Black boxes and gray spaces: how illegal accessory dwellings find regulatory loopholes

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May 2014

Submitted towards the fulfillment of the requirements for the Doctor of Architectural degree.

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We certify that we have read this Doctorate Project and that, in our opinion, it is satisfactory in scope and quality in fulfillment as a Doctorate Project for the degree of Doctor of Architecture in the School of Architecture, University of Hawai‘i at Mānoa.

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GUIDE TO THE READER

This thesis is divided into
I, II and III Parts.
While the information overlaps, each Part is unique.

Part I: The Short Version
Only the most powerful points; least reading.

Part II: An Open Letter for Change
(Attention politicians)
This is a rebuttal to a 2011 letter written by the Department of Planning and Permitting explaining why an Accessory Dwelling Unit Resolution from the City Council should not be acted upon.

Part III: The Long Version
Intended to supplement, but not replace, the Short Version. Specific Recommendations and Further Research ideas are included here.
ABSTRACT

Honolulu has one of the highest costs of living and the most unaffordable real estate (relative to income) in the nation (NILHC 2014) (Performance Urban Planning 2012). Meanwhile, the current state of regulation in Honolulu is like a Black Box: perceived as slow, confusing and uncertain. In response, communities manifest Gray Spaces such as Illegal Accessory Dwellings (iADUs). Symbolically and physically, the ubiquity of iADUs lies in their agility to circumvent Black Box restrictions while preserving owner and users’ flexibility of use.

When homeowners obtain permits for rooms labeled as “TV” or “Rumpus Room” and then (without a permit) convert the use of these spaces into an independent dwelling unit, they are cultivating ambiguity, using gray areas within the zoning code as a form of urban-economic resilience. Thus, when urban plans do not meet the needs of the community, homeowners respond by finding loopholes in land use regulations, using these types of living arrangements to create needed rentals (Reade and Di 2000).

This paper highlights one such irony created by this semantic game: a structure can be built-to-code, but how it is used – can still be illegal. For example, when a floor plan is designed with a separate entry and kitchenette, it strongly suggests an eventual use as a separate dwelling unit. Thus, the rate at which Illegal Accessory Dwellings are created can be estimated by quantifying such suspicious floor plans.

From 2005-2012, Illegal Accessory Dwellings comprised a low of 30% up to 46% of all new residential dwellings units created (not counting apartments and hotels). The highest rate of production was in 2008, during the Great Recession. Thus, this paper suggests that not only do Illegal Accessory Dwellings contribute a substantial number of units to the overall housing supply but also that homeowners increasingly rely on them during poor economic conditions.

This research also serves as an example of how big data (ie. building permit information) is transforming people’s ability to understand their communities and how GIS maps can help spatially visualize data, thereby bolstering civic engagement.

This paper also raises issue of US Census undercounting of “housing units”. Given the significant number of this type of housing, new methods that enable researchers to more accurately portray actual vs planned density, could potentially shift the official landscape of urban growth, infrastructure, and resource allocation.

Research methods include correlational research, GIS mapping and case studies to explain how homeowners circumvent the rules.

Key Words: Illegal Accessory Dwelling Unit (iADU), Secondary Units, Census Undercounting, Zoning Enforcement
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PART I: THE SHORT VERSION OF THIS THESIS

1.1 INTRODUCTION

An Illegal Accessory Dwelling Unit (hereafter: iADU) is a legally constructed room accessory to a primary residence. However, these spaces are frequently illegally occupied as a separate independent dwelling unit (including a bedroom, full kitchen facilities and bathroom), becoming an illegal second dwelling unit on land zoned for single-family use.

A critical distinction made in this study is use vs structure. All iADUs identified in this paper were issued a building permit. Their structure, floor plan, and setbacks are all legal and met local zoning codes at the time of permit issuance. It is only when
these spaces are occupied by a tenant and used as an independent living unit that these spaces become Illegal Accessory Dwellings.

As these types of living arrangements create needed rentals (J. a. Reade 2000), this issue is particularly relevant to Honolulu, which has one of the highest costs of living and the most unaffordable real estate (relative to income) in the nation (Performance Urban Planning 2012). Thus this paper begins with the premise that Illegal Accessory Dwellings actually serve a significant public benefit by adding units to the housing supply, thereby having the net effect of improving housing affordability. iADUs highlight an interesting contradiction in housing policy – while they are officially unwanted, they are desperately needed.

To that end, the goal of this paper is 1) to quantify all legally sanctioned building permit activity to create Illegal Accessory Dwellings, and 2) perform a rudimentary spatial analysis to see what, if any, patterns emerge. With this information, policymakers will have a better understanding of where this type of urban growth is occurring and perhaps which portions of the second unit policy should be modified.

To date, illegal dwellings have not been comprehensively quantified in any major metropolitan area. While studies of illegal units in other cities have used visual surveys (Cchaya 2008) (SPUR 2001) or focused on the hypothetical occupancy of the structure (ie. realtor descriptions that describe potential rental income from a basement studio), the methodology used in this paper systematically investigates all
legally sanctioned building activity, pinpointing only those residential floor plans that are highly suspicious for being converted into a separate rental unit.

While it is common knowledge that these conversions occur, data has been lacking to quantify this type of housing. Using GIS and basic spatial analysis tools, this paper proposes to show where these iADUs are being built and their relationship to other demographic information provided by the US Census.

From the exterior (Figure 1 and 2), it is difficult to tell whether a structure contains a iADU or not. While accessory residential spaces are often lawfully built with a permit, it is only when a tenant moves in, that the iADU becomes an illegal unit. An iADUs physical location, dimensions, and configuration is not the issue; it is how the space is occupied that makes it illegal.

Under the land use code, iADUs are not intended to be used as a bedroom or an independent living unit. This exuberant gray area (Figure 1) is where regulation of planning policy gets messy. Because land use departments cannot effectively monitor or control landlord behavior, the City has great difficulty enforcing occupancy or use provisions, especially on residential zoned land.

1.2 AFFORDABLE RENTAL HOUSING

Organizations such as the AARP, HUD, EPA, the Joint Center for Housing Studies of Harvard University and the SmartCode (AARP 2000) (US 2008) (EPA 2009) (Lawler 2001) (Hurley 2009), specifically name “Accessory Dwelling Units” as a form of supportive housing for seniors and a source of affordable rental housing. Essentially, they are advocating for iADUs that can be legally occupied and rented for income.

Furthermore, secondary units support housing affordability by increasing the number of units available for renters, giving homeowners passive income, thereby supporting neighborhood stability, aging-in-place, (Hare 1991) and long-term community goals such as reducing sprawl and concentrating new development near existing civic infrastructure. But while Honolulu has allowed legal Accessory Dwelling
Units since 1982, (City 1984) there seems to be a disconnect between policy intention and urban implementation that encourages otherwise law-abiding homeowners to operate illegal rentals.

1.3 DIFFICULT TO ENFORCE

Controlling how a space is used is difficult to enforce, especially when the activity occurs within a homeowner’s private residence. This is further complicated by the fact that catching someone in the act of living illegally in an iADU, requires 1) the alleged tenant to admit that they live there, 2) the City Inspector must gain admittance onto the property and/or visual access into the unit to inspect it, and 3) the Inspector must see that that the physical configuration and appliances (ie. sink, refrigerator and stove) do not match approved permit drawings on file with the City. Essentially, determining whether or not a use violation has occurred requires the allegedly guilty party, to cooperate with the City Inspector, so that penalties can be levied against them.

This mode of enforcement selectively punishes the people who are the most cooperative with City Inspectors, while rewarding those who are more deceptive and unresponsive to inspection requests. In theory, an iADU could continue if a City Inspector is unable to gain visual access to verify that the living arrangements are in violation of the Code. Furthermore, anecdotal evidence suggests that some homeowners coach their tenants on what to say if they are confronted by a City Inspector.

1.4 CASE STUDY

The demand for homes that are configured to include a secondary unit can also be seen in predesigned home kits. Homeowners who can’t afford the services of an architect to customize their home to include a separate rental unit can select from a variety of predesigned home kits that include plans and materials from Honsador
Lumber. The Oahu model floor plan is notable for its entry, at the bottom of the stairway. Adding a door at the 1st floor Living Room easily converts this home into two separate dwelling units. The 1st floor already has a wet bar and its own separate entry off the Family Room.

The fact that homes like these are available for purchase off-the-shelf from suppliers who can supply all materials precut and ready to assemble on site, shows how sophisticated and ubiquitous the iADU loophole has become.

As a single-family dwelling, the Oahu model unit would not be required to provide a 1-hour fire-rated separation between units (ie. the floor-ceiling assembly). Consequently, if the initial homeowners added a door at the stairway and sold the home, the physical configuration could easily become a de facto separate, second unit. Essentially a structure that the building code regards as a single-family dwelling, can be illegally converted into a two-family dwelling by adding a door, separating upstairs and downstairs units.

