eligible areas;
- Permitted ohana units in Agricultural and Country zoning districts for the first time;
- Restricted ohana dwellings to conforming lots;
- Added a family occupancy requirement;
- Required applicants for ohana dwellings to file a restrictive covenant agreeing not to condominiumize the property;
- Clarified requirements for existing ohana dwellings;
- Provided a bailout option by which a neighborhood could petition to be excluded from ohana development.
- Required ohana dwelling too be "attached" within a single structure.

1994 Ohana Rules (January 22, 1994)

Following passage of Ordinance 92-101, new ohana maps and new rules were prepared to replace the 1989 rules. The City began accepting ohana applications on January 22, 1994, when the new rules took effect.

OHANA DWELLING-RELATED DATA

1. The average size for single-family dwellings on Oahu is 1,584 square-feet.¹
2. The number of “ohana” building permits which have been issued on Oahu is 2,000.² The geographic distribution of ohana building permits issued is summarized by the following two (2) tables.

Ohana Building Permits Issued by Development/Sustainable Area Plan Area

<u>DP/SCP Area</u>	<u>No. of Ohana Permits</u>
Central Oahu	249
East Honolulu	165
Ewa	0
Koolauloa	1
Koolaupoko	283
North Shore	1
Primary Urban Center	1,300
Waianae	1
TOTAL	2,000

Ohana Building Permits Issued by Neighborhood Board³

<u>Board No.</u>	<u>Town</u>	<u>No. of Ohana Permits</u>
1	Hawaii Kai	2
2	Kuliouou-Kalani Iki	147
3	Waialae-Kahala	26
4	Kaimuki	143
5	Diamond Head-Kapahulu-St. Louis	64
6	Palolo	120
7	Manoa	318
8	McCully-Moiliili	10
10	Makiki-Lower Punchbowl-Tantalus	36
12	Nuuanu-Punchbowl	105
14	Liliha-Kapalama	129
15	Kalihi-Palama	60
16	Kalihi Valley	24
17	Moanalua	24
18	Aliamanu-Salt Lake-Foster Village	66
20	Aiea	134

¹ Source: Real Property Division; based on assessment records for 150,216 single-family dwellings. Note: This figure excludes accessory structures such as garages, lanais, etc.

² Source: Building permit data compiled by DPP via POSSE system.

³ Neighborhood Boards not listed had no ohana building permits issued.

Ohana Building Permits Issued by Neighborhood Board³

<u>Board No.</u>	<u>Town</u>	<u>No. of Ohana Permits</u>
21	Pearl City	57
22	Waipahu	87
24	Waianae	1
26	Wahiawa	162
27	North Shore	1
28	Koolauloa	1
29	Kahaluu	4
30	Kaneohe	4
31	Kailua	260
32	Waimanalo	15
TOTAL		2,000

3. The total number of ohana eligible parcels on Oahu is 17,098.⁴ The geographic distribution of ohana eligible parcels on Oahu is summarized by the following two (2) tables.

Ohana Eligible Parcels by Development/Sustainable Area Plan Area

<u>DP/SCP Area</u>	<u>No. of Parcels</u>
Central Oahu	0
East Honolulu	1,948
Ewa	581
Koolauloa	444
Koolaupoko	1,087
North Shore	1,004
Primary Urban Center	10,039
Waianae	1,995
TOTAL	17,098

Ohana Eligible Parcels by Neighborhood Board⁵

<u>Board No.</u>	<u>Town</u>	<u>No. of Parcels</u>
2	Kuliouou-Kalani Iki	1,678
3	Waialae-Kahala	928
4	Kaimuki	1,606

⁴ Source: DPP (HoLIS) analysis. Ohana dwellings are permitted on lots meeting the minimum lot size in the residential, Country and agricultural districts in designated areas pursuant to adopted rules. Zoning lots which were at least twice the minimum lot size for the zoning districts were not included, since two single-family dwellings are already permitted by right. Zoning lots with more than one existing dwelling also were not included in the computation. [Note: This figure is an estimate only, due to the characteristics of the available data and methods of analysis employed.]

⁵ Neighborhood Boards not listed have no ohana eligible parcels.

Ohana Eligible Parcels by Neighborhood Board⁵

<u>Board No.</u>	<u>Town</u>	<u>No. of Parcels</u>
5	Diamond Head-Kapahulu-St. Louis	358
6	Palolo	1,288
7	Manoa	1,603
8	McCully-Moiliili	54
10	Makiki-Lower Punchbowl-Tantalus	271
12	Nuuanu-Punchbowl	905
14	Liliha-Kapalama	1,530
15	Kalihi-Palama	138
16	Kalihi Valley	80
17	Moanalua	608
18	Aliamanu-Salt Lake-Foster Village	940
23	Ewa	581
24	Waianae	1,995
27	North Shore	1,004
28	Koolauloa	444
29	Kahaluu	244
30	Kaneohe	3
31	Kailua	621
32	Waimanalo	219
TOTAL		17,098

