



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, as amended ("Specific circumstances"), is amended by amending subsection (i) to read as follows:

"(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 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] The floor area allowable under the current maximum building area development standard in the applicable [residential] zoning district.



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- (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.
 - (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)."



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SECTION 3. Section 21-4.110, Revised Ordinances of Honolulu 1990, as amended ("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 [21-8.20-1] 21-2.140-1(i), 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, as amended, is amended to read 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:



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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.

] shall not be limited but shall be subject to the maximum building area development standard in the applicable zoning district.

- (2) 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) An ohana dwelling unit shall not be permitted on any nonconforming lot.
- (4) The ohana dwelling unit and the [principal] first 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] first 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.



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- (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 5. Section 21-8.20-1, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"Sec. 21-8.20-1 Procedures for approval of ohana [(accessory)] dwellings.

The department, with the assistance of other agencies, as appropriate, shall adopt rules relating to ohana [(accessory)] dwellings, including rules to establish the following:

- (a) Procedures for designating ohana-eligible areas, including rules providing that:
 - (1) Only those areas that are determined by the appropriate government agencies to have adequate public facilities to accommodate ohana dwellings shall be ohana-eligible.
 - (2) Upon a finding by the responsible agency that wastewater treatment and disposal, water, or transportation facilities are not adequate to accommodate additional ohana dwellings in any ohana-eligible area, no more ohana dwellings shall be approved in that area.



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- (3) Notwithstanding the adequacy of public facilities, if the owners of 60 percent of the residential-zoned lots in the same census tract sign a petition requesting that residential-zoned lots in the census tract be excluded from ohana eligibility and submit the petition to the department, no new ohana dwellings shall be approved on residential-zoned lots in that census tract from the date the department certifies the validity of the petition. For purposes of this subdivision, the term "owners" shall mean the fee owner of property that is not subject to a lease and shall mean the lessee of property that is subject to a lease. For purposes of this subdivision, the term "lease" shall mean "lease" as that term is defined in HRS Section 516-1.
- (4) Notwithstanding the adequacy of public facilities, if the owners of 60 percent of the agricultural-zoned and country-zoned lots in the same census tract sign a petition requesting that all agricultural-zoned and country-zoned areas in a census tract be excluded from ohana eligibility and submit the petition to the department, no new ohana dwellings shall be approved on agricultural-zoned or country-zoned lots in that census tract from the date the department certifies the validity of the petition. For purposes of this subdivision, "owner" shall mean the fee owner of property that is not subject to a lease and shall mean the lessee of property that is subject to a lease. For purposes of this subdivision, the term "lease" shall mean a conveyance of land or an interest in land, by a fee simple owner as lessor, or by a lessee or sublessee as sublessor, to any person, in consideration of a return of rent or other recompense, for a term, measured from the initial date of the conveyance, 20 years or more (including any periods for which the lease may be extended or renewed at the option of the lessee).
- (5) The director may adopt rules and regulations pursuant to HRS Chapter 91 to establish procedures for, to implement and to further define the terms used in subdivisions (3) and (4). These rules may include, but not be limited to, provisions relating to the form of petitions, determination of necessary signatures where there is more than one owner or when the owner is an entity, the signing of petitions, validity of signatures, the withdrawal of signatures, the time frame for collection of signatures, verification of signatures, certification of results, duration of the prohibition and procedures upon the change of census tract boundaries.



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- (6) Before an area is designated eligible for ohana dwellings, the director shall publish a notice of the proposed change in a newspaper of general circulation, and notify the neighborhood board(s) in the affected area.
- (b) Standards and criteria for determining adequacy of public facilities, to include but not be limited to:
- (1) Width, gradients, curves and structural condition of access roadways.
 - (2) Water pressure and sources for domestic use and fire flow.
 - (3) Wastewater treatment and disposal.
 - (4) Any other applicable standards and criteria deemed to be appropriate for the safety, health and welfare of the community.
- (c) Standards and Procedures for Obtaining an Ohana Building Permit. The standards shall, at a minimum, require that planned parking is adequate to meet the parking requirements of this chapter applicable at the time of issuance of the ohana building permit to both the [principal] first and [accessory (Ohana)] dwelling unit."

SECTION 6. Section 21-10.1, Revised Ordinances of Honolulu 1990, as amended, is amended by amending the definition of "ohana (accessory) dwelling unit" to read as follows:

""Ohana [(accessory)] dwelling unit"; ["ohana dwelling unit";] "ohana dwelling"; and "ohana unit" mean a second dwelling unit permitted pursuant to the provisions of HRS Section 46-4(c); and of Ordinance 3234 (adopting the Comprehensive Zoning Code), as amended; and thereafter of Ordinance 86-96 (adopting the Land Use Ordinance), as amended."

