

BILL010(22)
Testimony

MISC. COMM. 460

ZONING AND PLANNING

ZONING AND PLANNING Meeting

Meeting Date: Oct 20, 2022 @ 09:00 AM

Support: 1

Oppose: 8

I wish to comment: 2

Name: Calvert Chipchase	Email: cchipchase@cades.com	Zip: 96813-4202
Representing: Cades Schutte, LLP	Position: I wish to comment	Submitted: Oct 19, 2022 @ 02:42 PM
Testimony: Would like to provide Oral Testimony via remote video conferencing.		
Name: Cynthia Rubinstein	Email: cynthiabeachfront@gmail.com	Zip: 96734
Representing: Self	Position: Oppose	Submitted: Oct 19, 2022 @ 05:23 PM
Testimony: The egg is still dripping down your faces from Bill 41, which more than a few of us tried to warn you was ILLEGAL, but no one said a word Except Andrea Tupola, the only one brave enough to disregard the obvious, possibly unspoken, gag order, from higher up. DON'T Make The Same Mistake Twice! The new administration cannot come in like a Bull In The China Shop and Change Land Use! Prove that you learned the lesson and put on the brakes, separate the issues and don't be cruising for another lawsuit bruising... Think Thru What I Am Trying To Save You From!		
Name: Damien Kim	Email: DKim@ibew1186.org	Zip: 96819
Representing: IBEW Local Union 1186	Position: Support	Submitted: Oct 19, 2022 @ 07:01 PM
Name: Ken Takeya	Email: takeyak001@hawaii.rr.com	Zip: 96734
Representing: Self	Position: Oppose	Submitted: Oct 19, 2022 @ 07:31 PM
Testimony: I feel the Bill 10 should be tabled until a more extensive review can be conducted to ensure all affected parties have had ample time to comment on the impact the Bill has on the general population. 239 pages of information is a lot to properly cover thoroughly. I see it as a disservice to all affected parties if the Bill is just pushed through and passed. Meetings with smaller groups of concerned citizens with public officials and people with the proper expertise should be conducted so there are no misunderstanding of the language of the Bill.		
Name: Jennifer Andrews	Email: jennifer.andrews@exprealty.net	Zip: 96816
Representing: Honolulu Board of Realtors	Position: Oppose	Submitted: Oct 19, 2022 @ 07:39 PM
Testimony: Aloha Committee Chair Elefante, Vice Chair Kiaina and Committee members: Thank you for the opportunity to provide testimony on this measure. The Honolulu Board of REALTORS® (HBR), on behalf of our over 7,000 members and its City Affairs Committee, opposes Bill 10 (2022), relating to Land Use regulations. While HBR understands the need to update the Land Use Code, our concern is the amount of time given for public input regarding this complex measure. The Land Use Code is a critical cornerstone of all future developments on Oahu, across all sectors from agriculture, industrial, tourism, and residential. As such, the process of crafting the new Land Use Code requires a greater opportunity for community engagement. This hearing is a surprise given the recent hearing wherein the City Council approved the request from DPP for a 120-day extension of time. We urge the Council not to rush the passage of this Bill and to use the extension that was granted to allow for thorough review and discussion with the many stakeholders that will be impacted by the changes reflected in this Bill.		

As housing advocates, HBR requests that the Committee defer action on this Bill to allow more community input prior to taking a vote.

Thank you for the opportunity to testify on this measure.

Name: Barbie Hee	Email: barbie.hee@evrealestate.com	Zip: 96816
Representing: Honolulu Board of Realtors	Position: Oppose	Submitted: Oct 19, 2022 @ 07:40 PM

Testimony:

Aloha Committee Chair Elefante, Vice Chair Kiaina and Committee members:

Thank you for the opportunity to provide testimony on this measure. The Honolulu Board of REALTORS® (HBR), on behalf of our over 7,000 members and its City Affairs Committee, opposes Bill 10 (2022), relating to Land Use regulations.

While HBR understands the need to update the Land Use Code, our concern is the amount of time given for public input regarding this complex measure. The Land Use Code is a critical cornerstone of all future developments on Oahu, across all sectors from agriculture, industrial, tourism, and residential. As such, the process of crafting the new Land Use Code requires a greater opportunity for community engagement.