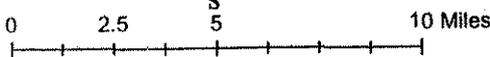
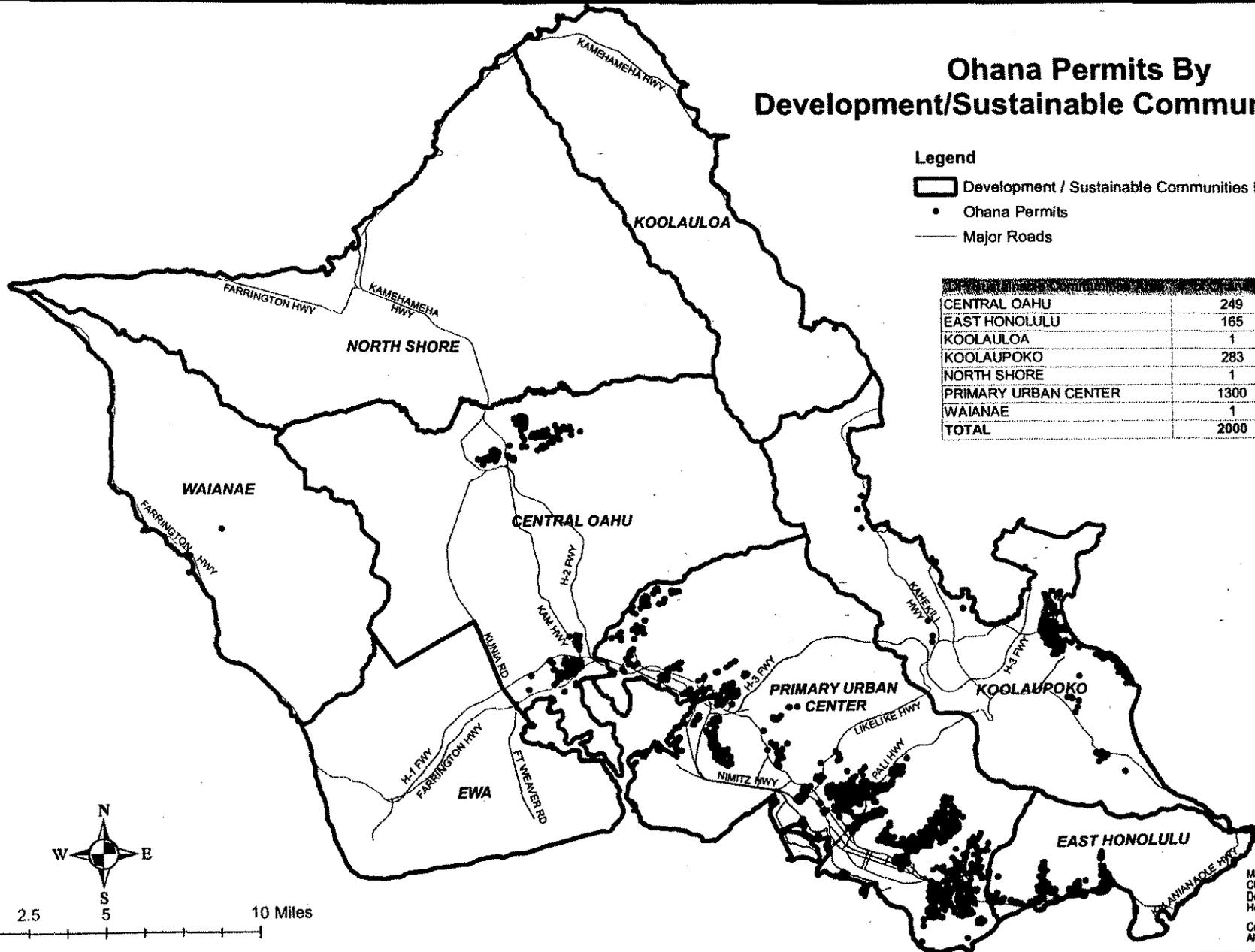
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Ohana Permits By Development/Sustainable Communities Plans

Legend

- Development / Sustainable Communities Plan
- Ohana Permits
- Major Roads

CENTRAL OAHU	249
EAST HONOLULU	165
KOOLAULOA	1
KOOLAUPOKO	283
NORTH SHORE	1
PRIMARY URBAN CENTER	1300
WAIANAE	1
TOTAL	2000



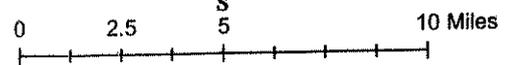
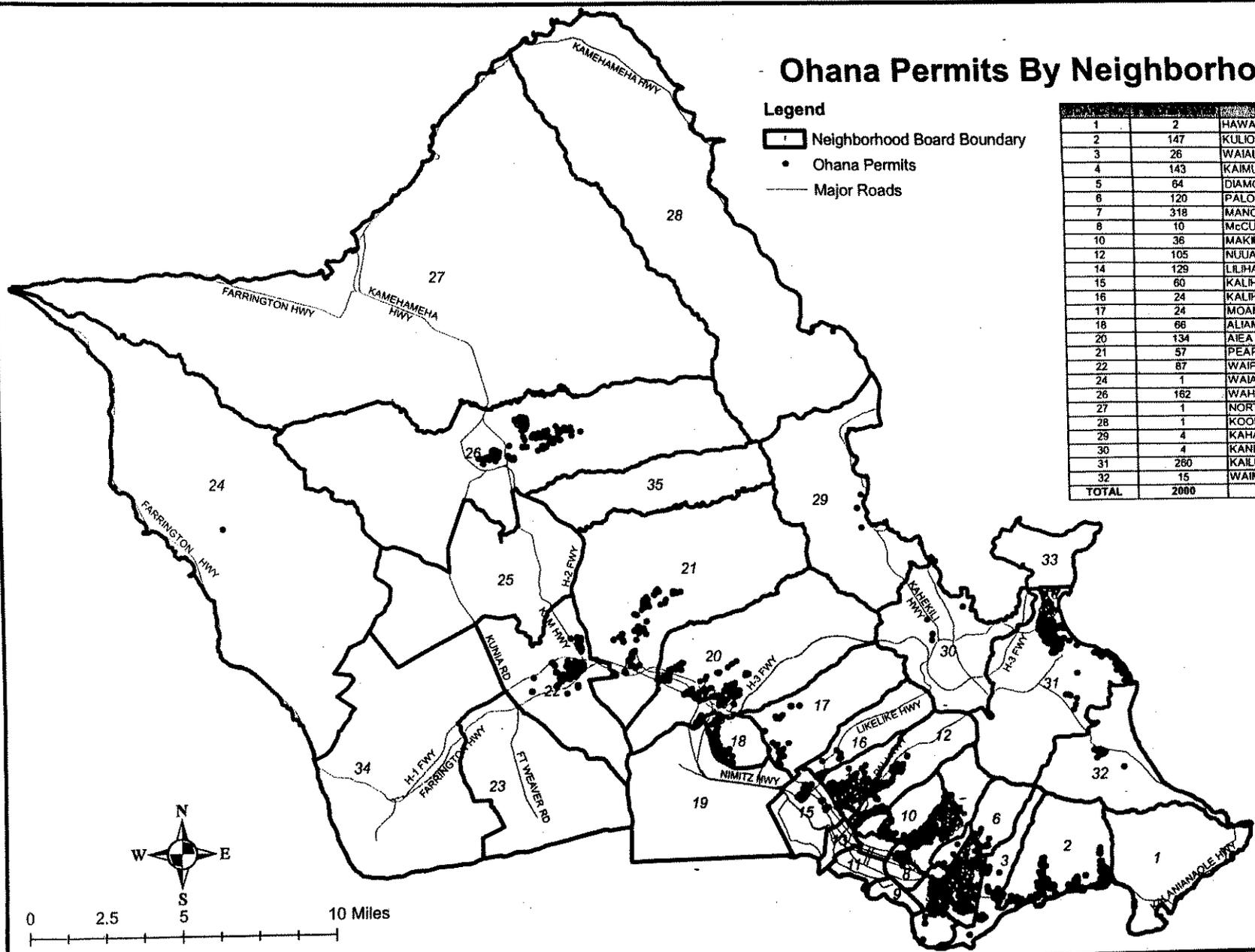
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Honolulu Land Information Systems (HoLIS)
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Ohana Permits By Neighborhood Boards

