



A BILL FOR AN ORDINANCE

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

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

SECTION 1. Purpose and intent. The purpose of this ordinance is to establish accessory dwelling units as a permitted use in all residential zoning districts, to encourage and accommodate the construction of accessory dwelling units, increase the number of affordable rental units and alleviate the housing shortage in the City, and to establish land use standards for those accessory dwelling units.

SECTION 2. Section 21-2.140-1, Revised Ordinances of Honolulu ("Specific circumstances"), is amended by adding a new subsection (o) to read as follows:

"(o) Conversion of accessory structures. An existing, legally established, accessory structure constructed prior to the effective date of this ordinance in the country or residential district may be converted to an accessory dwelling unit and allowed to exceed the maximum floor area established by Section 21-5. (c)(1) and/or be exempted from the off-street parking requirement established by Section 21-5. (c)(4) and contained in Table 21-6.1 subject to the following conditions:

- (1) Provided the director finds that viable constraints do not allow the reduction of the floor area of the existing accessory structure.
- (2) Provided that the director finds that no feasible alternative off-street parking site exists due to the placement of structures on, and/or the topography of, the zoning lot."

SECTION 3. Table 21-3, Revised Ordinances of Honolulu 1990 ("Master Use Table"), is amended by amending the "Dwelling and Lodgings" category to permit duplex units and detached two-family dwellings within Country and R-10 and R-20 Residential zoning districts and add "accessory dwelling units," to read as follows:



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SECTION 4. Table 21-3.2, Revised Ordinances of Honolulu 1990 ("Residential Districts Development Standards"), is amended to read as follows:

**"Table 21-3.2
Residential Districts
Development Standards**

Development Standard		District					
		R-3.5	R-5	R-7.5	R-10	R-20	
Minimum lot area (square feet)	One-family dwelling, detached, and other uses	3,500	5,000	7,500	10,000	20,000	
	Two-family dwelling, detached	7,000	7,500	14,000	[Use not permitted] <u>15,000</u>	[Use not permitted] <u>25,000</u>	
	Duplex	3,500	3,750	7,000	[Use not permitted] <u>7,500</u>	[Use not permitted] <u>12,500</u>	
Minimum lot width and depth (feet)		30 per duplex unit, 50 for other uses		35 per duplex unit, 65 for other uses		65 for dwellings, 100 for other uses	100
Yards (feet):	Front	10 for dwellings, 30 for other uses					
	Side and rear	5 for dwellings ¹ , 15 for other uses			5 for dwellings ¹ , 15 for other uses		
Maximum building area		50 percent of the zoning lot					
Maximum height (feet) ²		25-30					
Height setbacks		per Sec. 21-3.70-1(c)					

¹ For duplex lots, 5 feet for any portion of any structure not located on the common property line; the required side yard is zero feet for that portion of the lot containing the common wall.

² Heights above the minima of the given range may require height setbacks or may be subject to other requirements. See the appropriate section for the zoning district for additional development standards concerning height."



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SECTION 5. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990 ("Specific Use Development Standards"), is amended by adding a new Section for "Accessory dwelling units," to be appropriately numbered by the revisor of ordinances and to read as follows:

"Sec. 21-5. Accessory dwelling units.

- (a) The purpose of this section is to encourage and accommodate the construction of accessory dwelling units to increase the number of affordable rental units, without substantially altering existing neighborhood character, in order to alleviate the housing shortage in the city.
- (b) It is intended that accessory dwelling units only be allowed in areas where wastewater, water supply, and transportation facilities are adequate to support the additional dwelling units.
- (c) One accessory dwelling unit may be located on a lot in the country, R-3.5, R-5, R-7.5, R-10, and R-20 zoning districts, subject to the following conditions:

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

<u>Lot Area</u>	<u>Maximum Floor Area</u>
<u>3,500 to 4,999 sq. ft.</u>	<u>400 sq. ft.</u>
<u>5,000 sq. ft. or more</u>	<u>800 sq. ft.</u>

(2) Accessory dwelling units are not permitted:

- (A) On lots with a lot area of less than 3,500 square feet;
- (B) On lots that have more than one dwelling unit, including but not necessarily limited to, more than one single-family dwelling, two-family dwelling, accessory authorized ohana dwelling, guest house, multi-family dwellings, planned development housing, cluster, or group living facility; or
- (C) On lots that are landlocked.

(3) The property owner or owners or persons who are related by blood, marriage, or adoption to the property owner or owners, or designated authorized representative shall occupy the primary dwelling unit or the accessory dwelling unit; except in unforeseen hardship circumstances



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(e.g., active military deployment, serious illness) that prevent the continued occupancy of the primary dwelling unit or the accessory dwelling unit, subject to confirmation by the director.

