DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
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RICK BLANGIARDI
MAYOR

DEAN UCHIDA
DIRECTOR

DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

December 13, 2021

'21DEC13 AM 10:48 CITY CLERK

The Honorable Tommy Waters
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Waters and Councilmembers:

SUBJECT: Receipt of Land Use Ordinance (LUO) Amendment Resolution and Request for Additional Accompanying Documentation Required for Processing Resolution No. 21-268 Relating to Gambling Devices

This is to confirm receipt of Resolution No. 21-268, entitled:

"Resolution Proposing an Amendment to Chapter 21, Revised Ordinances of Honolulu 1990 (The Land Use Ordinance), as Amended, Relating to Gambling Devices"

The Resolution (copy enclosed) was sent to the Department of Planning and Permitting (DPP) by the City Clerk on November 30, 2021, and was received on December 1, 2021. In accordance with Ordinance No. 08-8, the DPP has begun reviewing the Council's proposed amendments to the LUO relating to gambling devices.

The DPP recognizes that the intent of the Resolution is to clarify that electronic and coin-operated game rooms are not permitted in residential districts and to subject the owners of structures with illegal game rooms in residential, apartment and mixed-use zoning districts to an initial civil fine of $25,000 and $25,000 per day for each day in which the violation persists.

While the DPP understands that illegal game rooms can be detrimental to the public health, safety and welfare in any district, zoning codes are generally not used to call out criminal behavior that are prohibited by State or County law. For example, we do not

include definitions of prostitution, sex trafficking, or illegal drug use in the LUO. Nor do we specify in the LUO that those activities are illegal.

Revised Ordinances of Honolulu (ROH) Chapter 40 Prohibited Activities in the City itemizes activities that some would suggest are similar to gambling, such as prostitution-related public nuisance abatement, urinating or defecating in public, damaging public property with graffiti, and use of intoxicating liquors in certain public places. ROH Section 40-1.3 suggests the penalties associated with those uses and others in Chapter 40 will result in criminal penalties and be enforced by the Honolulu Police Department (HPD) as provided by law. In contrast, land use violations are usually civil and not criminal offenses.

The Resolution proposes that indoor amusement and recreation facilities, including but not limited to electronic and coin-operated game rooms, be prohibited as a home occupation. However, the Master Use Table already prohibits indoor amusement and recreation facilities from the agricultural, country, residential, apartment and apartment mixed-use districts. Adding some, but not all, activities that are prohibited by the State to the existing list of prohibited home occupations would be new, but possibly redundant. It also runs counter to our efforts to streamline the LUO for improved readability.

In the event that the Council wants the DPP to explore this matter further, below are a number of items that will require research. Anything the Council could do to assist us with these items would be greatly appreciated.

- What is the appropriate number of electronic gambling devices? The number is left blank in the Resolution. What do other municipalities use as a threshold? What is the HPD's experience with gambling devices?

- Apart from fines for short-term rentals, all other uses in the LUO are fined in a similar manner. Is the Council moving in a direction whereby each use has its own fine? How would such fines be established? What is the justification for a higher fine?

- The technology associated with gambling may be changing such that gambling can occur using smartphone technology. The Resolution appears to focus on coin-operated game rooms or those involving attendants. Is the Council similarly concerned about gambling via the Internet? Is there any research available that discusses how gambling via the Internet is enforced via zoning codes?

- Hawaii Revised Statutes (HRS) Section 712-1220 includes a definition of gambling; HRS Section 712-1231 includes a definition of social gambling. It appears that the Council is not concerned with social gambling; however, from an enforcement perspective, it may be difficult for the DPP inspectors to distinguish between social gambling and other forms of gambling. Additional staff and training will likely be required to address this matter, should the LUO be revised as the Council is suggesting. Is the Council considering increasing the DPP's budget for inspectors and training? Or will enforcement be handled by the HPD? Has the Council discussed this matter with the HPD?