SECTION 7. Ordinance material to be repealed is bracketed. 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 bracketed material or the underscoring.



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SECTION 8. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Donovan Dela Cruz (BR)

DATE OF INTRODUCTION:

January 9, 2006
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Don S. Kutscha
Deputy Corporation Counsel

APPROVED this _____ day of _____, 2006.

MUFU HANNEMANN, Mayor
City and County of Honolulu

(OCS/022106/ct)

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE **06-15**

BILL **007 (2006)**

Introduced: 1/9/06 By: DONOVAN DELA CRUZ (BY REQUEST) Committee: ZONING

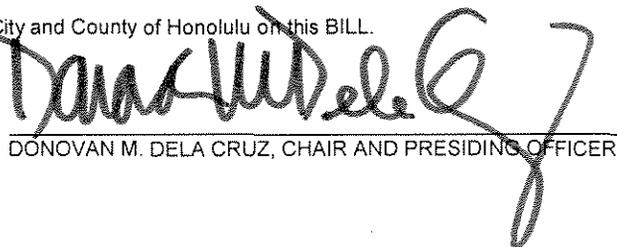
Title: A BILL FOR AN ORDINANCE TO AMEND CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED (THE LAND USE ORDINANCE), RELATING TO OHANA DWELLINGS.

Links: BILL 007 (2006) (COUNCIL INITIATED BY RES. 04-300; SEE ALSO BILL 8)
BILL 007 (2006), CD1
BILL 007(2006), CD2
D-1132 (2005)
CR-044

Council	1/25/06	Bill passed first reading and referred to Committee on Zoning. Apo Y Cachola Y Dela Cruz Y Djou Y Garcia Y Kobayashi Y Marshall Y Okino Y Tam Y
Zoning	1/31/05	CR-44 - Bill reported out of committee for passage on second reading and scheduling of a public hearing as amended in CD1 form.
Publish	2/4/06	Public hearing notice published in the Honolulu Star-Bulletin.
Council/Public Hearing	2/15/06	Bill passed second reading, as amended (CD1), CR-44 adopted, public hearing closed and referred to Zoning Committee. Apo Y Cachola Y Dela Cruz Y Djou Y Garcia Y Kobayashi Y Marshall Y Okino Y Tam Y
Publish	2/18/06	Second reading notice published in the Honolulu Star-Bulletin.
Zoning	2/21/06	CR-95 – Bill reported out of committee for passage on third reading, as amended in CD2 form.
Council	3/1/06	Bill passed third reading, as amended (CD2), and CR-95 adopted. (Bill 7, CD2) Apo Y Cachola Y Dela Cruz Y Djou 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 BILL.


DENISE C. DE COSTA, CITY CLERK


DONOVAN M. DELA CRUZ, CHAIR AND PRESIDING OFFICER

ORDINANCE NO. 06 - 15

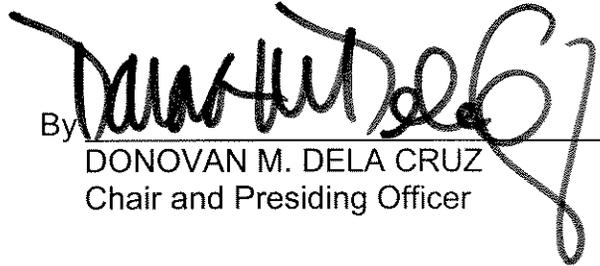
CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

CERTIFICATE

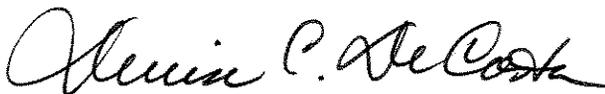
I hereby certify that on March 1, 2006, Bill 7, CD2, was presented to the Honorable Mufi Hannemann, Mayor of the City and County of Honolulu, for his approval or otherwise; and that on March 15, 2006, the Mayor returned said Bill without his signature; therefore, pursuant to Section 3-203 of the Revised Charter of Honolulu, said Bill 7, CD2, became a duly enacted ordinance on March 15, 2006.

Dated, Honolulu, State of Hawaii, this 15th day of March, 2006.

CITY COUNCIL

By 
DONOVAN M. DELA CRUZ
Chair and Presiding Officer

ATTEST:


DENISE C. DE COSTA
City Clerk