Legend

-  Neighborhood Board Boundary
-  Ohana Permits
-  Major Roads

1	2	HAWAII KAI
2	147	KULIYOU-KALANI IKI
3	26	WAIALAE-KAHALA
4	143	KAIMUKI
5	64	DIAMOND HEAD/KAPAHULU/ST. LOUIS
6	120	PALOLO
7	318	MANOA
8	10	MCCULLY/MOLILI
10	36	MAKKI/LOWER PUNCHBOWL/TANTALUS
12	105	NUUANU/PUNCHBOWL
14	129	LILIHAKAPALAMA
15	60	KALHI-PALAMA
16	24	KALHI VALLEY
17	24	MOANALUA
18	66	ALIAMANU/SALT LAKE/FOSTER VILAGE
20	134	AIEA
21	57	PEARL CITY
22	87	WAIPAHU
24	1	WAIANAE
26	162	WAIHAWA
27	1	NORTH SHORE
28	1	KOOLAULOA
29	4	KAHALUU
30	4	KANEHOE
31	280	KAILUA
32	15	WAIMANALO
TOTAL	2000	



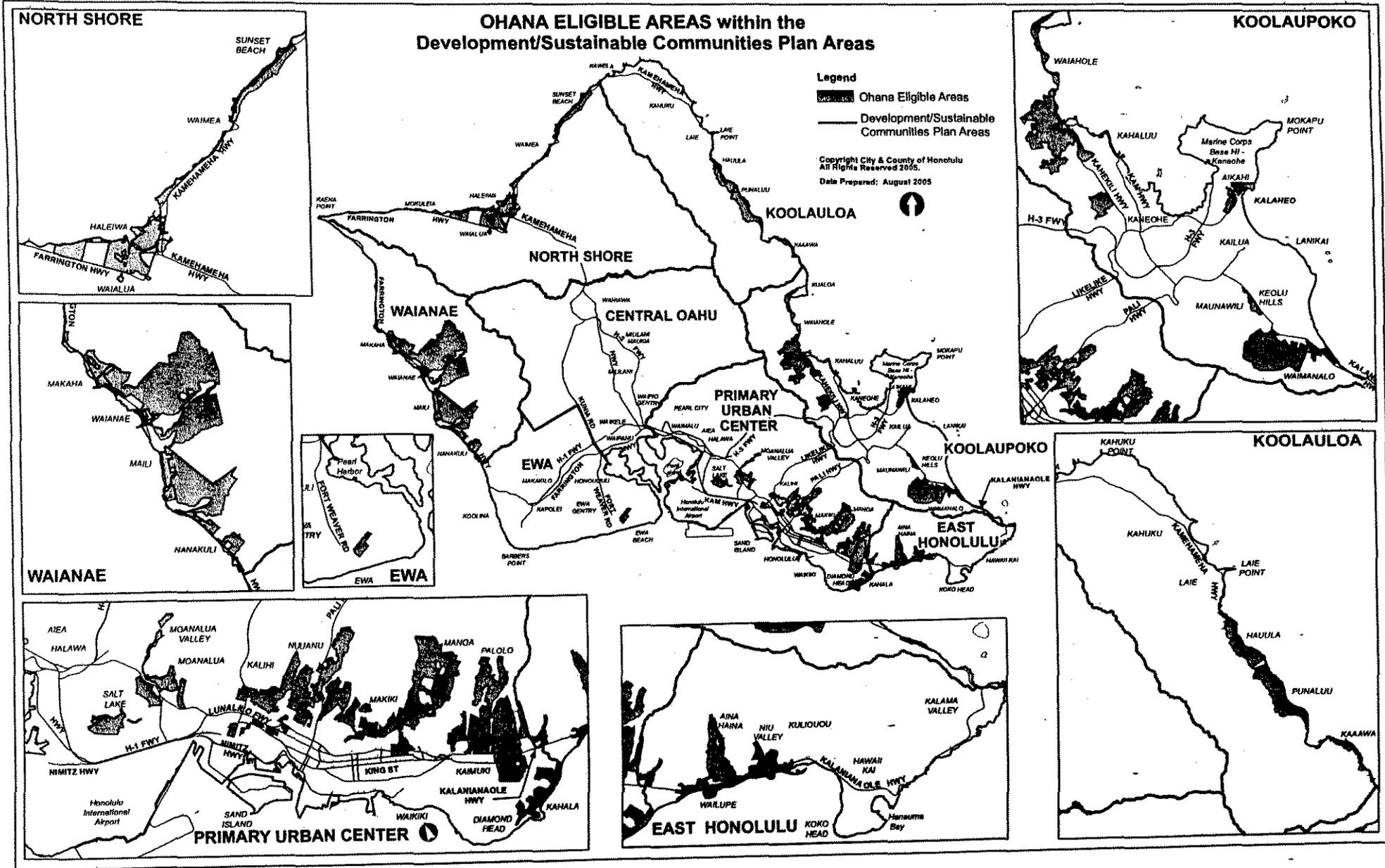
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OHANA ELIGIBLE AREAS within the Development/Sustainable Communities Plan Areas