This hearing is a surprise given the recent hearing wherein the City Council approved the request from DPP for a 120-day extension of time. We urge the Council not to rush the passage of this Bill and to use the extension that was granted to allow for thorough review and discussion with the many stakeholders that will be impacted by the changes reflected in this Bill.

As housing advocates, HBR requests that the Committee defer action on this Bill to allow more community input prior to taking a vote.

Thank you for the opportunity to testify on this measure.

Name: Choon James	Email: ChoonJamesHawaii@gmail.com	Zip: 96762
Representing: Self	Position: Oppose	Submitted: Oct 19, 2022 @ 08:29 PM

Name: Barbie Hee	Email: barbie.hee@evrealestate.com	Zip: 96814
Representing: Honolulu Board of Realtors	Position: Oppose	Submitted: Oct 20, 2022 @ 08:32 AM

Name: Ronald Weidenbach	Email: hawaiiifish@gmail.com	Zip: 96791
Representing: Hawaii Aquaculture and Aquaponics Association	Position: Oppose	Submitted: Oct 20, 2022 @ 08:52 AM

Testimony:

Written testimony previously submitted. This comment is to request opportunity for oral testimony

Name: Dorothy Kelly-Paddock	Email: dotty.kellypaddock@gmail.com	Zip: 96717
Representing: Hauula Community Association	Position: Oppose	Submitted: Oct 20, 2022 @ 08:55 AM

Testimony:

Hauula Community Association (HCA) supports Kahuku community requests that turbines be set back 1.25 mile from residential

property line. Please put yourself in the shoes of Kahuku residents and ask yourself if you would be willing to live with your ohana 274 feet away from a 568 feet tall turbine? Would you be ok with living with shadow flicker, noise, red blinking lights, and all the other cumulative impacts of industrial wind? If you haven't visited Kahuku for a tour, we ask you to visit Kahuku! You will see firsthand how big and close these turbines are located next to schools and homes.

There are some major problems with Bill 10 in regard to the wind turbines:

1. Placing an adequate setback is the only proven safety measure to protect and prevent host communities from the negative impacts of industrial scale wind turbines. It is catastrophic that we are allowing existing projects to NOT have to comply with the new 1.25 setback and continue to put residents in harm's way.
2. In addition, any component replacement must not change the height of the turbines. As the existing developer for First Wind wanted to replace the old blades with longer blades which would change the height and setback of these turbines.
3. Hau`ula Community Association strongly requests that the council deny and delete the newly inserted language in CD2 "the setback requirements only apply to new large wind energy generation facilities, and do not apply to the repair, maintenance, or component replacement of existing facility covered by a power purchase contract with an electric public utility during the term of the contract (and any renewal or extension thereof).

HCA appreciates the council's support in a 1.25 mile setback and asks the Council to continue to advocate for the public health, safety and welfare of the people. Mahalo!

Dotty Kelly-Paddock
HCA, President

Name: Harold Hewett	Email: harold.hewett@dish.com	Zip: 96814
Representing: DISH Wireless, LLC	Position: I wish to comment	Submitted: Oct 20, 2022 @ 08:58 AM



International Brotherhood of Electrical Workers

LOCAL UNION NO. 1186 • Affiliated with AFL-CIO

1935 HAU STREET, ROOM 401 • HONOLULU, HI 96819-5003
TELEPHONE (808) 847-5341 • FAX (808) 847-2224

TO: City Council Committee on Zoning and Planning
Hearing on Thursday, October 20, 2022, at 9:00 a.m.

RE: TESTIMONY IN **SUPPORT** OF BILL 10 (2022), PROPOSED CD2

Honorable Chairperson Brandon Elefante, Vice Chair Esther Kia'aina, and Councilmembers:

The International Brotherhood of Electrical Workers Local Union 1186 (IBEW 1186) represents over 3,400 members working in electrical construction, telecommunications, Spectrum, civil service employees, and educator and faculty associations. We are in support of the PROPOSED CD2 of Bill 10 (2022).

