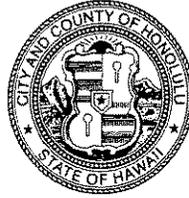


DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8000 • FAX: (808) 527-6743
INTERNET: www.honolulu.gov • DEPT. WEB SITE: www.honoluluapp.org

Authorization	<i>Henry Eng</i>
Advertisement	<i>7-25-08</i>
Public Hearing	<i>8-6-08</i>

MUFI HANNEMANN
MAYOR



HENRY ENG, FAICP
DIRECTOR

DAVID K. TANOUE
DEPUTY DIRECTOR

July 17, 2008

(ec)
JUL 21 2 34 PM '08

CITY CLERK
HONOLULU, HAWAII

RECEIVED

MEMORANDUM

TO: KARIN HOLMA, CHAIR
AND MEMBERS OF THE PLANNING COMMISSION

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

SUBJECT: TWO (2) BILLS TO AMEND CHAPTER 21, REVISED ORDINANCES OF
HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO
PLANT NURSERIES

We are submitting, for your review and consideration, two (2) proposed bills to amend the Land Use Ordinance (LUO) regarding the regulation of plant nurseries. These bills are attached as "Bill A" and "Bill B" and identified as Exhibits A and B, respectively.

The first bill was initiated by the City Council and transmitted to the Department of Planning and Permitting (DPP) for processing via Resolution 05-036. A copy of the Resolution and bill (referenced as Exhibit A to the Resolution) is attached as Exhibit A. This bill was initiated by the Council to address perceived confusion about the regulation of plant nurseries. The Council proposal would expressly list plant nurseries as a permitted use in the AG-1 Restricted Agricultural and AG-2 General Agricultural Districts. As stated in the Zoning Committee Report No. 384, the LUO Master Use Table lists plant nurseries as a permitted use within the I-1 Limited Industrial, I-2 Intensive Industrial, and IMX-Industrial-Commercial Mixed Use districts, but not in the AG-1 and AG-2 Districts.

The DPP recognizes that there may be confusion about whether the growing of plants outdoors in containers or within a greenhouse is a permitted use in the agricultural district. Therefore, the DPP proposes an alternative bill (identified as Bill B) to amend the definition of "crop production" to clarify that the growing of nursery crops is permitted under crop production. However, we do not believe it is necessary to amend the LUO to add "plant nurseries" as a permitted use in the LUO Master Use Table to make this

Karin Holma, Chair
And Members of the Planning Commission
July 17, 2008
Page 2

clarification, since it can be incorporated into the definition of "crop production." Moreover, it is consistent with past departmental interpretation and administration of the LUO.

As indicated by the attached letter from the State Department of Agriculture dated December 21, 2004 and the DPP response of January 7, 2005, we agree that the LUO should be amended to clarify that the growing of nursery crops is a permitted type of crop production, which is allowed in the agricultural districts. Subsequently, we are taking the opportunity with this transmission of the proposed Council bill to include our preferred alternative to address the situation.

The growing of plants in containers or greenhouses currently is regulated as "crop production" for the purposes of the LUO. Crop production is a principal permitted use in the P-2 General Preservation, AG-1 Restricted Agricultural, AG-2 General Agricultural, and Country Districts. Crop production is defined in the LUO to mean "agricultural and horticultural uses, including production of grains, field crops, vegetables, fruits, tree nuts, flower fields and seed production, ornamental crops, tree and sod farms, associated crop preparation services and harvesting activities."

Under the LUO, plant nurseries and crop production are separate use categories. Currently, the LUO Master Use Table lists crop production under the subheading of "Agriculture" and plant nurseries under the subheading, "Commerce and Business." Thus, they are considered different uses for the purposes of LUO regulation and plant nurseries would permit a greater retail sales component. When the LUO was adopted in 1986, the use category "greenhouses, plant nurseries" was a principal permitted use in the following zoning districts: B-1 Neighborhood Business District, B-2 Community Business District, BMX-3 Community Business Mixed Use District, BMX-4 Central Business Mixed Use District, I-1 Limited Industrial District, I-2 General Industrial District, and IMX-1 Industrial Commercial District.