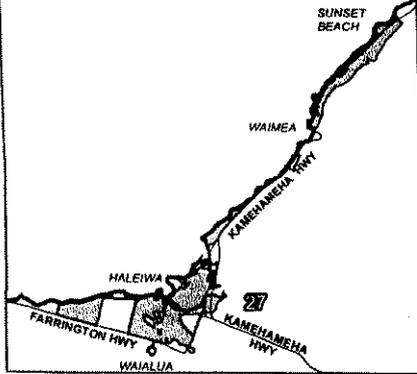
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- Ohana Eligible Areas
- Development/Sustainable Communities Plan Areas

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NORTH SHORE

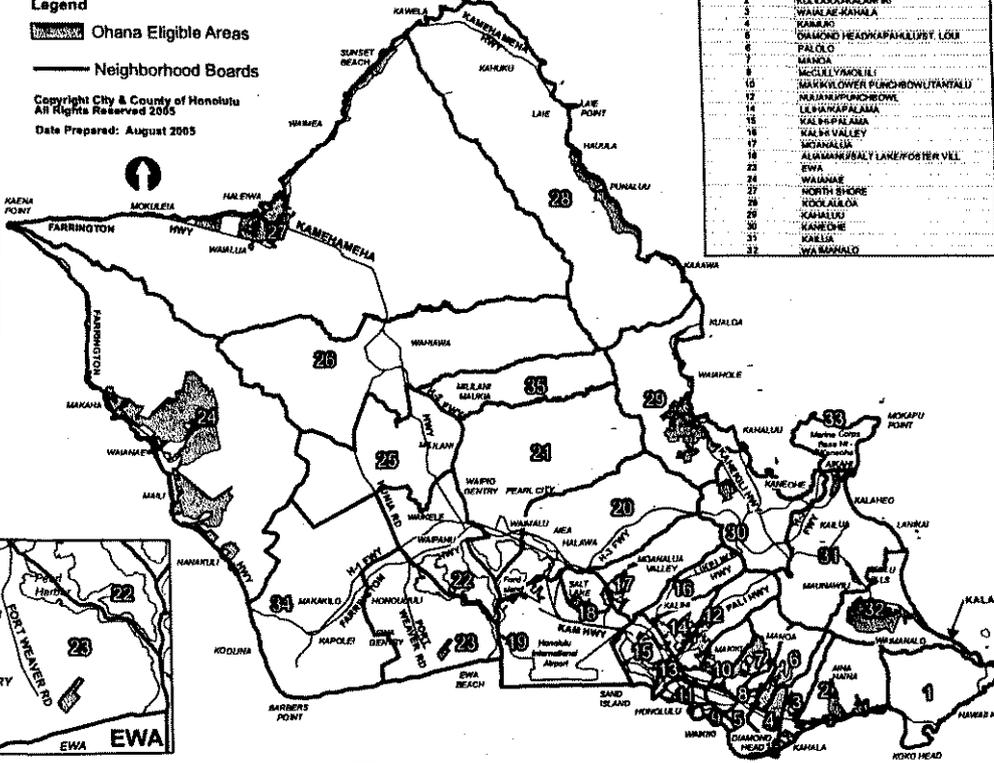


OHANA ELIGIBLE AREAS within the Neighborhood Boards

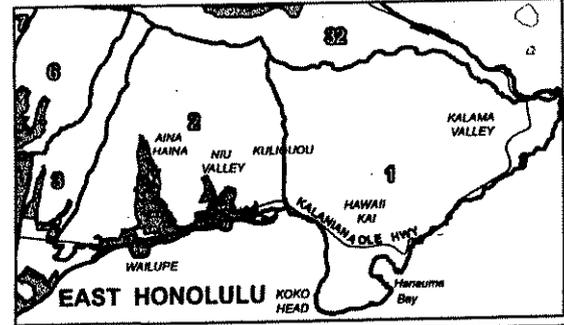
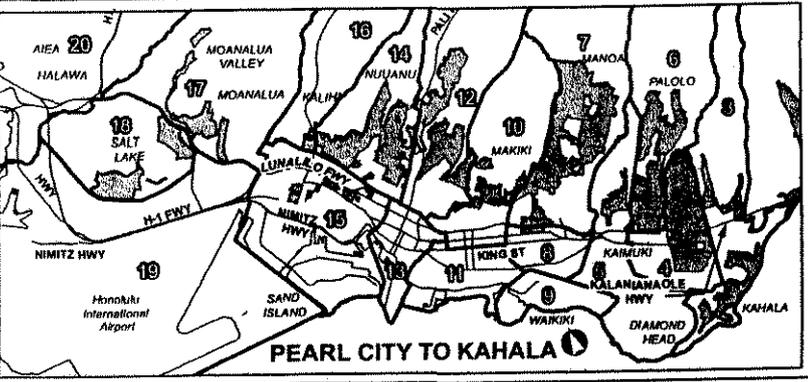
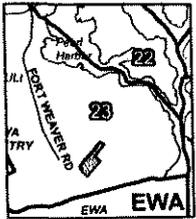
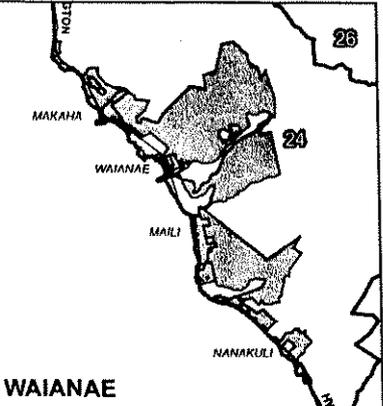
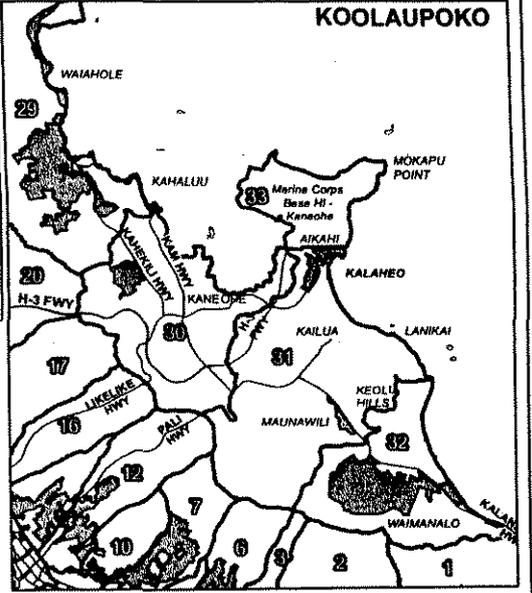
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 Ohana Eligible Areas
 Neighborhood Boards