My name is Damien Kim, I am the Business Manager/Financial Secretary and a 37-year member of IBEW 1186. I want to thank the Council for hearing my testimony.

Specifically, we appreciate and support the amendments in Sec. 21-5.60-6, for wind energy generation facilities that will apply only to new installations, and yet would allow existing facilities to undergo needed repair, maintenance, or component replacement.

IBEW Electricians install many of these renewable projects and are required to keep up with their training. Technologies are always changing in the renewable energy sector, and it only makes sense that many of these existing projects will need to upgrade as time goes on. Parts also become obsolete and will need to be replaced to keep things efficient.

Mahalo again for taking the time to hear my testimony.

Sincerely,

DAMIEN T.K. KIM
BUSINESS MANAGER/FINANCIAL SECRETARY

OPPOSE Bill 10

This monster omnibus Bill
must not be unfairly fast-tracked.
Please defer Bill to allow
needed Due Process & public engagement

Submitted by Choon James
ChoonJamesHawaii@gmail.com

COMMITTEE ON ZONING AND PLANNING

Voting Members:

Brandon J.C Elefante, Chair
Esther Kia'aina, Vice Chair
Radiant Cordero
Calvin K.Y. Say

CITY COUNCIL CHAMBER
THURSDAY, OCTOBER 20, 2022
9:00 A.M.

BILL 10 (2022), CD1 – LUO AMENDMENT RELATING TO USE

REGULATIONS. Addressing the regulation of uses throughout Chapter 21, Revised Ordinances of Honolulu 1990 (“Land Use Ordinance” or “LUO”). (Bill passed Second Reading and Public hearing held on 9/7/22; Committee amended to CD2 and postponed action on 9/26/22) (Current deadline for Council action: 2/26/23)

Here are some selected severe concerns and questions relating to this Bill 10. Its importance is not weighted in sequence.

First and foremost, does this fast-tracked Monster Bill 10 sound reasonable or intransigent to the Honolulu City Council? (Note that we're just coming out of this COVID19 pandemic.)

BILL HISTORY:

DATE	ACTION
02/03/2022	Introduced.
02/17/2022	The Director of the Department of Planning and Permitting requests an extension of time to hear and discuss the bill.
02/23/2022	Passed first reading. Councilmember Tupola voted with reservations due to taking the whole Land Use Ordinance into one bill.
08/25/2022	Amended to a CD1 and reported out for passage on second reading by all zoning committee members.
09/09/2022	The Director of the Department of Planning and Permitting requests another extension of time to hear and discuss the bill.
09/26/2022	Many testimonies ask the committee to defer the bill due to complexity and needing time to discuss with stakeholders. A proposed CD2 was discussed but the bill was postponed to a date and time to be determined by the Committee Chair due to many legal conflicts brought up by Corporation Counsel. The chair requested a third extension of time. The vice chair of the committee asked to have time to meet with farmers who were concerned about portions of the bill. She scheduled her townhall for November 10th.
10/05/2022	The council approves CR - 265 granting a 120-day extension of time.
10/06/2022	The Chair of the Planning and Zoning committee requests that councilmembers turn in their proposed amendments by October 13th which gives councilmembers no time to gather with their communities in town halls, no time to meet with lawyers about legal challenges, or have meetings to gather amendments from stakeholders.
10/20/2022	BILL 10 (2022), CD1 is scheduled for action. The Chair suggests amendments. Councilmember Waters and Tupola submit amendments . If passed out of committee, the full council will vote on November 2nd and it will pass into law.

PROCESS and PUBLIC PARTICIPATION

1. There are some, including DPP officials and other organizations, who testified that the process have been followed and public input has been ample. We disagree heartedly with this. It's very easy for those who are inside City Hall and insiders whose employment or trade or special interests are related to this Land Use issues.
2. The average resident who have other jobs and obligations. I consider myself a very interested resident and a good reader. But, I'm personally struggling to keep up with this very complex and intricate 239 pages of document and all the corresponding changes and communications. Unfortunately, many of these ordinances are unknown to the average citizenry until **after-the-fact**. It's not effective or efficient enough to say the Neighborhood Boards were notified. As evidenced, it appears only the **Kailua Neighborhood Board** was actively covering Bill 10 and submitting amendments.