The LUO was subsequently amended with the enactment of Ordinance 94-18 to delete greenhouses and plant nurseries as a principal use in the B-1, B-2, BMX-3, and BMX-4 Districts. The purpose for the LUO amendment was that the growing of plants in containers or within a greenhouse would still be permitted as an accessory to retail garden shops, which are permitted principal uses in these districts. The use was retained in the industrial districts because of the limitations on accessory retailing in those districts. Per LUO Section 21-5.530, in the industrial districts the retailing of products are limited to those which are manufactured or processed on the premises, except as otherwise specified under principal uses. Thus, while plants could be grown inside warehouses and wholesaled, retail sales of the plants would not have been

Karin Holma, Chair
And Members of the Planning Commission
July 17, 2008
Page 3

permitted if the plant nursery use category was not retained in the industrial districts. In retrospect, this use category should have been deleted from the IMX-1 District, since retail establishments are also a principal permitted use in that district.

The DPP is concerned that establishments approaching the level of retail garden shops, which exceed the scope of accessory use, would be allowed in the agricultural districts if the proposed Council bill is adopted. Limited retail sales are already allowed in the agricultural districts as accessory to a principal crop production use. For example, the LUO Section 21-5.40 allows one (1) roadside stand, not to exceed 500 square feet in area, as an accessory to agricultural production on the same premises. All items sold in the roadside stand must be grown on that same site. In addition, an incidental retail sale of produce still in the field (e.g., pumpkins at Halloween) or potted plants inside a greenhouse (e.g., poinsettia at Christmas) would be permitted as accessory to crop production.

The LUO also allows accessory agribusiness activities, which include retail activities by a minor Conditional Use Permit (CUPm) in the agricultural districts. The CUPm requires that the retail activities take place in an enclosed structure; the area devoted to retailing must not exceed 500 square feet and all products for sale must be grown on the site or within the City and County of Honolulu. The CUPm for agribusiness activities allows for case-by-case review of retail and other activities that may enhance the viability and economic feasibility of an existing agricultural operation.

Adding "plant nursery" as a permitted use in the agricultural districts may result in increasing the amount and level of retail and other commercial activities on agriculturally zoned lands, instead of limiting the retail activity to incidental uses appropriate a specific agricultural operation. Therefore, the DPP recommends that only a minor change to the definition of "crop production" be made to resolve the confusion as to whether nursery crops are allowed in the agricultural districts and to avoid proliferation of retail garden shops.

I recommend that you approve the alternative version proposed by the DPP (Bill B) and not the City Council bill initiated by Resolution 05-036.

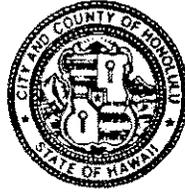
Attachments
cc: City Council

File

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

660 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 523-4432 • FAX: (808) 527-6743
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov

MUFI HANNEMANN
MAYOR



HENRY ENG, FAICP
ACTING DIRECTOR

DAVID K. TANOUÉ
DEPUTY DIRECTOR

2005/ELOG-4(na)

January 7, 2005

Ms. Sandra Lee Kunimoto
Chairperson, Board of Agriculture
State of Hawaii
Department of Agriculture
1428 South King Street
Honolulu, Hawaii, 96814-2512

Dear Ms. Kunimoto:

This responds to your letter of December 21, 2004, in which you noted that the Land Use Ordinance (LUO) does not list plant nurseries as a permitted use within any of the zoning districts in which agricultural activities are permitted, i.e., the P-2 General Preservation, AG-1 Restricted Agricultural, AG-2 General Agricultural and Country Districts. You recommended that plant nurseries, or just nurseries, be made a permitted use in the same zoning districts in which "crop production" is permitted (the P-2, AG-1, AG-2 and Country Districts). You also provided us with a sample amendment to the LUO's definition of "crop production" that you felt would accomplish this purpose.