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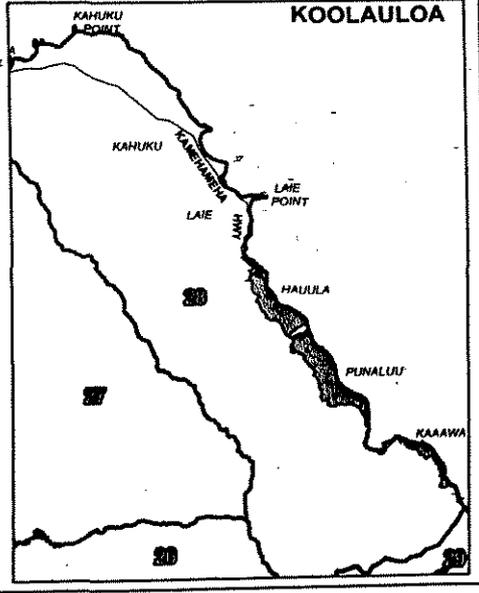
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4	WAIKANAHE
5	DIAMOND HEAD/KAPAHULUPT. LOU
6	PALOLO
7	MAKAI
8	WAIKANAHE
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KOOLAUPOKO



KOOLAULOA





RESOLUTION

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

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended (RCH), 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, Section 6-1513, RCH, further provides that "[a]ny such revision or amendment shall be referred to the director and the planning commission by resolution, which resolution shall be accompanied by supporting documentation sufficient to satisfy the director's usual requirements for the commencement of processing"; and

WHEREAS, for the purposes of the RCH, the term "zoning ordinances" refers both to the codification of land use standards in the Land Use Ordinance and to ordinances zoning and rezoning particular parcels of property (Section 6-1514, RCH); and

WHEREAS, it is the desire of the City Council that the Director of Planning and Permitting and Planning Commission process the proposed amendment to Chapter 21, Revised Ordinances of Honolulu (ROH) 1990, as amended, attached hereto as Exhibit "A"; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting is directed, pursuant to Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended, to process the proposed amendment to Chapter 21, ROH 1990 (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

BE IT FURTHER RESOLVED that if the Director of Planning and Permitting decides to initiate an alternative to the proposal attached hereto as Exhibit "A," the Director is directed to transmit both the attached proposal and the Director's alternative to the Planning Commission and the Planning Commission is directed to transmit both proposals and its recommendation on both proposals to the Council; and



RESOLUTION

BE IT FINALLY RESOLVED that the Clerk is directed to transmit certified 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.

INTRODUCED BY:

Barbara Bushnell
DANIELA G.

DATE OF INTRODUCTION:

OCT 6 2004

Honolulu, Hawaii

Councilmembers

(OCS/121003/ct)



A BILL FOR AN ORDINANCE

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

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 delete the maximum floor area restrictions for ohana dwelling units.

SECTION 2. Section 21-2.140-1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-2.140-1 Specific circumstances.

The director may grant an adjustment from the requirements of this chapter under the following circumstances:

(a) **Carports and Garages.**

- (1) When located in a residential district, a one-car or two-car carport or garage may encroach into required front and/or side yards, including those in special districts, only under the following conditions:
 - (A) That no other viable alternative site exists relative to the location of an existing dwelling (including additions), legally constructed prior to October 22, 1986, and/or to the topography of the zoning lot; and
 - (B) That the landowner must authenticate the nonconformity of the existing dwelling, carport or garage, if necessary.

Any carport or garage covered by this subsection shall not be converted to or be used for a use other than a carport or garage.

- (2) The maximum horizontal dimensions for the carport or garage shall generally not exceed 20 feet by 20 feet, except that the dimensions may be reasonably increased to accommodate an existing retaining wall or similar condition.
- (b) **Energy-saving Rooftop Designs.** Rooftop designs which incorporate energy-saving features, such as, but not necessarily limited to, vented ceilings and



A BILL FOR AN ORDINANCE

louvered skylights, may extend above the governing district height limit or height setback by not more than five feet, provided:

- (1) The building is not a detached dwelling unit or duplex.
 - (2) The proposal shall be subject to design review. The roofing treatment shall be attractive, give deference to surrounding design, and be an integral part of the design scheme of the building.
- (c) Flag Lot Access Width. Where unusual terrain or existing development does not allow the required access drive, the director may (i) adjust the minimum access width to no less than 10 feet, and (ii) allow more than dual access to an access drive, provided that the following criteria are met:
- (1) The appropriate government agencies do not object to the proposal;
 - (2) No more than 3 flag stems or access drives are located adjacent to one another, the access drive(s) do not serve more than 5 dwelling units, and the combined access drive width does not exceed 32 feet; and
 - (3) When more than dual access to a flag stem(s) or access drive(s) is proposed, the design results in one common driveway and one curb cut to serve all lots adjoining the flag stem(s).
- (d) Grade Irregularities. Where unusual natural deviations occur in grade, the director may adjust the building height envelope to permit reasonable building design. An adjustment shall be made only in accordance with the intent of the pertinent district regulations (See Figure 21-2.2).
- (e) Lanai Enclosures. Lanais, which are a part of buildings constructed on or before October 22, 1986 which have reached the maximum permitted floor area, may be enclosed if they meet all of the following criteria:
- (1) The enclosure meets a unified design scheme approved by either the condominium association or the building owner, whichever is applicable;
 - (2) Other lanais in the building have been similarly enclosed; and
 - (3) Lanais which have already been enclosed have been done so legally.



A BILL FOR AN ORDINANCE

- (f) **Loading Requirements—Joint Use.** The director may adjust the number of loading spaces to 50 percent of the required number when such spaces are to be jointly used by two or more uses on the same zoning lot; provided that:
 - (1) Each use has access to the loading zone without crossing driveways, public streets or sidewalks;
 - (2) All joint loading spaces are in reasonable proximity to the uses they serve, and can be jointly used without disrupting other activities on the lot; and
 - (3) The adjustment shall not be used to reduce the loading available for any single use below the minimum required for that use.

