



A BILL FOR AN ORDINANCE

RELATING TO COUNCIL PROPOSALS TO AMEND THE GENERAL PLAN, THE DEVELOPMENT PLANS, THE ZONING ORDINANCES, AND THE SUBDIVISION ORDINANCE.

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

SECTION 1. Legislative findings and purpose.

The Revised Charter of the City and County of Honolulu (1973), as amended (the "Revised Charter"), vests the legislative power of the city in the city council. Thus, as it should be in a representative democracy, the council, an elected body, has the right and the responsibility to propose, deliberate, and enact the city's ordinances and any amendments thereto.

With respect to council proposals to revise or amend 1) the city's general plan, 2) the development plans, and 3) the zoning ordinances, including the Land Use Ordinance, the Revised Charter establishes procedures whereby the department of planning and permitting (the "department") and the planning commission have an opportunity to review and comment on the council proposals prior to action thereon by the council. Revised Charter Section 6-1511.2 provides that council proposals to revise or amend the general plan or any existing development plan may be proposed by the council and shall be processed in the same manner as if proposed by the director of planning and permitting. The proposal is referred to the director and the planning commission by resolution. Revised Charter Section 6-1513 establishes a similar procedure for council proposals to revise or amend the zoning ordinances.

In deference to this charter scheme, the council also has, by resolution, referred council proposals to revise or amend the subdivision ordinance to the department for review and processing.

However, the Revised Charter does not provide a deadline for the director of planning and permitting to transmit to the planning commission (or to the council, in the case of the subdivision ordinance) the foregoing types of revisions or amendments and the director's report and recommendation thereon. As result, some council proposals have been pending in the department for years. See, e.g., the proposals initiated by the council via resolutions: 02-141, CD1; 05-036; 05-209, CD1; 05-283, CD1; 06-033, CD1; 06-119; 06-141; 06-142; 07-007; and 07-008. Notably, Resolution 05-209, a council proposal to amend the Land Use Ordinance to establish a timeline for the director of planning and permitting to process zoning ordinance amendments, has been pending for more than two years.



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The council acknowledges the appropriateness of giving the department the opportunity to review its proposals, and further acknowledges that staffing problems in the department may contribute to delays. However, inordinately long delays hinder the legislative process and prevent the council from responding to the needs of the public by passing legislation within a reasonable period of time. In a worst-case scenario, the council could be stymied from ever acting on its proposals by the department’s failure to process the proposals, either intentionally or by neglect. This gives an unelected administrative agency the power to block lawmaking action by the elected legislative body vested with that authority. This could not have been the intent of the drafters of the charter.

Accordingly, the purpose of this ordinance is to establish reasonable deadlines for the processing of council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and to clarify the responsibility of the director of planning and permitting to assist the council in adequately preparing its proposals for processing.

SECTION 2. Article 24 of Chapter 2, Revised Ordinances of Honolulu 1990, as amended (“Planning Department”), is repealed.

SECTION 3. Chapter 2, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Article 24 to read as follows:

**“Article 24. Department of Planning and Permitting**

**Sec. 2-24.1 Applicability.**

This article shall apply to council proposals to revise or amend:

- (1) The general plan;
- (2) A development plan;
- (3) The zoning ordinances; and
- (4) The subdivision ordinance.

**Sec. 2-24.2 Definitions.**

As used in this article:

“Council proposal” means any proposal set forth in Section 2-24.1.



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“Development plan” means a development plan for a particular area within the city, as described in Revised Charter Section 6-1509, and sometimes referred to as a sustainable communities plan, codified in Chapter 24.

“Director” means the director of planning and permitting.

“Director’s alternative” means any ordinance or resolution proposed by the director as an alternative to a council proposal as provided in Section 2-24.4.

“General plan” means the general plan for the city, as described in Revised Charter Section 6-1508.

“Revised Charter” means the Revised Charter of the City and County of Honolulu 1973, as amended.

“Subdivision ordinance” means the city’s ordinance governing the subdivision and consolidation of land, as described in Revised Charter Section 6-1515.1, codified as Chapter 22.

“Zoning ordinance” means:

- (1) The Land Use Ordinance, codified as Chapter 21; and
- (2) An ordinance designating and redesignating land to one or more of the zoning districts specified in the LUO.

### **Sec. 2-24.3 Initiation by the council.**

- (a) A council proposal shall be initiated by adoption of a resolution by the council directing the director to process the proposal. The resolution shall state the reason for the proposal and shall attach a draft ordinance or resolution, as appropriate, setting forth the revision or amendment.
- (b) Prior to the adoption of the resolution pursuant to subsection (a), the director shall assist the council in the preparation of the council proposal by gathering and preparing the necessary supporting documentation sufficient to satisfy the director’s usual requirements for the commencement of processing of such revision or amendment. The documentation shall be attached to and be deemed an integral part of the resolution adopted.



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- (c) Upon adoption of a resolution initiating a council proposal, the city clerk shall transmit copies of the resolution to the director and, in the case of council proposals set forth in Sections 2-24.1(1), (2), and (3), the planning commission, along with a writing setting forth the date by which the director's report and accompanying proposed ordinance or resolution are required to be submitted to the planning commission or the council, as applicable, under the deadlines set forth in Sections 2-24.4(a) and (b).