1.5 METHODOLOGY

A key insight that makes this research possible is that when a building permit is issued for residential property, City Plan Examiners will flag projects that contain layouts they deem suspicious for containing an illegal rental unit. In this writer’s experience, living areas that are partitioned separate from the main house and provided with its own exterior entry, bathroom, bedroom and wet bar, would be considered suspicious. Plans that contain a suspicious layout (Figure 6, 7 and 8) trigger a requirement for an affidavit and/or restrictive covenant document to be filed as a condition of permit approval. While the affidavit/covenant document states that the owner of the property promises that the use will not be converted into a separate dwelling unit, in reality, this does little to deter illegal rental activity. However, these data fields provide an excellent way to pinpoint only those permits that contain layouts that are suspicious.
This search criteria is especially useful because many of these permit descriptions do not say “Recreation Room” and of course do not say “Illegal Accessory Dwelling”. Using this as the search criteria avoids the necessity of needing to review the actual approved building permit drawings to determine which ones were suspicious; by flagging the permit as needing an affidavit or restrictive covenant, the City Plans Examiners have already made that determination. Even when the building permit description states new “Hobby Room,” “Gym,” “Sun Room,” or simply “Alterations,” if the permit required an affidavit or restrictive covenant, one can assume that the layout was suspicious and could be easily converted into a separate rental unit. Therefore, this research relies on City Residential Plans Examiners to review all permit drawings.

Exceptions to this rule are: Ohana Dwellings (legal second units), Farm Dwellings, Relocation permits, and Demolition permits. These categories also require either an affidavit or a restrictive covenant, but are not iADUs and were therefore
removed from this study's dataset. The permits that remained were assumed to be iADUs. Spot checking permit descriptions suggests this understanding is consistent with the results.

1.6 FINDINGS

This paper identified a total of 5,680 iADU permits issued in Honolulu between 2005 and 2012 (Figure 4). In comparison, 9,726 single-family or two-family dwellings units and 102 Ohana Dwelling permits were created in the same period. Multifamily dwellings were not included in Figure 4, Housing Unit Production counts.

Figure 5 shows that the highest proportion of iADUs was permitted in 2008, the year of the Great Recession in the US. While this suggests that in worsening economic conditions, homeowners create above average numbers of iADUs, this correlation could also be due to other factors. The second highest number of Illegal Accessory Dwellings occurred in 2011 and one wonders if this correlates to a relapse of bad economic conditions in Honolulu.

The Department of Planning and Permitting has already designated an Ohana Zone, wherein properties have supposedly already been prescreened for adequate road, water and wastewater infrastructure. However, when iADU locations were superimposed over the Ohana Zone, Figure 13 at end, 69% or 3,804 iADU permits issued between 2005 to 2012 were not within the Ohana Zone. A little less than a third
or 1,700 of the total 5,504 Illegal Accessory Dwellings were located within the Ohana Zone. If it is reasonable to assume that at some point in its lifetime, these iADUs will be occupied as an independent dwelling unit, then this pattern of growth suggests that the City is losing control over where urban growth is occurring.

Furthermore, Figure 14 at end shows that the location of the Ohana Zone and Multigenerational Households have minimal overlap, suggesting that local Zoning does not support the community’s need for housing.

Figures 9, 10 (at end) and 11 show that the distribution of iADUs vs new Single and Two-Family dwellings is different. New legal dwellings are statistically more prevalent in West Oahu, whereas iADUs occur primarily within the urban core. This is a striking difference although not unexpected since real estate prices and vacant land availability are more favorable at the urban fringe, which is more conducive to new development. However, this pattern suggests legal dwellings are contributing to urban sprawl. In comparison, iADU locations are consistent with Smart Growth principles, that is, they are primarily urban in-fill, occurring in areas with existing civic infrastructure.

Figure 11: Islandwide Statistical Hotspot Analysis. LEFT: Single and Two-Family Dwellings; RIGHT: Shows Illegal Accessory Dwellings (undocumented density) is increasing, within the urban core.
While it is tempting to assume that iADUs only occur in poor neighborhoods, that is not the case in Honolulu. The neighborhood around Diamond Head features some of the priciest real estate in Honolulu. This area is sprinkled with iADUs but there are also a high percentage of new homes built within the study period (2005-2012) that were either built with an iADU or installed one soon after (Figure 12). One explanation is that owners are building their homes in anticipation of needing a second separate housing unit.

One of the major regulatory barriers to Ohana Dwellings – could be eliminated. Using ArcGIS to intersect the bus stop ¼ mile buffer with Illegal Accessory Dwelling centroid locations, revealed that 4,827 out of 5,504 Illegal Accessory Dwellings or 88% of Illegal Accessory Dwellings were within a 5 minute walk of bus stops. See Figure 15 at end. This is compelling evidence to support reducing off-street parking requirements for Ohana Units from 2 stalls to 1 or none. This is supported by research from Berkeley shows that tenants of Accessory Dwellings are less likely to own cars than the people who reside in the main house (Chapple 2012).
1.7 DISCUSSION

One strong criticism of this research is that it makes the assumption of guilt – that these building permits may contain layouts that are suspicious for being a separate rental, but that does not guarantee that they will be used that way. This is exactly the point of this methodology. While other studies have focused primarily on the behavior of users, this study examines the physical layout of the structure. How a space is used frequently changes over time, while the structure itself is less likely to change. Therefore, the functional layout of a home, can offer substantial insights into how that space is likely be used.

While none of the iADUs included using these search criteria have been verified as containing an illegal rental, it stands to reason that the physical configuration of the spaces are so conducive to its use as a separate rental unit, that at some point of the life of the structure, there is a high likelihood that it will be illegally occupied. It should also be noted that some iADUs do not have direct access to an exterior exit and are well integrated into the floor plan of their unit. It is this writer’s experience that although such instances are rare, there are indeed homeowners that truly desire spaces that are accessory to the main home and design the layout so that the accessory use lacks a separate entry and/or cooking facility. As these integrated accessory uses are much harder to segregate and rent separately from the main house, the City does not consider them as suspicious, does not require an affidavit or restrictive covenant and thus, these spaces were not counted in this study.

Also excluded from this search methodology are structures that are built and/or altered without a building permit. In its simplest form, iADUs can be created simply by closing a door (ie. at the top of a stairway, creating separate Housing Units – Figure 6). Due to the concealed nature of private residences and the ease with which Housing Units can be easily separated/created, these conversions are the most difficult to quantify. Highlighting the differences between use versus structure, this paper
deliberately emphasizes structure: using the physical configuration of a house, as a way of understanding how it will be used.

The issue of having a separate entry is a key defining characteristic of iADUs, for both local officials and the US Census. What makes a floor plan suspicious and therefore triggers the requirement for a restrictive covenant or affidavit, is the presence of absence of a separate entry. The issue of a separate entry is also integral to the Census Bureau’s definition of “Housing Units”:

A housing unit is a house, apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied, or, if vacant, is intended for occupancy as separate living quarters… in which the occupants live separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.” (US Census n.d.)

In personal correspondence with a representative of the Census Bureau, it was established that 1) it is the intention of the Census Bureau to include iADUs in the quantity of Housing Units and 2) if discovered, an iADU would be counted in addition to/separate from the principal residence. A Census representative confirms:

“During this process, we did not attempt to distinguish between what may have been 'legal' or 'illegal' dwellings. Our purpose was to identify any place where people live or could live, but not to determine the legality of the housing unit. Therefore, in response to your question, if a dwelling met the qualifications of a separate housing unit for Census purposes, it was enumerated separately from the household that resided in the main house.” (Lenaiyasa 2013)

However, the quantity of iADUs tallied in this paper and in other reports, suggests that the official census significantly undercount the majority of iADUs (Caucus 2013) (Wegmann 2011). While Figure 16 does not enumerate the quantity of
housing units demolished during this period, it does not seem reasonable that
demolition alone would explain the large discrepancy in the number of Housing Units
created. A simple search of all 2005-2012 building permit raw data for all permits that
contain the word “demo,” results in 6,683 permits. However, this estimate is high,
considering that this number also includes all categories of demolition and partial
demolition permits, not just housing units.¹

One explanation for this is Census’ methodology is fed primarily by building permit
data, which accurately reports new legal dwelling units but does not have a systematic
method of identifying or reporting iADUs. Therefore, the methodology used in this
paper provides a systematic method of quantifying iADUs. The resulting Housing Unit
count (legal + illegal) can then be compared against official housing production
numbers. To the extent that federal funding is allocated based on housing unit
distribution, this research may help city and state level jurisdictions pursue federal
funding that more accurately reflects actual conditions.

¹ While Department of Planning and Permitting does have a data field that specifically captures the change in living
units, they did not respond to this writer’s request for more data in time.
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<td>Single and Two-Family Dwelling Units</td>
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<td>102</td>
<td>Ohana Dwelling Units</td>
</tr>
<tr>
<td>A: 5,683</td>
<td>Illegal Accessory Dwelling Units (iADUs)</td>
</tr>
<tr>
<td>9,044</td>
<td>Multifamily Units</td>
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<td>24,557</td>
<td>Total Housing Units Created (Local data)</td>
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<td>329,300</td>
<td>2005 Est Housing Units (ACS DP04, 1 year est)</td>
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<td>337,389</td>
<td>2012 Est Housing Units (ACS DP04, 2008-2012 5-year est)</td>
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<td>A-B: 8,089</td>
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**Comparison: Local vs US Census Data**

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<td>16,468</td>
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**Figure 16:** Housing Unit Production in Honolulu, 2005-2012. Data from Dept of Planning and Permitting and US Census, American Community Survey.
Figure 17: Floor plan (colorized) from an actual permit. Although the entire structure is considered a single-family dwelling, the colored areas show 3 potential housing units, each with a separate entry (red arrows) and food prep area.
1.8 CONFRONTING BLACK BOXES WITH GRAY SPACES

Reports from planning organizations repeatedly show that 1) with or without government approval, secondary units are being created within residential neighborhoods (Wegmann 2011) (SPUR 2001); and 2) these units rent at or below fair market value (J. a. Reade 2000) (P. H. Hare 1985).
The widespread pattern of iADUs suggests that the traditional command and control approach to regulation is not working. This is especially true for residential properties where homeowners expect the highest degree of privacy and freedom. However, even if this approach were taken to its logical extreme – and City Inspectors were granted police search-and-seizure capabilities, like narcotics enforcement – the list of violators and illegal tenants would result in a mass eviction on the scale of a natural disaster, except this would have been completely man-made. Therefore, current regulations exist in a state of limbo – not allowing but needing iADUs. Even the current complaint-driven enforcement system is more like posturing than sound policy. What would happen if all iADUs uncovered during this research were tendered to the City as a mass complaint? Such mischief only underscores the substantial number of iADUs, highlighting its status as a regulatory gray area.