- (g) **Loading Requirements—Low-rise Multifamily Dwellings.** The director may adjust or waive the loading requirement for low-rise multifamily dwellings provided that:
 - (1) The project consists of more than one building;
 - (2) Buildings do not exceed three stories; and
 - (3) There is sufficient uncovered parking and aisle or turnaround space to accommodate occasional use for loading.

- (h) **Off-street Parking and Loading Requirements Upon Change in Use.**
 - (1) **Change in Use on Zoning Lot With Conforming Parking and Loading.** Notwithstanding Article 6, if there is a change in use on a zoning lot, with no increase in floor area, which would otherwise require the addition of no more than three parking spaces and/or no more than one loading space, then the director may adjust the number of additional parking or loading spaces required, on the following conditions:
 - (A) There are no reasonable means of providing the additional parking and/or loading spaces which would otherwise be required, including but not limited to joint use of parking facilities and off-site parking facilities;
 - (B) There was no previous change in use on the zoning lot to a use with higher parking or loading standard during the five-year period immediately preceding the change in use;



A BILL FOR AN ORDINANCE

- (C) There was no previous grant of an adjustment from parking and loading requirements on the zoning lot pursuant to this subdivision; and
 - (D) The parking and loading shall thereafter be deemed to be nonconforming.
- (2) Change in Use on Zoning Lot With Nonconforming Parking and Loading. Notwithstanding Section 21-4.110(e)(1), if there is a change in use on a zoning lot, with no increase in floor area, which would otherwise require the addition of no more than three parking spaces and/or no more than one loading space, nonconforming parking and loading may be continued, with no additional parking or loading spaces being required, on the following conditions:
- (A) There are no reasonable means of providing the additional parking and/or loading spaces which would otherwise be required, including but not limited to joint use of parking facilities and off-site parking facilities;
 - (B) There was no previous change in use on the zoning lot to a use with a higher parking or loading standard during the five-year period immediately preceding the change in use; and
 - (C) There was no previous grant of an adjustment from parking and loading requirements on the zoning lot pursuant to this subdivision or subdivision (1).
- [(i) Ohana (Accessory) Dwellings.
- (1) Rebuilding. Any ohana dwelling unit that is destroyed by any means to the extent of more than 50 percent of the unit's replacement value may be rebuilt to its previously existing dwelling type under the following conditions:
 - (A) It can be demonstrated that the ohana dwelling unit was legally constructed.
 - (B) It can be demonstrated that the replacement ohana dwelling unit will meet all current underlying district standards including but not



A BILL FOR AN ORDINANCE

limited to height limits, required yards and setbacks, maximum building area and parking.

(C) Any ohana dwelling unit rebuilt under the provisions of this subdivision (1) shall not be expanded to increase the floor area beyond the larger of:

(i) The floor area shown on approved building plans prior to its destruction; or

(ii) The current maximum floor area for ohana dwellings in the applicable residential zoning district.

(2) Expansion.

(A) Notwithstanding subdivision (1), an ohana dwelling unit owned under the provisions of HRS Chapter 514A may be expanded; provided that:

(i) The declaration of condominium property regime or declaration of horizontal property regime was filed with the bureau of conveyances of the State of Hawaii on or before December 31, 1988; and

(ii) The building permit was issued prior to April 28, 1988, the effective date of Ordinance No. 88-48 which placed floor area restrictions on ohana dwellings.

(B) Expansion of an ohana dwelling unit pursuant to this subdivision (2) is subject to the following conditions:

(i) The maximum building area for each dwelling unit on the zoning lot shall not exceed the ratio of that unit's proportionate share of the common interest to the total common interest of all units on the same zoning lot multiplied by the maximum building area of the zoning lot. The common interest shall be as specified in the applicable condominium property regime documents.



A BILL FOR AN ORDINANCE

- (ii) Any such expansion shall conform to yard requirements and other development standards for the applicable zoning district.
 - (iii) In the event the maximum building area has already been reached or exceeded, no additional expansion shall be permitted.
- (3) Notwithstanding the provisions of Section 21-8.20(c), requiring all new ohana units to be attached units, detached ohana dwelling units for which the building permit was issued prior to September 10, 1992 may be rebuilt and/or expanded as provided by subdivisions (1) and (2).
- ~~(j)~~(i) Receive-only Antenna Height. Receive-only antennas may exceed the governing height limit under the following conditions:
- (1) The zoning lot is not located in a residential district where utility lines are predominantly located underground; and
 - (2) The applicant shall provide evidence to the director that adequate reception by the antenna, for the purposes for which the antenna is designed, cannot be provided anywhere on the zoning lot at or below the zoning district height limit, and the antenna shall not extend above a height greater than is shown by evidence provided to the director to be necessary to provide adequate reception, and in no case shall the antenna extend more than 10 feet above the governing height limit; or
 - (3) A receive-only antenna may be placed on top of an existing structure where the height of the structure is nonconforming, provided the antenna shall not extend above the height of the structure by more than 10 feet.
- ~~[(k)]~~(i) Residential Height. The director may adjust the second plane of building height envelope up to a maximum of 35 feet, only under the following conditions:
- (1) The lot has a slope greater than 40 percent;
 - (2) There is no other reasonable development alternative without an increase in the height envelope; and
 - (3) The lot shall be limited to dwelling use.



A BILL FOR AN ORDINANCE

~~[(l)]~~(k) Retaining Walls. The director may adjust the maximum height of the retaining wall on a finding that additional height is necessary because of safety, topography, subdivision design or lot arrangement and the aesthetic impact of the wall would not be adverse to the neighborhood and community as viewed from any street. The director may impose reasonable conditions when granting this additional height, such as type of materials and colors, landscaping, terracing, setbacks and offsets, as may be necessary to maintain the general character of the area.

~~[(m)]~~(l) Rooftop Height Exemption. Rooftop structures which principally house elevator machinery and air conditioning equipment may extend above the governing district height limit for structures or portions of structures, provided they meet the following conditions:

- (1) If the elevator cab opens on the roof, machinery may not be placed above the elevator housing.
- (2) The highest point of the rooftop structures shall not exceed five feet above the highest point of the equipment structures. Rooftop structures principally housing elevator machinery or air conditioning equipment which was installed under a building permit issued before February 9, 1993, shall be permitted even if they exceed the 18-foot limit of Section 21-4.60(c)(1) so long as they do not exceed five feet above the highest point of the equipment structure.
- (3) The building is not located in a special district. If the building is located in a special district, the special district requirements shall prevail.
- (4) The proposed rooftop structures shall be subject to design review. The design shall be attractive, give deference to surrounding design, and be an integral part of the design scheme of the building.
- (5) Areas proposed to be covered by the rooftop structure will not be counted as floor area, provided they are not used for any purpose except covering rooftop machinery. Areas used for purposes other than reasonable aesthetic treatment shall be counted as floor area.