- Finally, we're concerned that more stringent land use regulations may interfere with the HPD's efforts to catch criminals. We understand that the HPD usually stakes out illegal game rooms in advance to gather evidence. Once they have enough evidence, they raid the house, confiscate the gambling machines, and arrest those associated with the operation. If the DPP issues a Notice of Violation while the HPD are conducting their investigation, the game room might simply shut down and move to another location. Will the proposed amendment make it more difficult for the HPD to do their work?

We respectfully recommend that this Resolution is not adopted, and instead stronger enforcement is discussed with the HPD Narcotics/Vice Division.

Should you have any questions, please contact me at (808) 768-8000.

Very truly yours,

Dean Uchida
Director

Enclosure

APPROVED:

Michael D. Formby
Managing Director

2021/ELOG-2576 '21DEC01 AM 8:42 CITY CLERK

OFFICE OF THE CITY CLERK

CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 100
HONOLULU, HAWAII 96813-3077
TELEPHONE: (808) 768-3810 • FAX: (808) 768-3835

GLEN I. TAKAHASHI
CITY CLERK

November 30, 2021

VIA E-MAIL AND CITY MESSENGER

TO: DEAN Y. UCHIDA, DIRECTOR
DEPARTMENT OF PLANNING AND PERMITTING

FROM: GLEN I. TAKAHASHI, CITY CLERK

Digitally signed by Takahashi, Glen I.
Date: 2021.12.01 08:37:21 -10'00'

SUBJECT: **NOTICE OF INTRODUCTION OF A RESOLUTION FOR A COUNCIL PROPOSAL TO AMEND THE GENERAL PLAN, THE DEVELOPMENT PLANS, THE ZONING ORDINANCES, OR THE SUBDIVISION ORDINANCE.**

RESOLUTION 21-268, entitled:

"RESOLUTION PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO GAMBLING DEVICES,"

was introduced on November 24, 2021 and was referred to the Committee on Zoning and Planning. Pursuant to Ordinance 08-8, a copy of the Resolution is transmitted herewith.

Ordinance 08-8 further requires you to promptly stamp the date and time of receipt of this document on this transmittal letter and to notify the Council in writing of the date of receipt.

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Attachment: Resolution 21-268

2021 DEC -1 PM 3:34
DEPT. OF PLANNING AND PERMITTING
CITY & COUNTY OF HONOLULU

COUNCIL COM. 421
ZP

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAI'I

No. 21-268

RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO GAMBLING DEVICES.

WHEREAS, the zoning maps and the Land Use Ordinance ("LUO") of the City and County of Honolulu ("City") establish zoning districts and zoning district regulations for the utilization of land in the City pursuant to Section 6-1514, Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition), as amended ("Charter"); and

WHEREAS, each zoning district is designated for certain uses and restricted for other uses in order to encourage orderly development in accordance with adopted land use policies, including the Oahu general plan, and the applicable development plans or sustainable community plans, and to promote and protect the public health, safety, and welfare; and

WHEREAS, recently, illegal game rooms with multiple electronic gambling devices have been detected and shut down in residential neighborhoods; and

WHEREAS, not only do such illegal game rooms bring a commercial element into the communities in which residents live and raise their families, with the attendant problems of increased traffic, parking complaints, and noise, these game rooms tend to attract criminals who may bring drugs, weapons, prostitution, and human trafficking into these communities, as well as increasing incidents of assault, property crime, and loitering; and

WHEREAS, O'ahu residents deserve to live in safe communities, and enhanced civil remedies may assist in countering the spread of illegal game rooms in residential areas; and

WHEREAS, it is difficult to prevent illegal game rooms from reopening after they have been shut down because they are easily launched and very lucrative; and

WHEREAS, in addition to criminal prosecution, civil nuisance abatement and civil asset forfeiture are tools to combat the proliferation of illegal game rooms; and