What then is the alternative to traditional regulation? One possibility is from the legal field’s interest in social normativity research. According to legal scholar W.A. Bogart, when it comes to behaviors that are difficult to regulate, nudging people towards desired behavior: a permit-but-discourage approach, is more effective than legal sanctions alone (Bogart 2011). This could be applied to the Building and Zoning Codes, especially in areas where officials find it difficult to enforce (ie. within a personal residence).

1.9 HARM MINIMIZATION

Bogart’s approach refocuses regulatory efforts on the worst offenders and encourages a mixed methods, multi-pronged approach. Applying this to iADUs means that only those homes that have been converted into multifamily (three or more) units without a permit should be prosecuted since they pose the highest life-safety hazard. For example, the risk of fire is significantly higher for a single-family home that has been converted into a multifamily dwelling (more than three units) without a permit. According to the National Fire Data Center, “Cooking was, by far, the leading
cause of all residential building fires and injuries.” (National 2013) If each unit has its own hot-plate or impromptu cooking area, an accident in one unit could spread quickly to all. This is exacerbated when minimum fire-safety elements required by the Building Code, such as: fire alarms (smoke detectors), egress windows, and minimum clearances around cooking areas, are not provided. Multifamily dwellings have additional safety requirements such as fire-rated corridors, fire-sprinklers, and two means of egress that are typically not provided in illegal conversions.

Multi-pronged support to curb the creation of iADUs would basically entail removing incentives that make homeowners prefer iADUs to legal living arrangements. Major barriers to legal secondary units include: exorbitant permit fees, additional parking stalls required, occupancy limited to family, and the neighborhoods where legal second units can be built are severely limited by sewer capacity. Therefore, policies should realign homeowner incentives to favor legal secondary units. For example: reduce permit fees, reduce the number of stalls required, remove family-only occupancy restriction, and expand sewer capacity to increase the areas where legal secondary units are allowed. These actions taken together would be more effective in deterring the creation of illegal iADUs than strict enforcement of the zoning code.

Other cities have gone further. Seattle temporarily suspended the majority of its permit fees to encourage legal secondary units. Santa Cruz offered subsidized rehabilitation loans at reduced interest rates for homeowners who want to convert an existing space into a legal secondary unit.

1.10 MODERATING EXCESSIVE CONSUMPTION

While Bogart’s writing focused on behaviors related to excessive consumption (gambling, over eating, drug use), this paper notes an analogous situation in the iADU marketplace. While most iADUs are limited to one additional unit, only a few homeowners overindulge or install more than one. This raises an interesting question:
If homeowners use a legal loophole to make one illegal unit, then why aren’t they making two or more?

The answer seems to be because one accessory is the social norm but also, because the City will not issue a permit for more than one accessory use per dwelling (Crispin 2004). If a City Inspector discovers multiple iADUs in a single-family residence, the City will require alterations to revert the home back to single-family use. The potential massive loss of rental income and added rehab costs seem to be enough to deter such activity (Lau 2012). Such conversions are rare not only because it runs against prevailing social norms but also because such configurations make it harder to obtain a building permit. Therefore, Illegal Accessory Dwellings in Honolulu demonstrate that regulations can have greater effectiveness when they reinforce social norms.

1.11 CONCLUSIONS + FURTHER RESEARCH

Considering that all of the Illegal Accessory Dwellings (iADUs) identified on the attached maps are not recognized as legal dwelling units, this research helps situate the nuances of the zoning code in the public discourse by providing maps and pictures. Armed with quantifiable information, lawmakers will be better informed to address public concerns and fears about change.

As GIS becomes an increasingly accessible and user friendly tool, it is being used to help understand the factors that drive urban phenomenon such as iADUs. Such data also challenges assumptions of larger development trends in Honolulu and nationally. In Honolulu, the majority of new single and two-family dwellings are being built at the urban fringe. However, the pattern of iADU development shows that these units are typically built within the urban core that according to the City’s Primary Urban Center development plan, is – except for Kakaako – already built-out. This paper challenges that assumption.
This paper suggests that iADUs are a major contributor of housing, contributing substantially to a shadow supply of housing. On a larger scale, this study draws into question the accuracy of the US Census and suggests that iADUs are not being counted in the Census.
Figure 9: Statistical Hotspot Analysis of Single and Two-Family Dwelling distribution
Figure 10: Statistical Hotspot Analysis of Illegal Accessory Dwelling distribution
Figure 13: Location of ADUs (red) within Ohana Zone boundary (green) and outside of Ohana Zone (yellow).
Figure 14: Location of Multigenerational Households in relation to the Ohana Zone – areas designated for 2nd units. This map shows that the location of the Ohana Zone and Multigenerational Households have minimal overlap, suggesting that Zoning does not support the community’s need for housing.
Figure 15: Most iADUs (yellow dots), especially within the urban core of Honolulu, are within a 5 minute walk (brown buffer zone) to a bus stop. This suggests that parking requirements for secondary units could be reduced within the buffer zone.
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Strachan, Alan, interview by Questor Lau. Email correspondence. (July 30, 2010).


PART II
January 12, 2014

TO: City and County of Honolulu

RE: Response to Dept of Planning and Permitting’s August 30, 2011 letter Requesting for Additional Documentation Required for Processing the Land use Ordinance Amendment of Resolution No 11-205 Relating to Accessory Dwelling Units (Dept Com. 608)

In 2011, the Dept of Planning and Permitted presented a list of additional information needed to respond to a Resolution in support of Accessory Dwelling Units (ADUs). Please see attached in response to DPP’s concerns. The original may be found online:
http://www4.honolulu.gov/docushare/dsweb/Get/Document-116444/68g1m1x.pdf

Respectfully submitted,

Questor Lau
Architect
Doctoral Candidate in Architecture, University of Hawaii at Manoa
1) **A SOURCE OF AFFORDABLE HOUSING**

Organizations such as the AARP, HUD, EPA, the Joint Center for Housing Studies of Harvard University and the SmartCode (AARP 2000) (US 2008) (EPA 2009) (Lawler 2001) (Hurley 2009), specifically name *"Accessory Dwelling Units"* (ADUs) as a form of supportive housing for seniors and a source of affordable rental housing. Across the US and even in Canada and Australia, cities are looking to ADUs as a source of housing that the public sector doesn’t have to subsidize or manage. A report on municipals strategies to end homelessness in British Columbia lists ADUs (“secondary suites”) as the #1 strategy used by most of its cities (Newton 2009).

Generally speaking, ADUs support housing affordability by increasing the supply of rental housing, not for-sale units. ADUs also provide homeowners passive income, thereby supporting neighborhood stability, aging-in-place, (Hare 1991) and long-term community goals such as reducing sprawl and concentrating new development near existing civic infrastructure.

According to a study by the Institute of Urban and Regional Development in Berkeley, ADUs “rented to strangers are at least 6 percent cheaper than non-secondary units when their affordability is expressed in terms of a proportion of Area Median Income (AMI)....” Of the permitted and non-permitted ADUs they studied, 26% of them were “occupied by the homeowner household itself, while an additional 29% [were] occupied friends, family or acquaintances of the homeowner household, some of whom are living rent-free and others of whom are likely paying reduced rents” (Wegman and Chapple 2012, Intro). The following: Table 9 is taken directly from that study; red highlights by writer (Wegman and Chapple 2012).
While Honolulu regulations on Ohana Dwellings have gotten stricter, other cities are doing the opposite – expanding areas where ADUs are allowed and reducing regulatory barriers. To incentivize ADUs, Portland waived System Development Charges until July 31, 2016 (City of Portland n.d.). The Portland Resolution states this amounts to a savings of between $8,000 to $13,000 for each unit (Resolution 36980 2012).2

Table 9. The mean value of various characteristics of units, divided into the categories of non-secondary units (left column, N=164) and secondary units (central column; N=174). The right-hand column indicates whether each variable is or is not significantly different, between the non-secondary and secondary unit subsets, at the 95% level of confidence.

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<th>secondary units**</th>
<th>significantly different***</th>
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</table>

While Honolulu regulations on Ohana Dwellings have gotten stricter, other cities are doing the opposite – expanding areas where ADUs are allowed and reducing regulatory barriers. To incentivize ADUs, Portland waived System Development Charges until July 31, 2016 (City of Portland n.d.). The Portland Resolution states this amounts to a savings of between $8,000 to $13,000 for each unit (Resolution 36980 2012).2

2 According to AccessoryDwellings.org the number of ADUs created has increased substantially because of the fee waiver and other incentives: “Before the original waiver was adopted in early 2010, Portland was permitting 2.6 ADUs per month. That rate jumped to 8.7 ADUs per month in 2011 and is now on track for 12.8 ADUs/month in 2012, a nearly five-fold increase in ADU activity from before the waiver went into effect. There were undoubtedly other factors involved in this jump, including the available of Energy Trust of Oregon incentives for ADUs, zoning code changes to allow ADUs to be larger in comparison to the primary dwelling (but still capped at 800sf)…..” (Spevak n.d.)
In California, the County of Santa Cruz Planning Department has recommended removing a requirement that ADUs rent for an affordable amount. “Occupancy and rent level restrictions are not accomplishing the intended goal of ensuring that second units are rented primarily by low-income or senior households.” Therefore, the report recommended: “Eliminate occupancy and rent-level restrictions for second units.” (Planning Department 2008, Attachment #3)

2) **ADUs vs OHANA UNITS**

If the Ohana Dwelling Unit category remains intact, as-is, then existing nonconformities would not be exacerbated and a new ADU use is added. Nonconforming Ohanas may have the option to change to a conforming use – ie. to be reclassified as a new ADU. One possible way to address this is to simply identify these properties and create an exemption so that they can be expanded.