We appreciate your recommendation. We would like to assure you, however, that this department has interpreted and will continue to interpret the LUO to allow greenhouses and plant nurseries within the zoning districts in which agricultural activities are permitted. For regulatory purposes, we consider the commercial growing of plants, whether in containers (which could be in greenhouses) or in open fields, to fall within the LUO's definition of crop production. As you noted in your letter, the LUO (Section 21-10.1, Revised Ordinances of Honolulu (ROH)) defines "[c]rop production" as follows:

"Crop production" means agricultural and horticultural uses, including production of grains, field crops, vegetables, fruits, tree nuts, flower fields and seed production, ornamental crops, tree and sod farms, associated crop preparation services and harvesting activities.

The LUO (Table 21-3, ROH) establishes crop production as a permitted use within the P-2, AG-1, AG-2 and Country Zoning Districts.

Ms. Sandra Lee Kunimoto

Page 2

January 7, 2005

In light of the above, we do not believe that an amendment to the Land Use Ordinance to specifically include plant nurseries within the LUO's definition of "crop production" is necessary at this time. But, we will consider including such a clarifying amendment in any future agriculturally-related amendments to the LUO that we may prepare.

Please contact Nelson Armitage of my staff at 527-6274 if you have any questions.

Sincerely yours,



HENRY ENG, FAICP
Acting Director of
Planning and Permitting

HE:pl

LINDA LINGLE
Governor



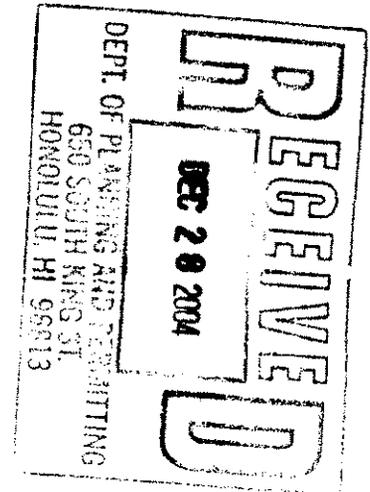
SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DIANE LEY
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

December 21, 2004

Mr. Eric G. Crispin, AIA
Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813



Dear Mr. Crispin:

Subject: Land Use Ordinance - Plant Nursery

It has been brought to our attention that the Land Use Ordinance (LUO) does not list plant nurseries as a permitted use within any of the zoning districts for which agricultural activities are permitted (P-2, AG-1, AG-2, and Country). Paradoxically, it is a permitted use in three of the four industrial zones (I-1, I-2, and IMX-1). There is also no definition of plant nursery. This situation should be quickly remedied. On Oahu, sales of flowers and nursery products in 2002 totaled \$31.5 million or 17 percent of the \$184.1 million in sales for all agricultural products islandwide.

Recommendation:

We recommend that plant nurseries, or just nurseries, be made a permitted use in the same zoning districts where "crop production" is permitted. The phrase "crop production" in the LUO (Section 21-10.1, ROH) could be amended as follows (amendment in bold/underscored):

"Crop production" means agricultural and horticultural uses, including production of grains, field and nursery crops, vegetables, fruits, tree nuts, flower fields and seed production, ornamental crops, tree and sod farms, associated crop preparation services and harvesting activities.



Mr. Eric G. Crispin
December 21, 2004
Page -2-

For your information, the Kauai County Comprehensive Zoning Code defines nursery as "...the growing, collecting or storing of plants for the purpose of selling to others for transplanting." (Section 8-1.5, Kauai County Code)

We would be happy to meet with you on this issue. You may contact me at 973-9550, or Earl Yamamoto at 973-9466.

Sincerely,



Sandra Lee Kunimoto
Chairperson, Board of Agriculture

EXHIBIT A

PROPOSED BILL INITIATED BY CITY COUNCIL RESOLUTION



RESOLUTION

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

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



RESOLUTION

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 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
[Handwritten Signature]

DATE OF INTRODUCTION:

FEB 08 2005

Honolulu, Hawaii

Councilmembers

FEB 8 1 17 05 PM '05

HONOLULU, HAWAII

EXHIBIT A



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____ **(2005)**

A BILL FOR AN ORDINANCE

RELATING TO PLANT NURSERIES.