RESOLUTION

WHEREAS, the City Council therefore desires to propose amendments to the LUO to clarify that electronic and coin-operated game rooms, which are classified by the LUO as "indoor amusement and recreation facilities," are not a permitted use in the residential districts, and to subject the owners of structures with illegal game rooms containing multiple electronic gambling devices in residential, apartment, and apartment mixed-use zoning districts to a civil fine of $25,000, and $25,000 per day for each day in which the violation persists; and

WHEREAS, Charter Section 6-1513 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, the term "zoning ordinances," as used in Charter Section 6-1513, includes both amendments to the LUO and to ordinances designating particular parcels of property in terms of the LUO; and

WHEREAS, ROH Chapter 2, Article 24, Part A, establishes procedures and deadlines for the processing of City Council ("Council") proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting and the Planning Commission are directed, pursuant to Charter Section 6-1513 and ROH Chapter 2, Article 24, Part A, to process the proposed amendment to ROH Chapter 21 (the "Land Use Ordinance"), attached hereto as Exhibit A, in the same manner as if the proposal had been proposed by the Director; and

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

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAI'I

No. 21-268

RESOLUTION

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, Part A, the Clerk shall transmit 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, and shall advise them in writing of the date by which the Director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.

INTRODUCED BY:

A. Fypola

Councilmembers

DATE OF INTRODUCTION:

NOV 24 2021

Honolulu, Hawai'i

EXHIBIT A

A BILL FOR AN ORDINANCE

RELATING TO LAND USE REGULATION OF GAME ROOMS.

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

SECTION 1. Purpose. The purpose of this ordinance is to address the spread of certain game rooms in residential- and apartment-zoned areas.

SECTION 2. Section 21-2.150-2, Revised Ordinances of Honolulu 1990 ("Administrative enforcement"), is amended by amending subsection (c) to read as follows:

"(c) Contents of Order.

(1) The order may require the person to do any or all of the following:

(A) Cease and desist from the violation;

(B) Correct the violation at the person's own expense before a date specified in the order;

(C) Pay a civil fine not to exceed $1,000 in the manner, at the place and before the date specified in the order; and

(D) Pay a civil fine not to exceed $5,000 per day for each day in which the violation persists beyond the date specified in paragraph (C), in the manner and at the time and place specified in the order.

(2) Notwithstanding the civil fines specified in subdivision (1)(C) and (D), if the violation is a violation of any provision of this chapter relating to the requirements for transient vacation units or bed and breakfast homes, then, in addition to requirements in subdivision (1)(A) and (B), the order may require a person to do any or all of the following:

(A) For the initial violation:

(i) Pay a civil fine of $1,000, in the manner, at the place and before the date specified in the order; and

(ii) Pay a civil fine of $5,000 per day for each day in which the violation persists beyond the date specified in subparagraph

(i), in the manner and at the time and place specified in the order.

(B) For a recurring violation:

(i) Pay a civil fine of $10,000 in the manner, at the place, and before the date specified in the order; and

(ii) Pay a civil fine of $10,000 for each day in which the violation persists beyond the date specified in subparagraph (i), in the manner and at the time and place specified in the order.

(3) Notwithstanding the civil fines specified in subdivision (1)(C) and (D), if the violation is a violation of any provision of this chapter relating to structures containing more than ___ electronic or coin-operated gambling devices, as defined in HRS Section 712-1220, located in zoning districts where indoor amusement and recreation facilities are not a permitted use, then, in addition to the requirements in subdivision (1)(A) and (B), the order may require the owner of the structure to do any or all of the following:

(A) Pay a civil fine of $25,000, in the manner, at the place and before the date specified in the order; and

(B) Pay a civil fine of $25,000 per day for each day in which the violation persists beyond the date specified in paragraph (A), in the manner and at the time and place specified in the order.

[~~(3)~~](4) The order must advise the person that the order will become final 30 days after the date of its mailing or delivery. The order must also advise that the director's action may be appealed to the zoning board of appeals."

SECTION 3. Section 21-5.350, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"**Sec. 21-5.350 Home occupations.**

Home occupations as an accessory use to dwelling units are permitted under the following restrictions and standards:

(a) Home occupations shall be incidental and subordinate to the principal use of the site as a residence and shall not change the character or the external appearance of either the dwelling or the surrounding neighborhood.