BASIC QUESTIONS

1. Why is the City Council fast-tracking this Monster Bill to overhaul the city's Chapter 21 LUO rules and regulations when DPP itself is floundering so badly. The internal DPP indictments, the recent resignations of DPP Director Dean Uchida and DPP Land Use Permits Division Chief Katia Balassiano. DPP itself has requested an extension of 120 days for this bill.
2. With the recent US Court Ruling on Bill 41 aka Ordinance 22-7, how is this going to be addressed in this revised LUO?
3. How is this Section related to the **Important Agriculture Lands (IAL)** that DPP was undergoing too? When the council amends to "*minimum of 50 percent of the zoning lot area suitable for crop production or such*", how does the 50% of IAL come into play? Didn't IAL already allow 50% of the land acreages to be out of farming?
4. Why is basic **human health** of the people not even mentioned or referenced in this Bill when public **physical safety** like erecting 6-foot fences is? This would especially pertain to communications towers, wireless, Spectrum 5G, industrial turbines and so forth. Electromagnetic fields (EMFs) has increased significantly in recent decades. We need to

be cognizant of this health impacts and mitigate the best we can. Put human health first.

5. Relating to not allowing water, electricity to certain Agriculture-Zoned farm lots and road-stands raises hygiene and health issues. This is a huge concern. Farmers need water to raise crops and clean. There are solutions to contain “gentlemen farmers” if there is real dialogue among real farmers and not only corporate planners or desk-top farmers.

Concerns relating to the Agriculture Section 3 of Bill 10

ROH Section 21-5 etal

1. Changing **Agri-business to Agri-tourism** is questionable. Does this mean that Agricultural lands are primed towards tourism as the end-game? Like more zip-lines, touristy outfits like beer gardens or tours and so forth? I hear the DPP Land Chief say the city wants to be consistent with the State. But many agri-business does not involve tourism at all. If the city's main intent was to follow and conform with the State, where does it end? It must be noted that the legislative period for the State Legislature is five (5) months. The City Council is year-round. Will the city look towards shortening its legislative period to conform with the State?
2. We are concerned that there are “**desktop farmers**” who are orchestrating agricultural policies and agricultural lands. These desktop farmers have good intentions but Hawaii's farming cannot solely be legislated through corporate or best and highest use of ag lands. The majority of farmers in Hawaii own approximately 9 acres of ag lands. These farmers are the backbone of farming just like the “small business owners of America”.
3. There appears to be very negative judgment against those who turn large acreages of ag lands into smaller parcels through **CPR subdivision** for farmers. At the city council hearing, developers like Peter Savio (although his name was not mentioned) were bad-mouthed by DPP bureaucrats to the point of public accusations of dishonest. This is discriminatory and prejudicial leadership.

The days of large land barons like the BIG FIVE are probably over.

Not many residents can afford those high prices for large acreages. But many can afford smaller parcels.

While it's understandable that DPP is trying to contain “**gentlemen's farms**”, there are many who want to live on a farm for sustainability and independence. Residents must be accorded private property rights - be given **options to have independent lives of their choice** whether to live in **yurts** or not. Or to do animal husbandry or do permaculture, aquaculture, horticulture among other countless choices that residential or other zoning classifications do not allow.

This agricultural CPR situation has not been logically deliberated yet. There are mitigating solutions. Except DPP is putting its foot down to say “no water, no electricity, no bathrooms etc allowed and so on” to these

CPR lots. This tactic is illogical and overbearing. Farmers need water for their crop production and washing. Farmers also need basic hygiene. If the city is serious about FOOD SECURITY and SUSTAINABILITY, it needs to help small farmers, not impose too rigid rules and impose more red tape to over-burden real farmers.

4. It appears there is a trend to look at agriculture only through the corporate or desktop lenses of “profits” and to opine that only farm with agri-tech will succeed. This is a conversation that needs to be had with real farmers before more public policies are implemented.