According to a legislative study in 1988, only 37 Ohana Units in Honolulu had been CPR’ed (Jaworowski 1988, Chap 3, endnote 23). By 1992, a city report stated that approximately 2,160 ohana permits were issued between 1982-1990 and between 7% to 8% (DLU 1992) had been CPR’ed. Since there were no Ohana unit permits issued between 1990-92 (DLU 1992, 3), about 151 to 173 Ohana units were CPR’ed. Presumably there are less units in actuality because not everyone who obtained an Ohana permit was able to complete the construction work³.

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³ For example, a legislative report states that in 1987, 5 years into the Ohana Unit program, a total of 1,395 Ohana permits were issued. However, in June 1987, only 798 (57%) were completed. Since the total Ohana permit count includes legalization of existing units, one would expect the completed count to be higher. The report states, “many of the permits are one to three years old, giving rise to the suspicion that many may be abandoned.” (Jaworowski 1988, Chap 2, footnote 14).
The low number of Ohana Units produced each year suggests that the policy is not effective in stimulating the production of housing units. Instead of creating Ohana Dwellings, the table below shows that homeowners are frequently obtaining permits for spaces that include a separate entry, wet bar, bathroom and bedroom-like space. The setbacks, dimensions and structural components can all be legally permitted. It is only when a tenant moves in that the space becomes illegal – hereafter referred to as Illegal Accessory Dwellings iADUs). Figure 1 shows that the highest rate of iADU permits occurred in 2008 – the year of the Great Recession. Therefore, it seems that not only do iADUs constitute a substantial portion of all residential housing, but homeowners also seem to build more iADUs in a bad economy.

<table>
<thead>
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<th>ANNUAL NEW RESIDENTIAL HOUSING INVENTORY</th>
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<tr>
<td>(Honolulu County)</td>
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<tr>
<td>Year Permit Issued</td>
</tr>
<tr>
<td>SFD + TFD[1]</td>
</tr>
<tr>
<td>Ohana Unit[1]</td>
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<tr>
<td>Total Residential</td>
</tr>
</tbody>
</table>

| Illegal Accessory Dwellings/Total Res    | 30%  | 33%  | 39%  |46%  | 39%  | 39%  | 43%  | 32%  |

[1] Data is from C&C of Honolulu Dept of Planning & Permitting website, Building Permit Bulletin
[2] Qty of bdg permits that required an affidavit or restr covenant (excluding Ohanas, Farm Dwgs, Relos and Demolition permits)
[3] Does not include multifamily housing ie. apartment units are excluded from this count

Figure 1: Proportion of Housing created by 3 categories of dwelling units

This suggests that homeowners create iADUs as a form of urban resilience. If this is true, then one can expect that the number of iADUs will only increase in the future as real estate prices and the cost of living continue to rise. Spatial analysis of Honolulu building permit data shows that when Illegal Accessory Dwellings were superimposed over the Ohana Zone (Figure 2), 69% or 3,804 Illegal Accessory Dwelling permits issued between 2005 to 2012 were
not within the Ohana Zone. A little less than a third or 1,700 of the total 5,504 iADUs were located within the Ohana Zone. If it is reasonable to assume that at some point in its lifetime, these iADUs will be occupied as an independent housing unit, then this pattern of growth suggests that the City is losing control over where urban growth is occurring.

Furthermore, iADUs are not limited to low-income areas of Honolulu (figure 3). Diamond Head is known to have the highest real estate prices in the state but this area also has a higher concentration of iADUs than would be expected due to random chance. Figure 3 shows that the locations of properties that obtained a permit to build a new single- or two-family dwelling and an iADU, between 2005-2012. This suggests that owners are building-in potentially rentable space when new homes are constructed. Clearly, iADUs are not only a phenomenon of lower-income neighborhoods.
Figure 2: Study comparing permits for illegal accessory dwellings issued within and beyond the Ohana Zone.
3) QUANTIFYING ILLEGAL UNITS (Taxes, Controlling Growth)

Allowing ADUs as-of-right would offer homeowners an alternative to building an Illegal Accessory Dwelling (ie. a Rec Room) and renting it illegally. The existing spatial pattern (figures 1 and 2) suggests that iADUs are proliferating beyond control. If this pattern persists, the County stands to lose much needed revenue.

For the life of the structure, an illegal dwelling is not likely to pay taxes or contribute to civic infrastructure fees (ie sewer base charges). Yet its occupants would use county roads and sewers. Accessory Dwellings can generate revenue for the City: permit fees as well as re-occurring property taxes and monthly utility fees, not to mention boosting the construction and finance industries.

As time goes on, if illegal dwellings become the norm, then the City will have an extremely difficult time controlling urban growth.

4) UNINTENDED FAMILY OCCUPANCY RESTRICTION

Although they are called Ohana Dwellings, there is compelling evidence that the state legislature did not have the intention of restricting these units to family members only. A 1991 article in the University of Hawaii Law Review insists: “…the legislature did not restrict Ohana dwellings to family member occupancy. The legislature merely intended to provide affordable housing by allowing the construction of additional dwellings on one residential lot.” (Kea 1991, 510). A 1988 state Legislative Reference Bureau report reiterates: “…given the fact that the text of the law itself does not restrict application to or even refer to families, it would appear that the primary legislative intent was to increase the housing supply, with an incidental benefit for extended families.” (Jaworowski 1988, 6-7) Therefore, restricting Ohana Dwellings to family-only
occupancy was a step that Honolulu County took independent of state mandate. For example, on Maui, Ohana Dwellings are called “Accessory Dwelling Units” and occupancy is not restricted to family.

Data on the number of Ohanas that have been CPR’ed comes from previous City agency reports. A 1984 report states that in 1982-83, “in the program’s first year of implementation, ohana units comprised roughly one-fourth of all single family construction.” (City and County of Honolulu 1984) Subsequently, in 1992, an “Ohana background Report” by the Department of Land Utilization looked at a longer duration and found that the rate of Ohana unit production had slipped. Between 1982 to 1990, approximately 2,160 Ohana permits were issued, which was “about 11 percent of all new single- and two-family dwellings approved....” (DLU 1992) In recent years, this rate has dropped to a mere 1% (figure 1). This trend toward declining rates of Ohana unit production positively correlates with restrictions added over the years.

SEWER CAPACITY

The lack of sewer capacity has undoubtedly played a major role in the number of declining Ohana units. However, if lack of sewer capacity were the primary reason for declining rates of Ohana units, then one would expect there to be an above average rate of new and second dwelling units built in areas that have surplus sewer capacity. Hawaii Kai Wastewater Treatment Plant (HKWWTP) is notable for being a private sewer system that fits this description because sewer capacity does not limit second dwelling units. Therefore, within the HKWWTP boundary, one would expect a higher than average concentration of new legal second dwelling units. However, a study of new housing production between 2005-2012 found that this was not the case (figures 4 and 5). Figure 5 shows that this area had a higher than average
concentration of Illegal Accessory Dwellings. Therefore, this suggests that limited sewer capacity is not the major limiting factor for second dwelling units – Ohana units being a subtype of this.

While this is a very rough comparison that does not control for a wide variety of factors such as Restrictive Covenants, median age of dwellings, median household income, and so on, this does at least suggest that sewer may not be the sole limiting factor. For example, when this writer presented these findings to the Honolulu Board of Realtors’ Board of Directors, there was widespread (albeit erroneous) belief that the City no longer issued Ohana permits. This suggests that lack of community awareness may be a limiting factor as well.

One alternative the Department of Environmental Services may want to consider is counting an Accessory Dwelling Unit at a reduced ESDU. This may further justify reinstating floor area limitations. If the floor area of ADUs were limited in size to be smaller than the primary residence, then it would produce less gallons per day in wastewater discharge. Therefore, for the purpose of calculating sewer capacity, ADUs should be counted at a reduced figure for example 0.15 to 0.5 ESDU. Even new multifamily dwellings are counted at a reduced rate of 0.7 ESDU. Perhaps a reduced ESDU might be a way to “find” sewer capacity and expand the Ohana Zone.

MULTIGENERATIONAL HOUSEHOLDS

Even if the City had the resources to strictly enforce the family occupancy requirement, the locations of multigenerational households⁴ do not align with the Ohana Zone. When census tract data provided by the 2010 US

⁴ According to the US Census Bureau, Hawaii ranks #1 as the state with the highest % of multigenerational households: 11.1% vs 5.6%, national average. The Census defines “multigeneration HH” as having 3 or more generations.
Census is superimposed over the Ohana Zone, it shows that multigenerational households are concentrated in areas outside of the Ohana Zone (figure 6). Therefore, without expanding the Ohana Zone, only a minimal number of multigenerational households will benefit from the current Ohana rules. This is reflected in the very low numbers of Ohana units (figure 1).