(b) Only household members shall be employed under the home occupation. Notwithstanding the foregoing, when the home occupation is home-based child care, one caregiver, not a member of the household, may be employed as a substitute for the principal caregiver if an emergency renders the principal caregiver unavailable, provided that in no event shall such substitute employment exceed five days per calendar month. As used in this subsection, "emergency" includes but is not limited to illness of the principal caregiver or an immediate relative of the principal caregiver.

(c) There shall be no exterior sign that shows the building is used for anything but residential use. There shall be no exterior displays or advertisements.

(d) There shall be no outdoor storage of materials or supplies.

(e) Indoor storage of materials and supplies shall be enclosed and shall not exceed 250 cubic feet or 20 percent of the total floor area, whichever is less.

(f) Articles sold on the premises shall be limited to those produced by the home occupation and to instructional materials pertinent to the home occupation.

(g) Home occupations which depend on client visits, including group instruction, shall provide one off-street parking space per five clients on the premises at any given time. This shall be in addition to, and shall not obstruct the parking required for the dwelling use. Residents of multifamily buildings may fulfill the requirement by the use of guest parking with the approval of the building owner (management) or condominium association.

(h) For those activities which may have potential negative noise impacts on adjoining residences, the director may require that such activities be conducted in fully enclosed, noise-attenuated structures.

(i) The following activities are not permitted as home occupations:

(1) Automobile repair and painting. However, any repair and painting of vehicles owned by household members shall be permitted, provided that the number of vehicles repaired or painted shall not exceed five per year per dwelling unit. A household member providing any legal document showing ownership of an affected vehicle shall be deemed to satisfy this requirement.

(2) Contractor's storage yards.

(3) Care, treatment or boarding of animals in exchange for money, goods or services. The occasional boarding and the occasional grooming of animals not exceeding five animals per day shall be permitted as home occupations.

(4) Those on-premises activities and uses which are only permitted in the industrial districts.

(5) Use of dwellings or lots as a headquarters for the assembly of employees for instructions or other purposes, or to be dispatched for work to other locations.

(6) Sale of guns and ammunition.

(7) Mail and package handling and delivery businesses.

(8) Indoor amusement and recreation facilities, including but not limited to electronic and coin-operated game rooms.

(j) There shall be no parking on the street of commercial vehicles associated with the home occupation, other than the occasional, infrequent, and momentary parking of a vehicle for pickups and/or deliveries as a service to the home occupation."

SECTION 4. Section 21-10.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definition of "Indoor amusement and recreational facilities" to read as follows:

"Amusement and Recreation Facilities, Indoor. "Indoor amusement and recreation facilities" means establishments providing indoor amusement or recreation. [~~Typical uses include:~~] Uses include but are not limited to: martial arts studios; billiard and pool halls; electronic and coin-operated game rooms; bowling alleys; skating rinks; reducing [~~salon,~~] salons; health and fitness establishments; indoor tennis, handball and racquetball courts; auditoriums, indoor archery and shooting ranges, and gymnasiums and gymnastic schools. The presence of more than electronic or coin-operated gambling devices, as defined in HRS Section 712-1220, in a structure will be prima facie evidence that the structure is being used as an indoor amusement and recreation facility. For the purposes of this definition, a device will be deemed to be coin-operated if it is activated by a coin, cash, credit, or a token, or by an attendant upon the payment of coins, cash, credit, or tokens, or giving something else of value to the attendant."

A BILL FOR AN ORDINANCE

SECTION 5. Ordinance material to be repealed is bracketed and stricken. 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 material that has been bracketed and stricken, or the underscoring.

SECTION 6. This ordinance takes effect upon its approval.

INTRODUCED BY:

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_____

_____

_____

DATE OF INTRODUCTION:

_____
Honolulu, Hawai'i

_____
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

_____
RICK BLANGIARDI, Mayor
City and County of Honolulu