3 Sec. 21-5.40-4(c)(2) Agricultural uses, Accessory agricultural, Beekeeping – standards 16 Amend beekeeping standards (2) Lot area required: (A) No more than two beehives may be established on zoning lots less than 10,000 square feet; (B) No more than four beehives may be established on zoning lots of 10,000 up to 20,000 square feet; and (C) **No more than six beehives may be established on zoning lots greater than 20,000 square feet.** (D) No beehive may exceed 7 cubic feet in volume.

Is this saying that agricultural farms can ONLY have the maximum six beehives? Or is this for residential zoning parcels? Ag acreages can maintain more beehives comfortably.

Can yurts be allowed?

How does this relate to IAL that already allows 50% exemption of Ag-zoned land from farming.

No.	Bill SECTION	ROH Section, Exhibit, or Figure and title	Page No.	Amendment Description	Amendment Text (in Ramseyer form)	Comments or Clarification
18	3	Sec. 21-5.40-4(e) Agricultural uses, Accessory agricultural, Farm dwelling – standards	17	Amend farm dwelling standards	<p>(e) Farm dwelling – standards.</p> <p>(1) Crop production and livestock keeping must occupy a minimum of 50 percent of the zoning lot area suitable for crop production or livestock keeping, and valid agricultural dedication status must be maintained through an agricultural easement or similar legal encumbrance for as long as the farm dwelling use continues. The director may adopt rules pursuant to HRS Chapter 91 to determine the zoning lot area considered to be suitable for crop production or livestock keeping.</p> <p>(2) Each farm dwelling (including eaves, overhangs, carports, garages, trellised areas, stairways, decks, storage sheds, and swimming pools) must be contained within an area not to exceed 5,000 square feet, confined to a polygon for which no exterior angle is greater than 180 degrees.</p> <p>(3) In the AG-1 zoning district, the number of farm dwellings must not exceed one for every 5 acres of zoning lot area.</p> <p>(4) In the AG-2 zoning district, the number of farm dwellings must not exceed one for every 2 acres of zoning lot area.</p> <p>(5) If multiple farm dwellings are permitted on a zoning lot, they must not exceed 10 percent of the total zoning lot area.</p> <p>[(6) – A farm dwelling is not permitted as an accessory use to open space, forestry, community garden, or urban agriculture uses.</p> <p>[(7) – A farm dwelling is not permitted as an accessory use to boarding and care of horses and other domestic animals.]</p>	Deleted standards have been incorporated into the definition of farm dwelling.

Timeshare is also now allowed.

How do we differentiate between

Bed and Breakfast and Transient Vacation Units?

Bed and Breakfast ONLY for owner-occupants?

But why is the word “OPERATOR” used?



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL **10 (2022), CD2**

A BILL FOR AN ORDINANCE

Figure 21-5.3
Bed and Breakfast Homes and Transient Vacation Units
Permitted Areas – Close Proximity to the Turtle Bay Resort



Does this mean that bed and breakfast **does not need** to have Owner-occupants?
Operators can also do B&B?

ALL operators of property **must have written authorization** from all owners. There had been cases where an “operator” signs a long-term rental contract but converts it to short-term **WITHOUT** the owners’ knowledge. However, the owner is ultimately responsible for the property.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL **10 (2022), CD2**

A BILL FOR AN ORDINANCE

association, or condominium property regime articles,
by-laws, and house rules;

(gg) The informational binder required under subdivision
(3)(B)(iii)(ff); provided that a copy of a registration
certificate need not be included;

(hh) Evidence that a dwelling unit proposed for use as a
bed and breakfast home or transient vacation unit:

(AA) Is not an affordable unit subject to income
restrictions;

(BB) Did not receive housing or rental assistance
subsidies; and

(CC) Was not subject to an eviction within the last
12 months.

(ii) Registration will be effective for a period of one year
beginning on the date a certificate of registration is issued by
the department, and must be renewed annually prior to
expiration.

(B) Registration Renewal.