- (4) One off-street parking space per accessory dwelling unit must be provided in addition to the required off-street parking for the primary dwelling unit, except for accessory dwelling units located within one-half mile of a rail transit station. For purposes of this section, the minimum distance requirement is measured as the shortest straight line distance between the edge of the station area and the zoning lot line(s) of the project site.
- (5) The owner or owners of the lot shall record covenants running with the land with the bureau of conveyances or the land court of the State of Hawaii, or both, as is appropriate, stating that:
- (A) Neither the owner or owners, nor the heirs, successors or assigns of the owner or owners will submit the lot or any portion thereof to a condominium property regime under the provisions of HRS Chapter 514A to separate the ownership of an accessory dwelling unit from the ownership of its primary dwelling unit;
- (B) The property owner or owners, or persons who are related by blood, marriage, or adoption to the property owner or owners, or designated authorized representative(s) shall occupy the primary dwelling unit or the accessory dwelling unit so long as the other unit is being rented or otherwise occupied; except in cases of unforeseen hardship circumstances (e.g., active military deployment, serious illness) that prevent the continued occupancy of the primary dwelling unit or the accessory dwelling unit, subject to confirmation by the director. For purposes of this section, "designated authorized representative(s)" means the person or persons designated by the property owner or owners to the department of planning and permitting, who are responsible for managing the property;
- (C) The accessory dwelling unit may only be used for long-term rental or otherwise occupied for periods of at least six months, and cannot be used as a bed and breakfast home or transient vacation unit;
- (D) If the property owner or owners, or persons who are related by blood, marriage or adoption to the property owner or owners, or designated authorized representative(s) choose to receive rent for



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the primary dwelling unit and occupy the accessory dwelling unit, the primary dwelling unit may only be used for long-term rental or otherwise occupied for a minimum period of six months, and cannot be used as a bed and breakfast home or transient vacation unit;

- (E) The accessory dwelling unit is limited to the approved size in accordance with the provisions of Chapter 21; and
- (F) The deed restrictions lapse upon removal of the accessory dwelling unit, and all of the foregoing covenants are binding upon any and all heirs, successors and assigns of the owner or owners.

The covenant must 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 will be deemed a violation of Chapter 21 and will be grounds for enforcement by the director pursuant to Section 21-2.150, et seq.

- (6) All other provisions applicable to the zoning district apply.
- (7) All rentals of an accessory dwelling unit, or of the primary dwelling unit if the property owner or owners, or persons who are related by blood, marriage or adoption to the property owner or owners, or designated authorized representative(s) choose to receive rent for the primary dwelling unit and occupy the accessory dwelling unit, must be evidenced by a written rental agreement signed by the owner and the tenant for a lease period of at least six months; provided that after the initial lease period is concluded, the owner may allow the same tenant to continue renting the accessory dwelling unit on a consecutive month-to-month basis.
- (d) At the time of application, the applicant shall first obtain written confirmation from the responsible agencies that wastewater treatment and disposal, water supply, and access roadways are adequate to accommodate the accessory dwelling unit.
- (e) An accessory dwelling unit may be created by building a new structure (attached or detached from the primary dwelling unit) or through conversion of a legally established structure (attached to or detached from the primary dwelling unit), attic or basement, subject to meeting all pertaining zoning requirements.



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- (f) The owner of a structure constructed without a building permit prior to the effective date of this ordinance, who wants to convert that structure to an accessory dwelling unit shall obtain an after-the-fact building permit. In addition to fulfilling the base requirements of the after-the-fact permit, any adjustments to the structure must conform to the accessory dwelling unit regulations enumerated in this section and any additional adopted policies and rules.
- (g) The department of planning and permitting must be notified upon removal of an accessory dwelling unit.
- (h) Prima facie evidence. If an accessory dwelling unit is advertised as a bed and breakfast home or transient vacation unit, the existence of such advertisement will be prima facie evidence of the following:
 - (1) That the owner of the advertised unit disseminated or directed the dissemination of the advertisement in that form and manner; and
 - (2) That a bed and breakfast home or transient vacation unit, as applicable, is being operated at the location advertised.

The burden of proof is on the owner to establish otherwise with respect to the advertisement and that the subject property either is not being used as a bed and breakfast or transient vacation unit, or that it is being used legally for such purpose."

SECTION 6. Section 21-6.30, Revised Ordinances of Honolulu 1990 ("Method of determining number"), is amended by amending subsection (d) to read as follows:

"(d) All required parking spaces [shall] must be standard-sized parking spaces, except that duplex units, detached dwellings and multifamily dwellings may have up to 50 percent compact spaces, and accessory dwelling units may have one compact space."