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 provide expressly that plant nurseries are a permitted use in AG-1 Restricted Agricultural and AG-2 General Agricultural zoning districts.

SECTION 2. Table 21-3, Revised Ordinances of Honolulu 1990, as amended, ("Master Use Table") is amended by amending the "Commerce and Business" category to read as follows:

**TABLE 21-3
MASTER USE TABLE**

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

- KEY:**
- Ac = Special accessory use subject to standards in Article 5
 - Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
 - C = Conditional Use Permit-major subject to standards in Article 5; public hearing required
 - P = Permitted use
 - P/c = Permitted use subject to standards in Article 5
 - PRU = Plan Review Use

USES (Note: Certain uses are defined in Article 10.)	ZONING DISTRICTS																			
	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3

Plant nurseries		P	P															P	P		P	
Real estate offices													P/c	P	P	P	P					P ²
Retail, accessory																	Ac	Ac	Ac			
Retail establishments													P	P	P	P	P					P ²
Self-storage facilities															P/c	P/c	P/c	P	P			P
Trade or convention center	PRU	PRU	PRU	PRU			PRU															
Travel agencies													P	P	P	P	P					P ²
Veterinary establishments														P/c	P/c	P/c	P/c	P	P			P/c ¹¹



A BILL FOR AN ORDINANCE

SECTION 3. New ordinance 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 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 _____, 2005.

MUFI HANNEMAN, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 05-036

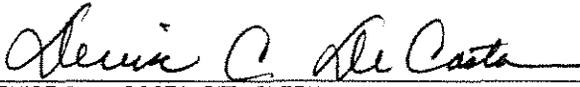
Introduced: 2/8/05 By: DONOVAN DELA CRUZ (BY REQUEST) Committee: ZONING

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

Links: [RES 05-036](#)

Zoning	3/1/05	Resolution deferred in Committee.
Task Force	4/4/05	Resolution was on the Agricultural Development Task Force agenda for discussion.
Zoning	7/26/05	Resolution deferred in Committee.
Zoning	8/30/05	CR-384 – Resolution reported out of committee for adoption.
Council	9/28/05	Resolution and CR-384 adopted. 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 RESOLUTION.


DENISE C. DE COSTA, CITY CLERK

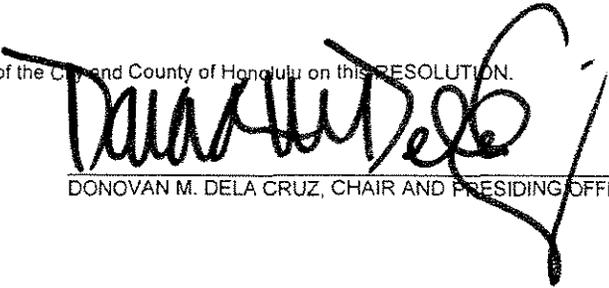

DONOVAN M. DELA CRUZ, CHAIR AND PRESIDING OFFICER

EXHIBIT B

ALTERNATIVE BILL PROPOSED BY DPP



A BILL FOR AN ORDINANCE

RELATING TO PLANT NURSERIES.

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 definition of "crop production" to clearly state that the growing of nursery crops is included under this use category, which would clarify that the growing of plants outdoors in containers or within a greenhouse is permitted in the AG-1 Restricted Agricultural and AG-2 General Agricultural zoning districts.

SECTION 2. Section 21-10.1 Revised Ordinances of Honolulu 1990, as amended ("Definitions") is amended by amending the definition of "crop production" to read as follows:

"Crop production" means agricultural and horticultural uses, including production of grains, field and indoor or outdoor nursery crops, vegetables, fruits, tree nuts, flower fields and seed production, ornamental crops, tree and sod farms, associated crop preparation services and harvesting activities.

SECTION 3. New ordinance 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 underscoring.

DPPNURSERIES.B08



A BILL FOR AN ORDINANCE

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 _____.

MUFU HANNEMANN, Mayor
City and County of Honolulu