(i) Annually, no earlier than three months prior to the expiration
of the registration certificate, the owner or operator of a bed
and breakfast home or transient vacation unit shall renew
the registration certificate for a bed and breakfast home or
transient vacation unit with the department on a form
prescribed by the department, and submit to the department
the following in the registration renewal application:

(aa) For a bed and breakfast home, evidence of a real
property tax home exemption for the subject property;

(bb) A tax clearance certificate issued by the department
of budget and fiscal services certifying that real
property taxes were assessed at the rates required by



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Testimony by Suzanne Young, CEO
Honolulu Board of REALTORS®

In Opposition of Bill 10 (2022)

Honolulu City Council
Thursday, October 20th, 2022
Honolulu Hale

Aloha Committee Chair Elefante, Vice Chair Kiaāina and Committee members:

Thank you for the opportunity to provide testimony on this measure. The Honolulu Board of REALTORS® (HBR), on behalf of our over 7,000 members and its City Affairs Committee, opposes Bill 10 (2022), relating to Land Use regulations.

While HBR understands the need to update the Land Use Code, our concern is the amount of time given for public input regarding this complex measure. The Land Use Code is a critical cornerstone of all future developments on Oahu, across all sectors from agriculture, industrial, tourism, and residential. As such, the process of crafting the new Land Use Code requires a greater opportunity for community engagement.

This hearing is a surprise given the recent hearing wherein the City Council approved the request from DPP for a 120-day extension of time. We urge the Council not to rush the passage of this Bill and to use the extension that was granted to allow for thorough review and discussion with the many stakeholders that will be impacted by the changes reflected in this Bill.

As housing advocates, HBR requests that the Committee defer action on this Bill to allow more community input prior to taking a vote.

Thank you for the opportunity to testify on this measure.



Committee on Zoning and Planning
City and County of Honolulu
Honolulu, Hawaii 96813-3077

Re: DISH Wireless Written Testimony Submission for the August 25, 2022 Meeting of the Committee on Zoning and Planning, City and County of Honolulu, Hawaii Regarding Land Use Ordinance Amendments Contained in Proposed CD1 to Bill 10 (2022)

Dear Councilmembers:

More than ever before (especially after the COVID-19 pandemic and its effects) people rely on wireless broadband services to communicate and access things like healthcare, education, jobs, and public safety. It is vital that we continue to connect people and things. Wireless broadband is a relatively low-cost, low-impact way to ensure increased connectivity for all residents of Honolulu. DISH is poised to contribute to this objective in a meaningful way over the next few years

In July 2019, as part of the Sprint/T-Mobile merger, DISH entered into a series of agreements and commitments with the US Department of Justice, the Federal Communications Commission ("FCC") and T-Mobile that accelerated DISH's entry into the wireless market as the country's fourth nationwide wireless carrier¹. The carefully crafted remedy imposed by the DOJ addressed the competitive harms that could potentially have resulted from T-Mobile acquiring Sprint. DISH purchased Sprint's prepaid mobile businesses (including Boost) and its approximately 9 million subscribers. Furthermore, the FCC imposed requirements for DISH to build a 5G broadband network covering the US within certain deadlines (the 2022 deadline was met)². DISH's plans include the installation of wireless sites in Honolulu that will increase access to 5G wireless broadband services.

DISH is pleased to learn that the City and County of Honolulu is considering revisions to the communications-related sections of its Land Use Ordinance (the "Code") with Proposed CD1 to Bill 10. We welcome the opportunity to work with the City and County to achieve a well-balanced approach to increase broadband connectivity options for consumers while minimizing the physical impact of infrastructure on the surrounding community. The most effective way to do this is to encourage

¹ **Links to Relevant Press Releases**

- DISH's July 26 press release is [HERE](#)
- DOJ's July 26 press release is [HERE](#)

² **FCC Deadline Requirements:**

- Deployed 5G broadband service to more than **20%** of U.S. population by **June 14, 2022**
- Deploy 5G broadband service to at least **70%** of U.S. population by **June 14, 2023**
- Deploy 5G broadband service to at least **75%** of U.S. population by **June 14, 2025**



communications carriers to co-locate on existing wireless communications facilities by implementing the provisions of Section 6409 of the Spectrum Act and related FCC regulations³ ("6409"). 6409 provides that carriers may modify existing wireless facilities (including new co-locations) so long as such modifications do not substantially change the existing site, while simultaneously reducing the administrative burden on City and County planning resources.