**ECONOMIC RECESSION**

Given the fragile situation of Honolulu’s tourist economy, did Illegal Accessory Dwellings help Honolulu survive the Great Recession of 2008 (Pacific Business News 2008)? Did having a tenant help reduce the foreclosure rate and stabilize neighborhoods by providing mortgagees a supplementary income? Figures 9 through 12 present a very preliminary glimpse combining maps produced by the Federal Reserve of San Francisco and this writer. These figures suggest that those areas with high numbers of iADUs experienced a lower rate of foreclosure.
Figure 6: Shows except for Waianae and Waimanalo, the Ohana Zone does not really overlap locations where large concentrations of Multigenerational families are living.
Figure 9: Distribution of Residential Loans (Nolte 2009). Most loans were issued for homes at the urban fringe of Honolulu – just outside the Primary Urban Core.

Figure 10: Time Series: areas affected by concentrated foreclosure (Nolte 2009)

Figure 11: Concentration of New Single and Two-Family Dwelling permits (2005-2012). Red show high concentrations; Blue areas have below average.

Figure 12: Concentration of New Illegal Accessory Dwelling permits (2005-2012). Red show high concentrations; Blue areas have below

Figures 9 through 12: Suggest that those areas with high numbers of Illegal Accessory Dwellings experienced a lower rate of foreclosure.
5) R-10 and R-20 ZONES

Illegal Accessory Dwellings (ie. Rec Rooms) are currently allowed on all residential zones. To the extent that it is easier for homeowners to continue to permit, build and rent Rec Rooms, they will continue to do so. The numerous fees and restrictions on legal second units only incentivizes the creation of Illegal Accessory Dwellings that have none of these limitations.

Only R-20 zoned properties are allowed to have an accessory Guest House, which the LUO defines as “a lodging unit for nonpaying guests or household employees not to exceed 500 square feet of floor area.” Considering these limitations, perhaps ADUs should be expanded into R-20 zones as well.

It should be remembered that the current Ohana regulations includes language whereby owners can petition to have their neighborhood removed from the Ohana Zone. However, to this writer’s knowledge, no neighborhoods have successfully opted-out. Perhaps the similar wording can be adopted for ADUs.

6) NONCONFORMING LOTS

For the same reason as 5) above, the discussion on ADUs should consider allowing them on nonconforming lots. One possible option that could make this more palatable is to reinstate maximum floor area limits. Limiting the size may be the most effective way to limit the number of occupants. ADU size could also be limited to a percentage of the lot size or to the main house.

Another possibility is to experiment with a smaller area and monitor the results and public feedback. If the trial program is a success, then it can be expanded or modified. Other cities have modified minimum ceiling heights to increase the number of basement ADUs. Marin County offered an amnesty program for a limited period of time to encourage homeowners to bring iADUs
into conformance. As stated in section 1), Portland waived all development charges to incentivize legal ADUs. These are options that Honolulu could explore.

7) DENSITY

Illegal Accessory Dwellings (ie. Rec Rooms) have already been deployed in alarming numbers (figure 2). Yet the fact that nobody knew of its widespread nature until these units were mapped suggests that there is minimal impact on neighborhoods. This suggests that since many neighborhoods have been illegally doubled already, ADUs might not substantially alter neighborhood character as much as people fear.

If a Rec Room would be allowed for every dwelling unit on a property that could have up to 8 dwellings, then the City may want to consider what difference it makes whether it wants to have Illegal Accessory Dwellings or legal ADUs. More importantly, how can homeowners be incentivized to do the right thing and how can the City collect more revenue from it (in a way that does not jeopardize life-safety, promotes orderly growth, and maintains neighborhood character)?

8) PARKING

Figure 13 shows that the existing bus system seems adequate to mitigate the need for 2 parking stalls. Using ArcGIS to intersect the bus stop ¼ mile buffer with Illegal Accessory Dwelling centroid locations, revealed that 4,827 out of 5,504 Illegal Accessory Dwellings or 88% of Illegal Accessory Dwellings were within a 5 minute walk of bus stops. This is compelling evidence to support reducing off-street parking requirements for Ohana Units from 2 stalls to 1 or none. This is supported by research from Berkeley shows
that tenants of Accessory Dwellings are less likely to own cars than the people who reside in the main house (Chapple 2012).
Figure 7: Census Tracts with the highest concentration of new Single and Two-Family Dwelling permits (2005-2012) are red. Blue areas have below average numbers.
Figure 8: Census Tracts with the highest concentration of new Illegal Accessory Dwelling permits (2005-2012) are red. Blue areas have below average numbers.
Figure 4: Concentration of Illegal Accessory Dwellings in an area with unrestricted sewer connections shows some areas have higher than average concentration (red/pink areas) of Illegal Dwellings.
Figure 5: New Single and Two-Family Dwellings are not concentrated in an area with unrestricted sewer connections but instead show an average distribution (white areas).
Figure 13: 88% of Illegal Accessory Dwellings are within a 5-minute walk to a bus stop. This supports reducing parking requirements for ADUs.
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APPENDIX II-A

August 30, 2011

The Honorable Ernest Y. Martin, Chair and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Martin and Councilmembers:

Subject: Request for Additional Accompanying Documentation Required for Processing the Land Use Ordinance Amendment of Resolution No. 11-205 Relating to Accessory Dwelling Units

As required by Ordinance 08-8, we are submitting our comments as to submission requirements.

The proposed bill will add a new section to the Land Use Ordinance (L.U.O) to include a new definition ("accessory dwelling unit"), as well as to create new development provisions for accessory dwelling units (ADUs) and amend the L.U.O Master Use Table to include ADUs as a permitted use in the Country and Residential Districts.

Ordinance 08-8, Section 2-24.3, specifies that, "prior to adoption of the resolution", the Director must assist the Council by:

- Advising the Council of any documentation "needed to satisfy the Director's usual requirements" for processing the amendments within 30 days of receiving the City Clerk's notice of introduction of the resolution;
- Providing maps, documents, and information in the possession of the Department within 30 days of receiving a written request from any Councilmember;
- Advising the Council of the sufficiency of any documentation prepared to accompany the proposal within 30 days of submission of the documentation to the Director.

The Department of Planning and Permitting (DPP) typically prepares a report and recommendation for L.U.O amendments which follows a standard format. Supporting documentation for the L.U.O amendment should provide the DPP with information adequate to complete its report, and should address the following with regard to the specific proposal.
Problem Statement: The Resolution indicates several reasons justifying the proposal:

1) The Council notes that the Home for Life Task Force (HFLTF) was created to coordinate research and action to reduce barriers to aging in place and to facilitate multigenerational or accessible living, pursuant to Senate Concurrent Resolution No. 7, SD1, of the 2009 Hawaii Legislature, which requested the President of the Senate, the Speaker of the House of Representatives, and the Governor to create the task force.

2) The Council points out that the Resolution directed the task force to examine a number of issues, including building and zoning codes that present barriers to converting an existing single-family dwelling into a multigenerational or accessible home.

3) In January 2011, the HFLTF submitted an interim report to the Hawaii Legislature, which stated that accessory dwelling units hold enormous potential to encourage multigenerational living and aging in place, promote housing affordability, and help revitalize the construction industry. ADUs also offer a compromise between illegal rentals and onerous restrictions imposed by ohana dwelling units.

Provide documentation that adequately supports the above conclusions.

1) The Resolution refers to Appendix E, Accessory Dwelling Units (ADU): Overview, Background, and Benefits, which contains information on ADUs, multigenerational living, and ohana dwellings. Appendix E suggests that ADUs are a better source for multigenerational living, and workforce and affordable housing, and that the LUO has onerous restrictions on ohana dwellings which encourage illegal rentals. Explain how ADUs promote affordability and multigenerational living. Define "affordable housing" and identify what mechanisms would be required to ensure that ADUs remain affordable. Provide a current comparison of the amount of rent that ohana dwelling tenants pay versus the amount of rent other tenants pay for comparable rental units that are not ohana dwellings. How many of the units are rented at "affordable levels"?

2) Explain why the proposed ADU amendment would not undermine the LUO Ohana restrictions intended to promote multigenerational living, aging in place, and housing affordability; how would the removal of those restrictions for ADUs better promote those objectives? Moreover, explain why the development of ADUs would not affect ohana development, in effect, competing for the availability of sewer, water, and other facilities necessary for ohana development. On the other hand, if the proposed ADU amendment is superior to the existing ohana regulations, would it not be simpler to amend and/or supersede the ohana regulations by removing the occupancy requirement, i.e., the restriction that limits occupancy to persons who are related by blood, marriage or adoption to the family residing in the principal dwelling, but continue to prohibit the sale of such dwelling units by the Condominium Property Regime (CPR)?
3) Explain how amending the LUO regulations to allow ADUs would eliminate illegal rentals. The resolution restricts ADUs to ohana eligible areas, more specifically areas with adequate public facilities. What number or percentage of illegal rentals on Oahu is located in the ohana-designated areas, and what is the estimated number of illegal rental units that could be eliminated? How does this compare to the number of illegal dwelling units in areas that are not ohana-eligible?