~~[(n)]~~(m) Sign Master Plan. A sign master plan is a voluntary, optional alternative to the strict sign regulations of this chapter, intended to encourage some flexibility in



A BILL FOR AN ORDINANCE

order to achieve good design (including compatibility and creativity), consistency, continuity and administrative efficiency in the utilization of signs within eligible sites. Under this alternative, and subject to the provisions of this subsection, the director may approve a sign master plan that permits the exceptions to the sign regulations of this chapter set forth in subdivision (2).

- (1) **Eligibility.** Developments with three or more principal uses on a zoning lot, other than one-family or two-family detached dwellings or duplex units, shall be eligible for consideration of a zoning adjustment for a sign master plan. An applicant must have the authority to impose the sign master plan on all developments on the zoning lot.
- (2) **Flexibility.** The following exceptions to the sign regulations of this chapter may be permitted pursuant to an approved sign master plan.
 - (A) **Physical Characteristics.** The maximum number of permitted signs, and the height and physical dimensions of individual signs, may be modified; provided:
 - (i) No sign shall exceed any applicable standard relating to number, height or dimension by more than 20 percent;
 - (ii) The total permitted sign area for a building shall not be increased by more than 20 percent; and
 - (iii) When computation of the maximum number of permitted signs results in a fractional number, the number of allowable signs shall be the next highest whole number.
 - (B) **Sign Types.** The types of business signs permitted for ground floor establishments may include hanging, marquee fascia, projecting, roof and wall signs.
 - (i) When marquee fascia signs are to be utilized, the signs may be displayed above the face of the marquee, provided the signs shall not exceed a height of more than 36 inches above the marquee face.



A BILL FOR AN ORDINANCE

- (ii) When wall signs are to be utilized, signs displayed as individual lettering placed against a building wall are encouraged.
 - (C) Sign Location. An appropriate, consistent pattern for the placement of regulated signs within the project site shall be approved in the sign master plan, provided all signs shall be located on the building containing the identified establishment, and no ground sign shall be located within a required yard except as may be permitted by this chapter.
 - (D) The standards and requirements for directional signs, information signs and parking lot traffic control signs may be established by the director, as appropriate.
- (3) Sign Master Plan Approvals. The director may approve a sign master plan only upon a finding that, in addition to the criteria set forth in Section 21-2.140-2, the following criteria have been met:
- (A) The proposed sign master plan will accomplish the intent of this subsection;
 - (B) The size and placement of each sign will be proportional to and visually balanced with the building facade of the side of the building upon which it is maintained;
 - (C) All signs regulated by this chapter and maintained upon the site will feature the consistent application of not less than one of the following design elements: materials, letter style, color, shape or theme; and
 - (D) In all respects not adjusted by the sign master plan, all signs regulated by this chapter and maintained upon the site will conform to the provisions of this chapter.
- The director may impose conditions and additional controls as may be appropriate.
- (4) Implementation.



A BILL FOR AN ORDINANCE

- (A) The director shall maintain a copy of the approved sign master plan for each project to facilitate the expedited processing of sign permits for that project. The director shall review each sign permit application for an individual sign within an affected project for its conformity to the approved sign master plan. Upon determining that the sign permit application conforms to the approved sign master plan, the director shall issue the sign permit for the sign.
- (B) Except as otherwise provided in this paragraph (B), no sign shall be maintained upon a site subject to an approved sign master plan unless the sign conforms to the sign master plan. If a site has existing signs which will not conform to the approved sign master plan, the master plan shall specify a reasonable time period, as approved by the director, for conversion of all existing signs to the design scheme set forth in the approved master plan, provided that in no event shall the time period for full conformance exceed one year from the date of approval of the sign master plan."

SECTION 3. Section 21-4.110, Revised Ordinances of Honolulu 1990 ("Nonconformities"), is amended by amending subsection (d) to read as follows:

"(d) Nonconforming Dwelling Units. With the exception of ohana (accessory) dwelling units, which are subject to the provisions of [Section] Sections 21-8.20 and 21-8.20-1, nonconforming dwelling units are subject to the following provisions:

- (1) A nonconforming dwelling unit may be altered, enlarged, repaired, extended or moved, provided that all other provisions of this chapter are met, except the requirements of Section 21-8.30.
- (2) If a nonconforming dwelling unit is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed.
- (3) When detached dwellings constructed on a zoning lot prior to January 1, 1950 exceed the maximum number of dwelling units currently permitted, they shall be deemed nonconforming dwelling units."

SECTION 4. Section 21-8.20, Revised Ordinances of Honolulu 1990, is amended to read as follows:



A BILL FOR AN ORDINANCE

"Sec. 21-8.20 Housing--Ohana (accessory) dwellings.

- (a) The purpose of this section is to encourage and accommodate extended family living, without substantially altering existing neighborhood character.
- (b) It is intended that "ohana" units be accessory to the principal permitted single-family dwelling on the zoning lot and that they be allowed only in areas where wastewater, water supply and transportation facilities are adequate to support additional density.
- (c) One ohana accessory dwelling unit may be located on a lot zoned for residential, country, or agricultural use, with the following limitations:

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

Zoning District	Maximum Floor Area
AG-1 restricted agricultural	1,000 sq. ft.
AG-2 general agricultural	1,000 sq. ft.
Country	1,000 sq. ft.
R-20 residential	1,000 sq. ft.
R-10	900 sq. ft.
R-7.5	700 sq. ft.
R-5	700 sq. ft.

(2)[(1)] Ohana dwelling units shall not be permitted on lots within a zero lot line project, cluster housing project, agricultural cluster, country cluster, planned development housing, R-3.5 zoning districts, or on duplex unit lots.

[(3)][(2)] An ohana dwelling unit shall not be permitted on any nonconforming lot.



