MEMORANDUM

TO: Arthur D. Challacombe, Chair
   and Members of the Planning Commission

FROM: Kathy K. Sokugawa, Acting Director
       Department of Planning and Permitting

SUBJECT: Proposed Amendment to Chapter 21, Revised Ordinances of Honolulu (ROH) 1990, as Amended (The Land Use Ordinance [LUS]), Relating to References to the State of Hawaii Condominium Property Act

The Department of Planning and Permitting (DPP) is pleased to submit for your review and recommendation this DPP-initiated Bill, which would amend certain sections of the ROH in order to create consistent references to the Condominium Property Act of the Hawaii Revised Statutes (HRS; Chapters 514A and 514B) within the ROH.

The LUS currently references both Chapters 514A and 514B, HRS. The Hawaii State Legislature recently voted to repeal Section 514A, HRS relating to “Condominium Property Regimes” (CPRs; Act 181, 2017 Session Laws of Hawaii). As a result, related LUS references will soon be out of date.

We believe the proposed amendments will address concerns over potential regulatory inconsistencies, while also alleviating the need to revise the LUS each time the State Legislature makes amendments to the Condominium Property Act. Enclosed you will find additional information and staff analysis. We would be happy to answer any questions that you may have as part of your deliberations.

Should you have any questions, please contact Christi Keller, of our staff, at 768-8087.

Enclosures
DEPARTMENT OF PLANNING AND PERMITTING-INITIATED LUO AMENDMENT
RELATING TO REFERENCES TO
CONDOMINIUM PROPERTY REGIMES

Staff Report

October 24, 2019

I. Purpose

This proposed Land Use Ordinance (LÜO) amendment seeks to create consistent references to the Condominium Property Act of the Hawaii Revised Statutes (HRS) within the LÜO. Both HRS Chapters 514A and 514B (Chapters 514A and 514B) are referenced as the Condominium Property Act.\(^1\) The LÜO cites Chapters 514A and/or 514B in three sections, relating to nonconforming multi-family dwellings, ohana dwellings, and accessory dwelling units. However, the Legislature has recently voted to repeal Chapter 514A, so references to it will soon be out of date. Therefore, we recommend a housekeeping measure to update the language in the LÜO to reference the condominium property laws more generally.

II. Background

The State of Hawaii administers laws and regulations relating to condominium properties and real property ownership. HRS Section 514B-3 defines a condominium as, "real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions." In other words, the State regulations designate ways to divide ownership on zoning lots with certain common elements.

Condominium Property Regimes (CPRs) are a form of property ownership, and are not related to a property’s zoning district or allowable uses. The City and County of Honolulu administers zoning laws through the LÜO, which specifies the types of uses and structures allowed on zoning lots; generally, the City does not recognize CPR lots for zoning purposes. Development entitlements or "standards" are applied the same way regardless of whether the lot is owned by one entity or multiple entities under a CPR.

III. Legislative History

As previously stated, both Chapters 514A and 514B apply to condominium properties and are administered by the Real Estate Branch of the State of Hawaii, Department of Commerce and Consumer Affairs. Chapter 514A applies to CPRs that were created before July 1, 2006; they would then transition to Chapter 514B through a subsequent application or an automatic safe harbor transfer. However, in 2019, the State

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\(^1\) HRS Sections 514A-1 (Title) and 514B-1 (Short title).
Legislature temporarily resurrected portions of Chapter 514A under limited circumstances through July 1, 2020, when Chapter 514A will sunset.

IV. LUO References

The specific detailed changes enacted through State legislation do not impact the way the City applies zoning laws. However, they do result in incorrect references to State regulations within the LUO. The LUO currently references Chapters 514A and/or 514B in LUO Section 21-4.110 (Nonconforming structures), Section 21-5.720 (Accessory dwelling units), and Section 21-8.20 (Housing-Ohana dwellings). Amendments to these LUO sections are necessary to ensure consistency between the State and City and County of Honolulu's documents and regulations, and to avoid any unnecessary confusion for members of the community.

This draft bill seeks to remove references to Chapters 514A and 514B from the LUO in favor of general language, specifically "the State of Hawaii's Condominium Property Act." The existing inconsistencies will be addressed, and future HRS amendments will not trigger the need for related LUO amendments.

V. Recommendation

DPP has prepared and supports approval of this bill in order to remove inconsistencies between the LUO and HRS, and ensure that future HRS amendments related to CPRs will not trigger the need for additional LUO amendments.
TO AMEND CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED (THE LAND USE ORDINANCE), RELATING TO CONDOMINIUM PROPERTY REGIMES.

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 provisions of the Land Use Ordinance pertaining to Condominiums and Condominium Property Regimes. The amendments will reference the Hawaii Revised Statutes (HRS) regulations relating to Condominium Property Regimes more broadly, rather than identifying specific portions of the code.

SECTION 2. Sec. 21-4.110 (b)(1)(A), Revised Ordinances of Honolulu (ROH) 1990, Nonconformities, is amended as follows:

“(b) Nonconforming Structures.
(1) If that portion of a structure that is nonconforming is destroyed by any means to an extent of more than 90 percent of its replacement cost at the time of destruction, it may not be reconstructed except in conformity with the provisions of this chapter. All reconstruction and restoration work must comply with building code and flood hazard regulations, and commence within two years of the date of destruction.
(A) Notwithstanding the foregoing provision, a nonconforming structure devoted to a conforming use which contains multifamily dwelling units owned by owners under the State of Hawaii Condominium Property Act, authority of HRS Chapter 514A, 514B or 421H, or units owned by a "cooperative housing corporation" as defined in HRS Section 421L-1, whether or not the structure is located in a special district, and which is destroyed by any means, may be fully reconstructed and restored to its former permitted condition, provided that such restoration is permitted by the current building code and flood hazard regulations and is started within two years from the date of destruction.”

SECTION 3. Sec. 21-5.720(c)(5)(A), Revised Ordinances of Honolulu (ROH) 1990, Accessory Dwelling Units, is amended as follows:

“(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 the State of Hawaii Condominium Property Act [HRS Chapter 514A] to separate the ownership of an accessory dwelling unit from the ownership of its primary dwelling unit;"

SECTION 4. Sec. 21-8.20(c)(8), Revised Ordinances of Honolulu (ROH) 1990, Housing - Ohana dwellings, is amended as follows:

“(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 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 the State of Hawaii Condominium Property Act [HRS Chapter 514B]. The covenant shall 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 be deemed a violation of this chapter and be grounds for enforcement of the covenant by the Director pursuant to Section 21-2.150, et seq., and shall be grounds for an action by the Director to require the owner or owners to remove, pursuant to the State of Hawaii Condominium Property Act [HRS Section 514B-47], the property from a submission of the lot or any portion thereof to the condominium property regime made in violation of the covenant.”

SECTION 5. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the ROH, the reviser of ordinances need not include the brackets, the bracketed material, or the underscoring.
SECTION 6. This ordinance shall take effect upon its approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councillmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of ____________, 20_____.

Kirk Caldwell, Mayor
City and County of Honolulu