SECTION 7. Table 21-6.1, Revised Ordinances of Honolulu 1990 ("Off-street Parking Requirements"), is amended by amending the DWELLINGS AND LODGINGS category to read as follows:



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**Table 21-6.1
Off-street Parking Requirements**

Use ¹	Requirement ²	
DWELLING AND LODGINGS		
Boarding facilities	2 plus 0.75 per unit	
Consulates	1 per dwelling or lodging unit, plus 1 per 400 square feet of office floor area, but not less than 5	
<u>Dwellings, accessory dwelling unit</u>	<u>1 per accessory dwelling unit or none if the accessory dwelling unit is located within one-half mile of a rail transit station</u>	
Dwellings, detached, duplex and farm	2 per unit plus 1 per 1,000 square feet over 2,500 square feet (excluding carport or garage)	
Dwellings, multifamily	Floor Area of Dwelling or Lodging Units	
	600 sq. ft. or less	1
	More than 600 but less than 800 sq. ft.	1.5
	800 sq. ft. and over	2
Plus 1 guest parking stall per 10 units for all projects		
Hotels: dwelling units	1 per unit	
Hotels: lodging units	0.75 per unit	

SECTION 8. Section 21-6.40, Revised Ordinances of Honolulu 1990 ("Arrangement of parking spaces"), is amended by amending subsection (c) to read as follows:

- "(c) All spaces [shall] must be arranged so that any automobile may be moved without moving another except that tandem parking [shall be] is permissible in any of these instances:
- (1) Where two or more parking spaces are assigned to a single dwelling unit and/or a parking space is assigned to an accessory dwelling unit.
 - (2) For use [for] as employee parking, except that at no time [shall] can the number of parking spaces allocated for employees exceed 25 percent of the total number of required spaces. Also, for employee parking, "tandem" parking [shall be] is limited to a configuration of two stacked parking stalls.
 - (3) Where all parking is performed by an attendant at all times, and vehicles may be moved within the lot without entering any street, alley or walkway.



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- (4) For public assembly facilities and temporary events when user arrivals and departures are simultaneous and parking is attendant directed."

SECTION 9. Section 21-8.20, Revised Ordinances of Honolulu 1990 ("Housing--Ohana dwellings"), is amended by amending subsection (c) to read as follows:

"(c) One ohana 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 dwelling unit [shall] is not [be] limited but [shall] will be subject to the maximum building area development standard in the applicable zoning district.
- (2) Ohana dwelling units [shall] are 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] is not [be] permitted on any nonconforming lot.
- (4) The ohana dwelling unit and the first dwelling [shall] may be located within a single structure, i.e., within the same two-family detached dwelling, or the ohana dwelling unit may be detached from the first dwelling and located on the same lot as the first dwelling.
- (5) The ohana dwelling unit [shall] must be occupied by persons who are related by blood, marriage or adoption to the family residing in the 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.
- (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] is 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



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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] must 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] will 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] will 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 10. Section 21-10.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by adding new definitions of "Accessory dwelling unit" and "Designated authorized representative," to read as follows:

"Accessory dwelling unit" means a second dwelling unit, including separate kitchen, bedroom and bathroom facilities, attached or detached from the primary dwelling unit on the zoning lot."

"Designated authorized representative" means one or more persons appointed by the owner or owners to reside in the primary dwelling unit or accessory dwelling unit and act on behalf of the owner or owners in his or her absence."

SECTION 11. 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 12. This ordinance takes effect upon its approval.

INTRODUCED BY:

Ernest Martin (BR)

DATE OF INTRODUCTION:

March 5, 2015
Honolulu, Hawaii

_____ Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Don S. Kiteaka
Deputy Corporation Counsel

APPROVED this 14th day of September, 2015.

Kirk Caldwell
KIRK CALDWELL, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE 15-41

BILL 20 (2015), CD1

Introduced: 03/05/15

By: ERNEST MARTIN (BR)

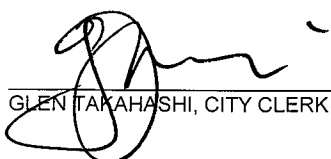
Committee: ZONING AND PLANNING

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

Voting Legend: * = Aye w/Reservations

03/11/15	COUNCIL	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING AND PLANNING. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA. 1 ABSENT: PINE.
04/25/15	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
04/30/15	ZONING AND PLANNING	CR-155 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING.
05/06/15	COUNCIL/PUBLIC HEARING	CR-155 ADOPTED. BILL PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON ZONING AND PLANNING. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.
05/13/15	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
05/28/15	ZONING AND PLANNING	CR-223 – REQUESTING 120-DAY EXTENSION OF TIME.
06/03/15	COUNCIL	CR-223 ADOPTED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.
07/23/15	ZONING AND PLANNING	BILL DEFERRED IN COMMITTEE.
08/20/15	ZONING AND PLANNING	CR-335 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING AS AMENDED IN CD1 FORM.
09/02/15	COUNCIL	CR-335 ADOPTED AND BILL 20 (2015), CD1 PASSED THIRD READING AS AMENDED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.

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.


GLEN TAKAHASHI, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER