HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. 24-141

RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 2021 (THE LAND USE ORDINANCE), RELATING TO ADMINISTRATIVE ENFORCEMENT.

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 O'ahu general plan, and the applicable development plans or sustainable community plans, and to promote and protect the public health, safety, and welfare; and

WHEREAS, the Director of Planning and Permitting has the authority to administratively enforce violations of the LUO, the rules adopted by the director to administer the LUO, and the conditions of any permits or approvals granted under the LUO by issuing a written notice of violation and notice of order pursuant to Section 21-2.150-2, Revised Ordinances of Honolulu 2021 ("ROH"); and

WHEREAS, under ROH § 21-2.150-2(c)(1), a notice of violation or notice of order may be served on the violator by registered or certified mail (with return receipt requested), or by delivering a copy of the enforcement notice to the violator in person; and

WHEREAS, under ROH § 21-2.150-2(c)(2), a notice of violation or notice of order may also by served on the violator by leaving a copy of the enforcement notice at the violator's residence, place of employment, or usual place of business; or by physically posting a copy of the enforcement notice in a prominent location on the property in a conspicuous manner that is likely to be discovered; but those methods of service may only be used if due diligence was first used in attempting to serve the violator personally or by registered or certified mail; and

WHEREAS, under ROH § 21-2.150-2(c)(3), if the Director of Planning and Permitting is not able to serve a notice of violation or notice of order by the methods described above, the Director may serve the enforcement notice to the violators by publishing a copy of the notice of order once each week for two consecutive weeks in a daily or weekly publication that is in general circulation within the City; and

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WHEREAS, there have been instances where a violator has deliberately avoided or refused to accept service of a notice of violation or notice of order to evade the Department of Planning and Permitting's ("DPP") enforcement of the LUO; and

WHEREAS, time is of the essence when serving of a notice of violation or notice of order, to prevent an LUO violation from becoming worse, and to mitigate impacts and avert situations that may be difficult to undo, particularly when a notice of order includes a directive to cease and desist an activity; and

WHEREAS, the City Council ("Council") believes that it would be advantageous to provide the DPP with more methods to serve notices of violation and notices of order, with the intent of facilitating and improving the effectiveness and efficiency of the DPP's enforcement efforts; and

WHEREAS, Charter § 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 [D]irector [of Planning and Permitting]"; and

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

WHEREAS, Chapter 2, Article 24, Part A, Revised Ordinances of Honolulu 2021 ("ROH"), establishes procedures and deadlines for the processing of 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 § 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

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BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, Part A, the City Clerk shall transmit copies of this resolution and the Exhibit A 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:

Councilmembers

DATE OF INTRODUCTION:

MAY 16 2024

Honolulu, Hawai'i

EXHIBIT A

HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

RELATING TO ADMINISTRATIVE ENFORCEMENT.

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 administrative enforcement provisions for violation of the standards and requirements of the Land Use Ordinance.

SECTION 2. Section 21-2.150-2, Revised Ordinances of Honolulu 2021, is amended to read as follows:

"§ 21-2.150-2 Administrative enforcement.

(a) *Enforcement authority.* In lieu of or in addition to seeking criminal enforcement pursuant to § 21-2.150-1, the director may seek enforcement against any person violating this chapter, the rules adopted by the director to administer this chapter, and the conditions of any permits or approvals granted under this chapter by issuing a written notice of violation and notice of order pursuant to this section.

(b) *Liability.* If the director determines that more than one person is liable for a violation, the director may issue one enforcement notice to all responsible persons or separate enforcement notices to persons or groups of persons that are responsible for the violation. Each person will be independently liable for the full extent of the violation and responsible for complying with the enforcement notice.

(c) *Service of enforcement notices issued by the director.*

(1) The director may serve an enforcement notice issued pursuant to this section by registered or certified mail, with return receipt requested, addressed to the last known address of each violator identified in the enforcement [~~action,~~] notice, or by delivering a copy of the enforcement notice to the violator in person.

(2) The director also may serve an enforcement notice issued pursuant to this section by leaving a copy of the enforcement notice at the violator's residence, place of employment, or usual place of business, or by physically posting a copy of the enforcement notice in a prominent location on the property that is the subject of the enforcement notice, in a

conspicuous manner that is likely to be discovered[~~; provided that due diligence was used in attempting to serve the person personally or by registered or certified mail~~].

(3) If the director is not able to serve the enforcement notice by any of the methods described in subdivisions (1) and (2), the director may serve the enforcement notice on one or more violators by publishing a copy of the [~~order~~] enforcement notice once each week for two consecutive weeks in a daily or weekly publication that is in general circulation within the city.