4) Appendix E also states that there is a correlation between the added provisions in the LUO, regarding ohana dwellings, and the decline in the number of ohana dwellings constructed. It contends that fewer and fewer ohana dwellings were constructed after each amendment to the LUO section pertaining to ohana dwellings was made. In 1981, Section 46-4 of the Hawaii Revised Statutes was amended to require all counties to permit two dwellings on any residential lots with adequate facilities. In 1982, the Comprehensive Zoning Code was amended to prohibit ohana dwellings in a cluster housing development, a zero lot line, duplex lots, and planned development housing areas. Additional amendments to the LUO occurred in 1989 when limitations were placed on the size of ohana dwellings. (Note: Ordinance 06-15 removed the size limitation). Ohana dwellings were also considered as "accessory" units. In 1989, the State Law was amended to allow counties to determine if ohana dwellings should be allowed as a development option rather than a mandatory provision, and to set reasonable standards for ohana units. Ordinance 99-155 amended the LUO to give the City Council the authority to designate ohana-eligible areas, prohibit ohana dwellings in the R-3.5 Residential District, provide for limited expansion, and to establish a zoning adjustment permit to allow existing ohana dwellings, which had become nonconforming in size, to be rebuilt following destruction. Ordinance 99-101 added a family occupancy requirement and required the filing of a restrictive covenant prohibiting the conversion of the property to condominium property regime (CPR) the property. Identify and/or explain what problems were created by those amendments or provisions, and how and to what extent they affected the construction of ohana dwellings.

What evidence suggests that an LUO amendment was a significant factor in the decrease? What other factors could have contributed to the decline in the construction of ohana dwellings on Oahu? e.g., was there a decrease in the number of ohana-eligible areas due to reduced availability of infrastructure that reduced the potential number of ohana units? Appendix E suggests that, conceivably, Honolulu could expect approximately 428 new ADUs per year. What is the estimated maximum number of ADUs that might be possible in the urban core of Honolulu, given the current sewer capacity and/or other facilities?

5) Explain why ADUs should be permitted in the R-10 Residential Districts, since the intent of R-10 (and R-20 Districts) is to provide for low-density, large lot residential developments, which are at the outskirts of urban development and have some development constraints. Explain why ADUs should be permitted in the R-10 Residential District, but not in the R-20 Districts.

6) Explain why ADUs should be permitted on nonconforming lots whereas ohana dwellings are not.
7) Explain how the potential doubling of density would not negatively affect neighborhoods planned for lower density. Ordinance 10-19 amended LUO Section 21-8.20A to facilitate the development of in-fill housing, i.e., up to a maximum of eight dwelling units may be placed on a single lot in the Residential or Country Districts if the lot meets minimum size requirements, and there is sufficient infrastructure capacity, including adequate street or right-of-way access, to assure public health and safety. The proposal to allow an additional eight ADUs on these lots would result in what might be called excessive density, exceed cluster-type housing density standards without the cluster housing permit review and controls, and overburden public facilities.

8) Explain how the proposal would ensure that the number of off-street parking spaces required for each additional bedroom, over one, would be provided. That is, rooms could be designated for other uses, e.g., home office, den, study or library, rather than a bedroom on the building permit plan to avoid the additional parking space requirement. Yet, if the room is used for bedroom purposes, the number of off-street parking spaces may be inadequate and result in traffic and street congestion in the neighborhood. Explain how the ADU proposal could be revised to close this loophole.

If you have any questions, please call me at 768-8000.

Very truly yours,

David K. Tanoue, Director
Department of Planning and Permitting

DKTnw

APPROVED:

Douglas S. Chin
Managing Director
RESOLUTION

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

WHEREAS, the Home for Life Task Force (HFLT) was created pursuant to Senate Concurrent Resolution No. 7, SD1, of the 2009 Hawaii Legislature, which requested the President of the Senate, the Speaker of the House of Representatives, and the Governor to create the task force "to coordinate research and action to reduce barriers to aging in place and to facilitate multigenerational or accessible living"; and

WHEREAS, the Concurrent Resolution further directed the task force to examine a number of issues, including:

"(1) Building and zoning codes that present barriers to converting an existing single-family dwelling into a multigenerational or accessible home, and to:

(A) Identify any previous legislative attempts to facilitate the creation of multigenerational or accessible homes;

(B) Recommend legislation for reasonable and appropriate changes to building and zoning codes that will facilitate the creation of or conversion to multigenerational or accessible homes; . . . ;

and

WHEREAS, the Concurrent Resolution requested that the members of the HFLT be appointed from the following categories: master-planned community developers; architects or planners who have a background in universal design or are designated as certified aging in place specialists; contractors with experience developing multi-generational or accessible homes; contractors with experience renovating existing homes to facilitate aging in place; trade or professional organizations involved in developing housing; the Hawaii chapters of the American Institute of Architects, American Society of Interior Design, and American Physical Therapy Association; the Building Industry Association; AARP Hawaii; the State Disability and Communications Access Board; county building officials; the State Building Code Council, created by Act 82, Session Laws of Hawaii 2007; educational institution administrators; the Hawaii Association of Realtors; the Healthcare Association of Hawaii; private agencies that assist older adults and individuals with disabilities with housing issues; and members of the community who have first-hand experience with . . . ."
Black boxes and gray spaces
RESOLUTION

Independent living environments, "aging in place" and multi-generational or accessible living; and

WHEREAS, in its January 2011 Interim Report to the Hawaii Legislature ("Interim Report") the HFLTF found, among other things, that:

"(7) Accessory Dwelling Units hold enormous potential to encourage multi-generational living and aging in place, promote housing affordability and help revitalize one of the largest sectors of our local economy, the construction industry. Accessory Dwelling Units are similar, but not synonymous with Ohana Dwelling Units. Accessory Dwelling Units are similar to Ohana Dwelling Units but with less restrictions. Other names for it are "Multigenerational living," "granny units," "in-law apartments," or "ECHO (Elder Cottage Housing Opportunity) housing." One of the key differences is that the occupants of a [sic] Ohana Dwelling Unit in Honolulu are limited to family, whereas Accessory Dwelling Units can be rented to anyone. An Accessory Dwelling Unit is a separate additional living unit, including separate kitchen, sleeping, and bathroom facilities, attached or detached from the primary residential unit, on a residential lot. Accessory Dwelling Units offer a compromise between illegal rentals and the onerous restrictions imposed by Ohana Dwelling Units." (Interim Report at p. 16); and

WHEREAS, the HFLTF discussed Accessory Dwelling Units (ADUs) in greater detail in Appendix E to the Interim Report, a copy of which is attached hereto and made a part hereof; and

WHEREAS, Appendix E lists the following benefits of ADUs:

- Flexibility of use: Multigenerational living allows families to save while pooling their resources, yet owners also have the option to rent if family moves out.
- ADUs supplement the inventory of affordable rentals.
- ADUs create new housing units without government subsidy, which would generate recurring tax revenue and fees to the county and state.
- ADUs add to the workforce housing inventory.
RESOLUTION

- Ease of implementation: ADUs will use existing infrastructure. Existing government policies and personnel can readily be adapted to administer ADUs with minimal changes required. Ohana zones have already been mapped to identify areas where ADUs can be added.

- ADUs are consistent with Smart Growth principles. Most ADUs will be located within the urban core of Honolulu, reducing commute time and congestion. Also, ADUs are urban infill, meaning they are built within existing neighborhoods and use existing utility and roadway infrastructure.

- Economic stimulus to the construction industry.

- Increase government revenue such as property taxes, permit fees, and sewer fees.

- Senior income supplement: ADUs support aging in place by providing a supplemental source of income (rentals) for seniors. ADUs can also provide a companion living arrangement for security where a reduced rent is exchanged for assistance with chores or maintenance around the home.

(Interim Report at pp. 36-37;); and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended (RCH), 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, ROH Chapter 2, Article 24, establishes procedures and deadlines for processing 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 Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended, and ROH Chapter 2, Article 24, to process the proposed amendment to Chapter 21, ROH 1990 (the Land Use Ordinance), attached hereto as Exhibit "A," in the same manner as if the proposal had been proposed by the Director; and
RESOLUTION

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

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, 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:

DATE OF INTRODUCTION:
JUL 22 2011
Honolulu, Hawaii
Appendix E
Accessory Dwelling Units (ADUs): Overview, Background, and Benefits

An Accessory Dwelling Unit (ADU) is a separate additional living unit, including separate kitchen, sleeping, and bathroom facilities, attached or detached from the primary residential unit, on a residential lot.

ADUs are similar to Ohana Dwelling Units but with less restrictions. Other names for it are "Multigenerational Living," "Granny Units," "In-law Apartments," or "ECHO (Elder Cottage Housing Opportunity) Housing." One of the key differences is that the occupants of an Ohana Dwelling Unit (in Honolulu) are limited to family, whereas ADUs can be rented to anyone. (See Comparison Chart)

A common misconception is that ADUs are equivalent to Bed and Breakfast homes (B&Bs) or Transient Vacation Units (TVUs). They are not the same. The key difference is the tenants’ length of stay. B&Bs and TVUs as defined in the Honolulu Land Use Code, provide accommodations to transient occupants for periods of less than 30 days. On the other hand, single family dwellings and ADUs are intended for long term residents and this has a stabilizing effect on neighborhoods.

ADUs offer a compromise between illegal rentals and the onerous restrictions imposed by Ohana Dwelling Units.

Organizations such as the AARPC, HUDC, EPA, the Joint Center for Housing Studies of Harvard University and the SmartCode specifically name “Accessory Dwelling Units” or ADUs as a form of supportive housing for seniors and a source of affordable rental housing. Although the goal of “home for life” is to remain in one’s home for as long as possible, the level of care provided at home is generally not intended to substitute for a nursing home or skilled nursing facility that provides 24-hour care.