A BILL FOR AN ORDINANCE

[(4)](3) The ohana dwelling unit and the principal dwelling shall be located within a single structure, i.e., within the same two-family detached dwelling. Notwithstanding this provision, detached ohana dwelling units for which the building permit was issued prior to September 10, 1992 may be rebuilt and/or expanded, subject to the development standards of the applicable zoning district.

[(5)](4) The ohana dwelling unit shall be occupied by persons who are related by blood, marriage or adoption to the family residing in the principal dwelling. Notwithstanding this provision, ohana dwelling units for which a building permit was obtained before September 10, 1992 are not subject to this restriction and their occupancy by persons other than family members is permitted.

[(6)](5) All other provisions of the zoning district shall apply.

[(7)](6) The parking provisions of this chapter applicable at the time the ohana building permit is issued shall apply and the provision of such parking shall be a continuing duty of the owner.

[(8)](7) The owner or owners of the lot shall record in the 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, a covenant that neither the owner or owners, nor the heirs, successors or assigns of the owner or owners shall submit the lot or any portion thereof to the condominium property regime established by HRS Chapter 514A. The covenant shall be recorded on 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 shall be deemed a violation of Chapter 21 and be grounds for enforcement of the covenant by the director pursuant to Section 21-2.150, et seq., and shall be grounds for an action by the director to require the owner or owners to remove, pursuant to HRS Section 514A-21, 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. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the



A BILL FOR AN ORDINANCE

Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material or the underscoring.

SECTION 6. This ordinance shall take effect upon its approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 2004.

JEREMY HARRIS, Mayor
City and County of Honolulu

(OCS/121003/ct)

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 04-300

Introduced: 10/6/04 By: Barbara Marshall

Committee: Z

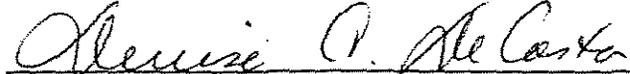
Title: RESOLUTION PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), AS AMENDED, RELATING TO OHANA DWELLINGS.

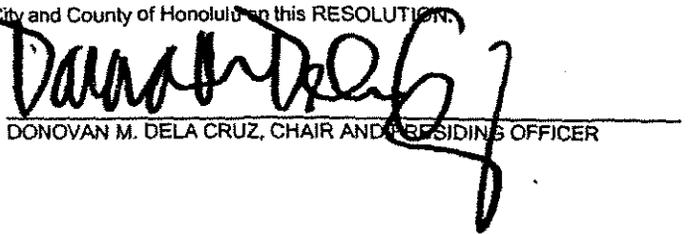
Links: 04-300

Related Communications

Zoning	10/19/04	CR-439 – Resolution reported out of committee for adoption.
Council	11/10/04	CR-439 & Resolution adopted.
		Cachola Y Dela Cruz Y Djou Y Gabbard Y Garcia Y
		Kobayashi Y Marshall Y Okino Y Tam Y

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


DENISE C. DE COSTA, CITY CLERK


DONOVAN M. DELA CRUZ, CHAIR AND PRESIDING OFFICER



A BILL FOR AN ORDINANCE

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

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

SECTION 1. The purpose of this ordinance is to establish a single standardized maximum size for permitted ohana (accessory) dwellings.

SECTION 2. Section 21-8.20, Revised Ordinances of Honolulu 1990, as amended ("Housing—Ohana (accessory) dwellings"), is amended by amending subsection (c) to read as follows:

"(c) One ohana accessory dwelling unit may be located on a lot zoned for residential, country, or agricultural use, with the following limitations:

(1) The maximum size of an ohana accessory dwelling unit shall be [as follows:

Zoning District	Maximum Floor Area
AG-1 restricted agricultural	1,000 sq. ft.
AG-2 general agricultural	1,000 sq. ft.
Country	1,000 sq. ft.
R-20 residential	1,000 sq. ft.
R-10	900 sq. ft.
R-7.5	700 sq. ft.
R-5	700 sq. ft.]

1,000 square feet in the agricultural, Country and residential zoning districts.

(2) Ohana dwelling units shall not be permitted on lots within a zero lot line project, cluster housing project, agricultural cluster, country cluster,



A BILL FOR AN ORDINANCE

planned development housing, R-3.5 zoning districts, or on duplex unit lots.

- (3) An ohana dwelling unit shall not be permitted on any nonconforming lot.
- (4) The ohana dwelling unit and the principal dwelling shall be located within a single structure, i.e., within the same two-family detached dwelling.
- (5) The ohana dwelling unit shall be occupied by persons who are related by blood, marriage or adoption to the family residing in the principal dwelling. Notwithstanding this provision, ohana dwelling units for which a building permit was obtained before September 10, 1992 are not subject to this restriction and their occupancy by persons other than family members is permitted.
- (6) All other provisions of the zoning district shall apply.
- (7) The parking provisions of this chapter applicable at the time the ohana building permit is issued shall apply and the provision of such parking shall be a continuing duty of the owner.
- (8) The owner or owners of the lot shall record in the 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, a covenant that neither the owner or owners, nor the heirs, successors or assigns of the owner or owners shall submit the lot or any portion thereof to the condominium property regime established by HRS Chapter 514A. The covenant shall be recorded on 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 shall be deemed a violation of Chapter 21 and be grounds for enforcement of the covenant by the director pursuant to Section 21-2.150, et seq., and shall be grounds for an action by the director to require the owner or owners to remove, pursuant to HRS Section 514A-21, the property from a submission of the lot or any portion thereof to the condominium property regime made in violation of the covenant."

SECTION 3. Ordinance material to be repealed is bracketed and new material is underscored. When revising, compiling, or printing this ordinance for inclusion in the



CITY COUNCIL
 CITY AND COUNTY OF HONOLULU
 HONOLULU, HAWAII

ORDINANCE _____

BILL (2005)

A BILL FOR AN ORDINANCE

Revised Ordinances of Honolulu, the revisor or ordinances need not include the brackets, the bracketed material or the underscoring.

SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

 Honolulu, Hawaii

 Councilmembers

APPROVED AS TO FORM AND LEGALITY:

 Deputy Corporation Counsel

APPROVED this _____ day of _____, 20_____.

 MUFI HANNEMANN, Mayor
 City and County of Honolulu