(4) Where one or more violators identified in an enforcement notice have the same mailing address, place of residence, place of employment, or usual place of business, the delivery of one copy of the enforcement notice to that place [~~shall~~] will be effective service upon all violators named in the enforcement notice that may be served at the place the enforcement notice has been delivered. The physical posting of a copy of the enforcement notice pursuant to subdivision (2) will be effective service upon all violators named in the enforcement notice."

(d) *Contents of the notice of violation.* Whenever the director seeks enforcement pursuant to subsection (a), the director shall serve, pursuant to subsection (c), a notice of violation to the persons responsible for the violation. In addition to any other information or requirements deemed appropriate by the director, the notice of violation must include the following information:

(1) [~~Date~~] The date of the notice of violation;

(2) The name of the person noticed;

(3) The address or location of the violation;

(4) The specific ordinance, rule, or condition that has been violated;

(5) A concise description of the violation;

(6) A statement of the actions that are necessary to correct the violation;

(7) A requirement that the violator correct the violation by a specified date;

(8) A statement of the penalties that will be imposed if the violation is not corrected by the deadline for correction established pursuant to subdivision (7); and

(9) A requirement that the violator send a written notice to the director reporting the correction of the violation when the violator believes the violation has been corrected.

(e) *Contents of the notice of order.* If the violation is not corrected by the date specified in the notice of violation, the director [~~may issue~~] shall serve, pursuant to subsection (c), a notice of order to the persons responsible for the violation imposing penalties for failure to correct [~~a~~] the violation.

(1) In addition to any other information or requirements deemed appropriate by the director, the notice of order must include a copy of the applicable notice of violation issued by the director for the violation.

(2) The notice of 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 $5,000 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.

(3) Notwithstanding the civil fines specified in subdivision (2)(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 the requirements in subdivision (2)(A) and (B), the order may require a person to do any or all of the following:

(A) Pay a civil fine not to exceed $10,000 in the manner, at the place, and before the date specified in the order; and

(B) Pay a civil fine not to exceed $10,000 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.

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

(f) *Effect of the notice of order—right to appeal.* The provisions of the notice of order issued by the director under this section will become final 30 days after the date [~~of the mailing or delivery of~~] the order[~~.~~] is served on the persons responsible for the violation pursuant to subsection (c). The [~~person~~] persons responsible for the violation may appeal the notice of order to the zoning board of appeals as provided in Charter § 6-1516 and § 21-1.40; provided that an appeal to the zoning board of appeals will not stay any provision of the notice of order. The appeal must be received in writing on or before the date on which the order becomes final.

(g) *Judicial enforcement of the notice of order.* The director may institute a civil action in any court of competent jurisdiction for the enforcement of any notice of order [~~issued pursuant to this section.~~] served on the persons responsible for the violation pursuant to subsection (c). Where [~~the~~] a civil action has been instituted to enforce the civil fine imposed by [~~said~~] the notice of order, the director need only show that the notice of violation and the notice of order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been paid.

(h) Notwithstanding any other provision to the contrary, in addition to daily civil fines, the director may impose a fine in an amount equal to the total sum received by the owner, operator, or proprietor of a bed and breakfast home or transient vacation unit from any impermissible rental activity during the period in which the owner, operator, or proprietor was subject to daily fines.

(i) Nothing in this section [~~shall preclude~~] precludes the director from seeking any other remedy available by law."

A BILL FOR AN ORDINANCE

SECTION 3. Ordinance material to be repealed is bracketed and stricken. 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 brackets, the material that has been bracketed and stricken, or the underscoring.

A BILL FOR AN ORDINANCE

SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

_____

_____

_____

_____

_____

_____

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

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

CERTIFICATE

RESOLUTION 24-141

Introduced: 05/16/24 By: TOMMY WATERS Committee: ZONING (ZON)
COUNCIL (CCL)

Title: PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 2021 (THE LAND USE ORDINANCE), RELATING TO ADMINISTRATIVE ENFORCEMENT.

Voting Legend: * = Aye w/Reservations

05/16/24	INTRO	Introduced.
05/22/24	ZON	Reported out for adoption. CR-178 4 AYES: CORDERO, DOS SANTOS-TAM, KIA'ĀINA, SAY 1 ABSENT: WEYER
06/05/24	CCL	Committee report and Resolution were adopted. 7 AYES: CORDERO, DOS SANTOS-TAM, KIA'ĀINA, SAY, TUPOLA, WATERS, WEYER 2 ABSENT: OKIMOTO, TULBA

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.

GLEN I. TAKAHASHI, CITY CLERK

TOMMY WATERS, CHAIR AND PRESIDING OFFICER