1 http://assets.aarp.org/rescenter/consume/d17158_dwell.pdf
2 http://www huduser.org/publications/pdf/ADU.pdf
3 http://www.epa.gov/asia3/hhs/leables
5 http://www.transsec.org/docs/Att-HousingPolicyModule.pdf
Background of Ohana Dwelling Units and ADUs

Multigenerational dwellings were enacted by the State Legislature in 1981 (Act 229). The term “Ohana Dwelling Units” as they are commonly known, was coined by then Honolulu Mayor Eileen Anderson. Initially, there was no restriction that occupancy be limited to “ohana.” The statute only required that the counties allow a second dwelling unit by right, on any residential property that had adequate public facilities (i.e., sewer, water, roads).  

The 1981 enabling legislation linked the importance of multigenerational living and housing affordability – core concepts of aging in place.

Implementation of the State mandate to allow second units proved troublesome at the local level. In the early 1980s, the counties raised the objection that the law removed their ability to control residential density and direct urban growth. Thus, the State amended the law in 1989 (Act 313) to make second units optional rather than mandatory.  

Despite the objections of the counties, the 1988 Legislative Reference Bureau study indicates that none of the counties had repealed their Ohana ordinances.

Similar to Hawaii, California enacted a second dwelling unit law in 1982. California originally promoted second units primarily as a source of affordable housing in all jurisdictions. In an effort to remove barriers to affordable housing, the California law went further to state that local agencies could not create requirements “so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units.”

Despite the new California state law, not all jurisdictions allowed second dwelling units. Those jurisdictions that resisted had problems with illegally built dwellings. For example, San Francisco refused to allow second units. Consequently, “in the 1980s and 1990s, many new buildings were constructed with ground floor spaces (e.g., a recreational room, a wet bar, a bathroom, and a separate entrance) that were easily convertible to a secondary unit.” In other words, in the absence of reasonable laws that permit increased density in areas of high market demand, the markets create illegal dwelling units.

The urban core of Honolulu is seeing a similar increase in the number of illegally built second dwelling units. This situation is aggravated by the fact that the core of Honolulu is essentially

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7 The following excerpt from HRS 46-4, the section currently in effect:

Current state law regarding second units (HRS §46-4 County zoning):

(c) Each county may adopt reasonable standards to allow the construction of two single family dwelling units on any lot where a residential dwelling unit is permitted.

Original Ohana law (as passed in 1981):

(c) Neither this section nor any other law, county ordinance, or rule shall prohibit the construction of two single family dwelling units on any lot where a residential dwelling unit is permitted, provided:

(1) All applicable county requirements, not inconsistent with the intent of this subsection, are met, including building height, setback, maximum lot coverage, parking, and floor area requirements; and

(2) The county determines that public facilities are adequate to service the additional dwelling units permitted by this subsection.

9 Ibid.
built-out. Under existing laws, very little space remains to legally add additional dwellings, either single family or high-rise. The market response to strict regulation of Ohana Dwelling Units has been a strong preference for illegal rental units.11

A comparison between Ohana Dwelling Units and Recreation Rooms used as illegal rentals (see Comparison Chart) highlights why illegal rentals are so attractive. Recreation Rooms are allowed in all residential zones, can be detached from the main house, have no required parking, have no sewer connection fee, and may not have a recurring utility fee (i.e., sewer base charge). Illegal rentals use the state and county infrastructure of sewers, water, and roadways but contribute minimally to taxes and fees. The current regulations actually create strong incentives for owners to prefer an illegal rental unit to a conforming one.

Other Jurisdictions

The Working Group on Codes and Laws is awaiting responses to requests for information from the Counties of Maui, Kauai and Hawaii. However, it is noted that the County of Maui currently allows "Accessory Dwelling Units". Maui has a maximum floor area size, requires that the Accessory Dwelling Unit have a separate entry and must not be attached to the main home. In contrast, the City and County of Honolulu’s Ohana law requires the unit be attached to the main home but the Ohana maximum size is not limited. (See Comparison Chart)

The following discussion will focus on the City and County of Honolulu, as information on Ohana Dwelling Units (i.e., past studies and GIS maps) was readily available to help formulate a model for what could be expected if ADUs were to be implemented.

For example, approximately 17,000 properties are within the Ohana eligible zone. Most existing Ohana Dwelling Units and Ohana eligible properties are located within the urban core of Honolulu.13 If ADUs are allowed only within the existing Ohana eligible zones, it would not increase the residential density above what would have been allowed under the Ohana Dwelling Unit scheme. In effect, allowing ADUs would mainly help to streamline the permit process.

Before the numerous restrictions, Ohana Dwelling Units were a very popular option for homeowners, but the number of Ohana Dwelling Units declined in direct proportion to the number of added restrictions.

<table>
<thead>
<tr>
<th>Ohana Dwelling Units as a % of the total number of new dwelling permits:</th>
</tr>
</thead>
<tbody>
<tr>
<td>25% 1992-8914</td>
</tr>
<tr>
<td>11% 1992 to 199011 (restrictions added)</td>
</tr>
<tr>
<td>4.4% 200810 (more restrictions added, 1994)</td>
</tr>
<tr>
<td>1.2% 200917</td>
</tr>
</tbody>
</table>

11 Primary Urban Center Development Plan (Honolulu) [http://honoluluudpp.org/planning/Puc/Puc3.pdf]
In its first year of implementation, (1982-83) more Ohana Dwelling Units would have been built. However, up to 40% of Ohana permits were rejected because of inadequate sewers. The very low number of Ohana permits issued in Honolulu (see chart) suggests that requirements are too restrictive. In 2008 and 2009, Ohana permits were 1.4% and 1.2% of New Dwelling permits. In fact, there were more Relocation permits than Ohana permits, meaning that people found it more desirable to haul an entire house from one property to another and spend the money to retrofit and bring it up to code rather than apply for an Ohana permit.

In comparison, the County of Maui adopted “Accessory Dwellings” and does not limit occupancy to family. The County of Maui continues to enjoy a healthy rate of new ADUs.

Similar to Hawaii, Santa Cruz, California, also has high real estate values and also struggles with housing affordability. In 2003, Santa Cruz streamlined their ADU law to make it easier for homeowners to get permits and financing. The table shows that from 2007-2009, the number of Accessory Dwelling permits in Santa Cruz jumped to approximately 50% of the number of single family permits issued. Comparatively:

- Santa Cruz’s ADU permits = 50% of New Dwelling permits
- Maui’s ADU permits = 16% of New Dwelling permits
- Honolulu’s Ohana permits = 1% of New Dwelling permits... we need to change!

<table>
<thead>
<tr>
<th>MAUI COUNTY: # of Bldg Permits Issued</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-Family, detached</td>
<td>1063</td>
<td>535</td>
<td>280</td>
</tr>
<tr>
<td>valuation</td>
<td>$263,121,848</td>
<td>$152,701,147</td>
<td>$71,145,201</td>
</tr>
<tr>
<td>avg cost per unit</td>
<td>$247,528</td>
<td>$285,423</td>
<td>$254,090</td>
</tr>
<tr>
<td>Accessory Dwelling</td>
<td>192</td>
<td>79</td>
<td>46</td>
</tr>
<tr>
<td>valuation</td>
<td>$12,237,820</td>
<td>$4,846,610</td>
<td>$2,906,004</td>
</tr>
<tr>
<td>avg cost per unit</td>
<td>$63,739</td>
<td>$61,349</td>
<td>$63,174</td>
</tr>
<tr>
<td>% of Single-Family permits</td>
<td>18%</td>
<td>15%</td>
<td>16%</td>
</tr>
</tbody>
</table>

SOURCE: Honolulu Dept of Planning & Permitting website


Although the chart shows declining numbers of Accessory Dwelling Permits, the overall construction industry experienced a decline and is reflected in a reduced number of permits in single family construction as well.
According to a Legislative Reference Bureau study, "[E]ven when used for non-family members, [Ohana units] help to alleviate the housing shortages experienced by all four counties. The family restriction works as long as there are family members who are available to occupy the Ohana Dwelling Unit. But young couples may eventually move to their own home, and elderly relatives will eventually pass on. If the unit must remain vacant because no family member is available to live there, not only is a valuable resource wasted, but the family may be caught in a financial bind if it is unable to realize any income at all from the unit to offset the payments on the debt incurred to build the unit. In a worst-case situation, this restriction could devastate the family if the loss of income from the unit that must remain vacant leads to foreclosure on the entire lot."

Benefits of ADUs

Flexibility of Use: Multifamily living allows families to save while pooling their resources, yet owners also have the option to rent if family moves out. Multigenerational living works best when there is a separation between units.

Affordable Rentals: ADUs also supplement the inventory of affordable rentals. ADUs rent for close to or below Department of Housing and Urban Development established rental rates. This is due in part to the requirement that ADUs require the owner to occupy either the main house or the ADU unit versus absentee owners. Landlords that live on the premises tend to be more selective of their tenant and willing to compromise on the rent for a better tenant.

Create New Housing Units: If Honolulu allowed ADUs and had similar adoption rates as Santa Cruz, it could expect approximately 428 new affordable housing units per year. These units would be built and managed without any government subsidy (ie. built, managed and maintained by small private homeowners) and in fact would generate reoccurring tax revenue and fees for the county and state.

Workforce Housing: An alternative analysis of the number of anticipated ADUs is to consider Honolulu’s historical average of 1,500 new single family dwellings permitted each year x 25% = 375 new ADUs per year (privately funded). Comparatively, Hawaii Housing Finance and Development Corporation (HFFDC) plans to deliver 380 (government subsidized) new or preserved housing units in 2010. As the Department of Business, Economic Development, and Tourism (DBEDT) acknowledges, "market forces alone will not deliver necessary housing." Statewide, approximately 23,000 affordable and workforce housing units are needed.