### **Sec. 2-24.4 Processing by the department.**

- (a) Council proposals to revise or amend the general plan, any development plan, or a zoning ordinance. Within 270 days of the adoption of the resolution initiating a council proposal to revise or amend the general plan, any development plan, or a zoning ordinance, the director shall submit a report, accompanied by the proposed ordinance or resolution, to the planning commission. If the director proposes an alternative ordinance or resolution for consideration by the planning commission, both versions shall be attached to the director's report in a form sufficient for introduction in the council.
- (b) Council proposal to revise or amend the subdivision ordinance. Within 270 days of the adoption of the resolution initiating a council proposal to revise or amend the subdivision ordinance, the director shall submit a report, accompanied by the proposed ordinance, to the council. If the director proposes an alternative ordinance, both versions shall be attached to the director's report in a form sufficient for introduction in the council.
- (c) Extension of deadline. Notwithstanding the foregoing, if the director finds that the council proposal involves complex issues that require additional time for review, the director may request a 60-day extension of the deadline as follows:
- (1) Within the existing deadline, the director shall submit to the council a request for an extension of the deadline and an interim report describing the status of the director's processing of the council proposal and the reasons that additional time is need for processing.
  - (2) The council may approve or deny the proposed extension by adoption of a committee report or resolution. If the council fails to take final action on the proposed extension within 60 days after receipt of the director's request, the extension shall be deemed denied. The city clerk shall advise the director and, for council proposals set forth in Sections 2-24.1(1), (2), and (3), the planning commission, in writing of the council's action on the director's extension request. If the council approves the extension, the



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clerk shall also advise the director and, for council proposals set forth in Sections 2-24.1(1), (2), and (3), the planning commission, in writing of the new date by which the director's report and accompanying proposed ordinance or resolution are required to be submitted to the planning commission.

- (3) If an extension of the deadline is approved by the council, the director may thereafter request subsequent extensions of the deadline in accordance with the procedures described above.

### **Sec. 2-24.5 Processing by planning commission.**

- (a) The planning commission shall commence processing of a council proposal to revise or amend the general plan, any development plan, or a zoning ordinance, upon the first to occur of:
  - (1) Submission of the director's report and proposed ordinance or resolution; or
  - (2) The director's failure to transmit the report and proposed ordinance or resolution by the deadline required by this article, including any extensions approved by the council pursuant to Section 2-24.4(c).
- (b) The planning commission shall hold a public hearing on the council proposal and any director's alternative within 45 days of the commencement of processing. Within 30 days of the close of the public hearing, the planning commission shall transmit through the mayor to the council the director's report, if any, council proposal, and any director's alternative, with its recommendations. If the director has proposed an alternative ordinance or resolution, the planning commission shall make recommendations on both the council proposal and the director's alternative. The mayor shall submit the director's report, if any, council proposal, any director's alternative, and planning commission recommendations to the council within 30 days of receipt of the same from the planning commission.

### **Sec. 2-24.6 Action by council.**

- (a) If the planning commission disapproves a council proposal to revise or amend the general plan, any development plan, or a zoning ordinance, or recommends a modification thereof not accepted by the council, or fails to make its report within a period of either 30 days after the close of its public hearing or 90 days after the commencement of processing by the commission pursuant to Section 2-24.5(a), whichever occurs first, the council may nevertheless consider and adopt



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such council proposal, but only by the affirmative vote of at least two-thirds of its entire membership.

- (b) If the director disapproves a council proposal to revise or amend the subdivision ordinance, or recommends a modification thereof not accepted by the council, or fails to submit his or her report and proposed ordinance to the council within the required deadline specified in Section 2-24.4(b), including any extensions approved by the council pursuant to Section 2-24.4(c), the council may nevertheless consider and adopt such council proposal, but only by the affirmative vote of at least two-thirds of its entire membership.

### **Sec. 2-24.7 Determination of submission date.**

- (a) For the purposes of this article, a document shall be deemed submitted to the recipient when the document is received by the recipient.
- (b) The planning commission shall cause the date and time of receipt by the commission of any director's report on a council proposal, and accompanying proposed ordinance or resolution, to be promptly stamped on the first page of the report, and notify the council in writing of the date of receipt.
- (c) The city clerk shall promptly stamp the date and time of receipt by the council of any report or recommendation from the director or the planning commission, and accompanying proposed ordinance or resolution, on the first page of the report or recommendation.
- (d) If the date and time of receipt of a document is not stamped on a document, the document shall be deemed to be received by the recipient one day after the date set forth on the transmittal letter.

### **Sec. 2-24.8 Severability.**

If any provision of this ordinance, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable."



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SECTION 4. This ordinance shall take effect upon its approval, and shall apply to council proposals, as defined in Section 3 of this ordinance, initiated prior to, on, or after the effective date of this ordinance; provided that for council proposals initiated prior to the effective date of this ordinance, the applicable deadlines established in Section 3 of this ordinance for the director, the planning commission, and mayor, shall begin to run from the effective date of this ordinance for proposals in the respective possession of the director, the planning commission, and the mayor.

INTRODUCED BY:

Bryana Marshall  
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Romy M. Luholu  
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DATE OF INTRODUCTION:

FEB 11, 2008  
Honolulu, Hawaii

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Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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MUFU HANNEMANN, Mayor  
City and County of Honolulu