While we fully support and appreciate the current proposal to incorporate aspects of 6409 into the Code, in order to fully realize the benefits of wireless co-locations and technology upgrades, the provisions of 6409 must be fully integrated into the Code. We recommend further revising the Code to adopt all aspects of 6409, to include the regulations governing the definition of an eligible facilities request (and related terms), permissible conditions of approval, and the 60-day review and approval shot clock; and providing a clear framework for the implementation of the revised Code. Otherwise, the benefits of administrative efficiency and reduced impact of shared wireless facilities cannot be realized.

Definitions

DISH suggests that the Code be amended to incorporate the definitions related to eligible facilities requests ("EFR"), including but not limited to existing sites. Existing sites include both structures that were constructed for the specific purpose of accommodating communications equipment, as well as those structures whose primary purposes are unrelated to communications equipment, but have been legally sited and approved to house communications equipment⁴. Under the Code, communications towers, communication tower alternative support structures, and accessory communication structures are all existing sites to which an eligible facilities request applies.

Review Criteria

A request to modify an existing site that does not result in a substantial change should be approved. Review of the EFR is limited to determining if the six substantial change criteria of 6409 are met⁵. The Code should be revised to incorporate these six criteria as the only aspects of the proposed modification to be reviewed.

³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, codified at 47 U.S.C. § 1455(a) (2012); *In re Acceleration of Broadband Deployment by Improving Wireless Facility Siting Policies*, FCC 14-153, 29 FCC Rcd. 12865 (rel. Oct. 21, 2014) ("Infrastructure Order"); *In re Implementation of State & Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, FCC 20-75, 35 FCC Rcd. 5977 (rel. June 10, 2020) ("5G Upgrade Order"); *In re Accelerating Wireless and Wireline Deployment by Streamlining Local Approval of Wireless Infrastructure Modifications*, FCC 20-153, 35 FCC Rcd. 13188 (rel. Nov. 3, 2020) ("Site Expansion Order") (together the "FCC Orders") (codified at 47 CFR § 1.6100).

⁴ See 47 C.F.R. § 1.6100(b)(5) defining "existing" site as a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process, or other applicable state and local regulatory review process.

⁵ See 47 C.F.R. § 1.6100(b)(7)



Further, whether or not a request for modification of an existing site is an EFR is not dependent upon the zoning district in which the site is located. The Code should be amended to provide that an EFR is reviewed under the same six criteria in all zoning districts, including special districts, because the structures under review already legally house communications equipment, and the EFR criteria expressly limit approval of modifications to those that do not substantially change the existing site.

Shot Clock

The Code should be revised to incorporate the 60-day shot clock of 6409, meaning that the Honolulu Department of Planning and Permitting ("DPP") has 60 days in which to approve a properly completed application or make a determination that the six criteria of an EFR are not satisfied. If the application is not so acted upon within 60 days of submission then the request for modification is deemed to be approved and all City and County permits are deemed granted under 6409⁶.

Procedural Framework

We recommend a clear and simple EFR in-take process. The Code should include the creation of an EFR checklist and procedure for the DPP and all other applicable agencies to receive and review an EFR for any zoning district within 60 days of receipt. There should be no pre-application process for an EFR. Additionally, the 60-day shot clock applies to all City and County approvals and permits, such that a process that allows all reviews to occur within 60 days is necessary.

We also recommend that the paperwork required to be submitted with an EFR be limited to 1) those documents necessary to demonstrate that the six EFR criteria are met, and 2) those documents necessary to demonstrate that the proposed modification complies with codes related to health and safety. Any additional paperwork causes unnecessary delays and increased administrative burdens for the DPP and the applicant.

This is a summary of DISH's recommendations to the latest proposed Code amendment; however, we look forward to the opportunity to working further with Honolulu on this important initiative. We believe that we have a chance to ensure that Honolulu fully realizes the benefits of increased wireless broadband connectivity and greater administrative efficiency in a manner that limits impacts on the surrounding community. Thank you for allowing us to participate in the process.

A blue ink signature of Harold Hewett.

Harold Hewett
Interim Market Manager, Honolulu
DISH Wireless

⁶ See 47 C.F.R. § 1.6100(c)