

# REPORT OF THE COMMITTEE ON ZONING

Rod Tam, Chair; Todd K. Apo, Vice Chair  
Donovan M. Dela Cruz, Nestor R. Garcia, Gary H. Okino, Members

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Committee Meeting Held  
February 26, 2008

Honorable Barbara Marshall  
Chair, City Council  
City and County of Honolulu

Madam Chair:

Your Committee on Zoning, to which was referred Bill 4 (2008) entitled:

"A BILL FOR AN ORDINANCE RELATING TO COUNCIL PROPOSALS TO AMEND THE GENERAL PLAN, THE DEVELOPMENT PLANS, THE ZONING ORDINANCES, AND THE SUBDIVISION ORDINANCE,"

which passed First Reading on February 20, 2008, reports as follows:

The purpose of Bill 4 (2008) is to establish reasonable deadlines for the processing of Council proposals to revise or amend the general plan, the development plans, the zoning ordinances (including the Land Use Ordinance and ordinances rezoning particular parcels of land), 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.

The Revised Charter mandates that the Department of Planning and Permitting (DPP) must process council-initiated proposals to amend the general plan, the development plans, and the zoning ordinances "in the same manner as if proposed by the director [of planning and permitting]." RCH §§ 6-1511.2, 6-1513. However, the Charter does not specify a time period for the review process by the DPP, which has resulted in long delays of up to years in the processing of council-initiated proposals. The legislative findings in Bill 4 (2008) state in part:

[I]nordinately long delays [in the processing of council proposals] 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

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## CITY COUNCIL

CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON MAR 19 2008

COMMITTEE REPORT NO. 59

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Committee Meeting Held  
February 26, 2008  
Page 2

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.

The Bill would repeal current Article 24 of Revised Ordinances of Honolulu Chapter 2 ("Executive Agencies--Additional Powers, Duties and Functions") and replace it with a new Article 24 that would do the following:

1. Establish standards for the council's initiation of proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance ("council proposals").
2. During the council's consideration of a resolution initiating the proposal, require the DPP director to assist the council in preparing 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 in the same manner as if proposed by the director.
3. Establish deadlines for the DPP's processing of council proposals. The Bill provides that the DPP director shall, within 270 days of the adoption of the resolution initiating the council proposal, submit a report accompanied by the proposed ordinance or resolution to the Planning Commission or, in the case of subdivision ordinance amendment proposals, to the council. The Bill further establishes procedures by which the DPP may request extensions of the 270-day deadline if the proposal involves complex issues that require additional time for review.

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Page 3

4. Establish deadlines for the Planning Commission's processing of council proposals. The Bill provides that the Planning Commission shall commence processing a council proposal 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 required deadline, including any extensions. The Bill also establishes deadlines of 45 days after commencement of processing for the Planning Commission to hold a public hearing on a council proposal, 30 days after the close of the public hearing or 90 days after the commencement of processing by the Planning Commission for the Planning Commission to transmit the director's report and related documents to the mayor, and 30 days after receipt for the mayor to transmit the director's report and related documents to the council.

The Bill's 45-day deadline for the Planning Commission's public hearing is consistent with the deadline in current ROH Section 21-2.70(b) for the Commission's zone change public hearings. The Bill's 30-day/90-day transmittal deadline for the Planning Commission is consistent with the deadline for the same established in RCH Sections 6-1511.2 and 6-1513. The 30-day transmittal deadline for the Mayor is consistent with the 30-day deadline proposed in Bill 102 (2007) and Bill 3 (2008), now pending in the council, which deadline has received a recommendation of approval by the Planning Commission. Departmental Communication No. 866 (2007).

5. Establish procedures for council action in the event of disapproval of a council proposal or untimely action by the Planning Commission or the DPP. The procedures are consistent with the procedures established in RCH Sections 6-1511.2 and 6-1513 in the event of disapproval of a council proposal or untimely action by the Planning Commission.

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February 26, 2008  
Page 4

6. Establish standards for determining the commencement and end dates for the time periods prescribed by the Bill.

At your Committee's meeting on February 26, 2008, a representative of the DPP testified that the DPP has some concerns about the Bill. He said the Bill's provisions relating to the DPP director's duties may overstep into areas reserved for the Executive Branch by the Revised Charter. He also said the Bill would create an additional workload on the department by placing certain time limits on processing. However, the representative said he appreciates the council's position and expressed a willingness to work with the council to revise the Bill to provide procedures agreeable to both the DPP and the council.

The Committee Chair requested a staff attorney from the Office of Council Services ("OCS") to clarify the intent of the Bill. The OCS attorney stated that the DPP's concerns appear to relate to the provision of the Bill (proposed Section 2-24.3(b)) which would require the DPP director to "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 OCS attorney stated that this language currently exists in ROH Chapter 2, Article 24, which requires the DPP director to assist the council in proposing a development plan public facility map amendment. He said this provision was added in 1993 and there have been no legal challenges to that provision.

The OCS attorney said the DPP's concerns may arise out of a misinterpretation of the Bill's language. He said the problem is that while the Revised Charter requires a council proposal to be "accompanied by supporting documentation sufficient to satisfy the [DPP] director's usual requirements for the commencement of processing" (RCH Sections 6-1511.2, 6-1513), the DPP has never established or conveyed to the council what it deems to constitute sufficient documentation. He said the language is not intended to require the DPP to support the council proposal.

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Page 5

Council Chair Barbara Marshall, the introducer of the Bill, suggested moving the Bill forward while the OCS, the DPP, and the Department of the Corporation Counsel work on language to address the concerns.

Your Committee believes that additional public testimony at the public hearing recommended herein to be scheduled on this Bill will provide further assistance to your Committee and to the council in their deliberations. Your Committee plans to consider this matter further following the receipt of public testimony at the public hearing thereon.

Your Committee on Zoning recommends that Bill 4 (2008) pass Second Reading, be scheduled for public hearing, and be referred back to Committee. (Ayes: Tam, Apo, Dela Cruz, Garcia - 4; Excused: Okino - 1; Noes: None.)

Respectfully submitted,

  
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Committee Chair

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