Ease of Implementation: ADUs will use existing infrastructure, not only utilities such as roads and sewer lines, but also personnel. Existing government policies and personnel can readily be adapted to administer ADUs with minimal changes required. Ohana zones have already been mapped to identify areas where ADUs can be added.

Built Green: The proposed State Building Codes will require all additions/alteration work to be energy efficient. ADUs are consistent with Smart Growth principles. Most ADUs will be located within the urban core of Honolulu, reducing commute time and congestion. Also, ADUs are urban infill, meaning they are built within existing neighborhoods and use existing utility and

21 According to City and County of Honolulu’s Dept. of Planning and Permitting website, 856 building permits were issued for new dwelling units in 2009. 50% of this amount is 428 new ADUs.
22 25% is percentage of new Ohana Dwelling Units built in first year they were legalized in 1982-83.
roadway infrastructure. Without infill development, the only alternative is to up-zone residential to apartment density or rezoning of conservation or agricultural land, converting green fields into urban use. In 1984, the number of Ohana Dwelling Units built at that time helped reduce sprawl. "theoretically, about 45 acres of additional land would have been required had these additional units been constructed in a typical subdivision."23

Economic Stimulus: In a slow economy, ADUs can provide a cost-effective option for a community to add dwelling units and improve housing affordability. Interior Alterations generally cost less than building a New Addition. Also, since the ADU is built on the same property, there is no land acquisition cost. A 1984 program evaluation of Ohana housing reiterates: "It was a slow year for single family residential construction on Oahu in 1982-83. However, in the program's first year of implementation, Ohana units comprised roughly one-fourth of all single family construction. Without the Ohana zoning provisions, these units probably would not have been built."24

Increase Government Revenue: ADUs can help stimulate the construction industry, which will produce a ripple effect as homeowners secure financing, purchase, build and rent their homes. Increasing property taxes, permit fees, sewer fees are all byproducts of installing ADUs.

Senior Income Supplement: ADUs support aging in place by providing a supplemental source of (rental) income and thus prolong independence. ADUs can also provide a companion living arrangement for security and where a reduced rent is exchanged for assistance with chores or maintenance around the home. For seniors, risk of falls and fears about neighborhood crime rates may be reduced by having someone they can trust living in the ADU.

24 ibid
## Comparison of ADU vs Ohana Unit vs Rec Room

**10/11/11**

<table>
<thead>
<tr>
<th></th>
<th>Accessory Dwelling Unit <em>(proposed)</em></th>
<th>Ohana (currently allowed)</th>
<th>Rec Rooms (as illegal rental unit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min Lot Size req’d</td>
<td>R-3.5: Not allowed</td>
<td>5,000 sq ft</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td></td>
<td>R-5: 5,000 sq ft</td>
<td>5,000 sq ft</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td></td>
<td>R-7.5: 7,500 sq ft</td>
<td>7,500 sq ft</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td></td>
<td>R-10: 10,000 sq ft</td>
<td>10,000 sq ft</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td>Country</td>
<td>1 acre</td>
<td>1 acre</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td>AG-1</td>
<td>Not allowed</td>
<td>5 acres</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td>AG-2</td>
<td>Not allowed</td>
<td>2 acres</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td>Max Floor Area</td>
<td>To be determined</td>
<td>Unlimited</td>
<td>+/- 1,000 sq ft or what would be “Accessory” to Main House.</td>
</tr>
<tr>
<td>Max Lot Coverage</td>
<td>- 50% max lot coverage</td>
<td>- 50% max lot coverage, 25% in Country</td>
<td>- 50% max lot coverage, 25% in Country</td>
</tr>
<tr>
<td>Attached or Detached to main house?</td>
<td>Attached or Detached</td>
<td>Attached or Detached</td>
<td>Attached or Detached</td>
</tr>
<tr>
<td>Parking Req’d</td>
<td>1 stall min; 1 stall per bedroom</td>
<td>2 stalls min</td>
<td>None (in general: 1 stall if increasing floor area of house over 3,000 sf - As per LUO table 21-5.1)</td>
</tr>
<tr>
<td>Occupancy</td>
<td>Unrestricted</td>
<td>Restricted to occupants related by blood, marriage, or adoption to family living in main house</td>
<td>Often rented as a dwelling unit illegally.</td>
</tr>
<tr>
<td>Kitchen</td>
<td>Full Kitchen</td>
<td>Full kitchen</td>
<td>Bar Area only, but often illegal full kitchen</td>
</tr>
<tr>
<td>Floor Plan restrictions</td>
<td>none</td>
<td>none</td>
<td>Bedrooms/Closets not allowed; subsequent alterations often made without a permit</td>
</tr>
<tr>
<td>Legal Forms req’d</td>
<td>Declaration of Restrictive Covenants</td>
<td>Declaration of Restrictive Covenants</td>
<td>Affidavit or Declaration of Restrictive Covenants</td>
</tr>
<tr>
<td>Sewer Connection Fee</td>
<td>None</td>
<td>$5,541</td>
<td>None</td>
</tr>
<tr>
<td>Monthly Sewer Fee</td>
<td>Additional $68.39/mo for 2nd dwelling + usage fee</td>
<td>Additional $68.39/mo for 2nd dwelling + usage fee</td>
<td>No additional charge, depending on configuration when inspected</td>
</tr>
<tr>
<td>BWS 2nd meter</td>
<td>Allowed (extra charges apply)</td>
<td>Allowed (extra charges apply)</td>
<td>Not allowed</td>
</tr>
<tr>
<td>HECO 2nd meter</td>
<td>Allowed (extra charges apply)</td>
<td>Allowed (extra charges apply)</td>
<td>- Not allowed</td>
</tr>
<tr>
<td>Trash</td>
<td>grey, blue and green bin</td>
<td>grey, blue and green bin</td>
<td>Increased use/demand, no added bins</td>
</tr>
</tbody>
</table>

**CONCLUSION:**

- Rec Rooms that are rented illegally. Have all the benefits of Ohana Units, w/o contributing taxes or paying the required fees.
- Ohana Units are the most restrictive and have the highest fees.
- ADU’s – remove major incentives to create illegal rental units; help ease housing affordability.
Black boxes and gray spaces

EXHIBIT A
A BILL FOR AN ORDINANCE

RELATING TO ACCESSORY DWELLING UNITS.

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

SECTION 1. The purpose of this ordinance is permit accessory dwelling units in certain zoning districts.

SECTION 2. Section 14-1.6, Revised Ordinances of Honolulu 1990 ("Use of public sewers"), is amended by amending subsection (b) to read as follows:

"(b) Permit to Connect.

(1) A permit to connect shall be obtained from the department before any connection or reconnection may be made to a public sewer.

(2) Said permit is issued only for the facility or improvement shown on the original plans and specifications or application.

(3) Where any money or payment is due the department for a connection, the full amount shall be paid before the connection is made.

(4) Said permit will be issued only after an application for a building permit has been filed.

(5) All connections for industrial wastewater shall require an industrial wastewater discharge permit before a permit to connect is issued.

(6) Within 15 calendar days of receipt of a permit application to connect an accessory dwelling unit, the director shall approve the application as submitted, approve the application with modifications and/or conditions, or deny the application and provide the applicant with a written explanation for the denial."
charges, provided, they will be served directly or indirectly by the city's wastewater system.

(2) Applicants for structures on any existing vacant, residential zoned property shall be exempt from paying a system facility charge for connecting one equivalent single-family dwelling unit to the city’s wastewater system. In the event more than one equivalent single-family dwelling unit is connected to the system, system facility charges shall be assessed for each additional equivalent single-family dwelling unit connected.

(3) Applicants for structures on any vacant residential zoned property that is created in accordance with city subdivision rules and regulations after the effective date of this article shall be assessed system facility charges for each equivalent single-family dwelling unit connected to the system.

(4) Applicants for structures to be completed after the effective date of this article which will initially be served by either private individual wastewater disposal systems or private wastewater treatment plants shall be subject to a deferred wastewater system facility charge. Payment of the deferred charge shall not be required until such time as connection is actually made either directly or indirectly to the city's wastewater system.

(5) All other applicants for structures to be completed after the effective date of this article which will be served either directly or indirectly by the city's wastewater system shall be subject to the wastewater system facility charge, including federal, state, city, charitable, religious or other tax-exempt entities; except that the wastewater system facility charge shall be reduced for low-income housing projects in accordance with Section 14-10.6[1]; and provided that applicants for accessory dwelling units created in accordance with Section 21-8[,] shall not be subject to the wastewater system facility charge. For the purposes of this subsection, "accessory dwelling unit" shall mean the same as is defined in Section 21-10.2[2].
SECTION 4. Table 21-3, Revised Ordinances of Honolulu 1990, as amended ("Master Use Table"), is amended by amending the "Dwellings and Lodgings" category to add a new "Accessory Dwelling Units" use category to read as follows:

'TABLE 21-3
MASTER USE TABLE

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Wailuku Special District. (Please refer to Table 21-8(b)).

<table>
<thead>
<tr>
<th>KEY</th>
<th>USES</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Special accessory use subject to standards in Article 5</td>
</tr>
<tr>
<td>C</td>
<td>Conditional Use Permit subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)</td>
</tr>
<tr>
<td>P</td>
<td>Permitted use subject to standards in Article 5; public hearing required</td>
</tr>
<tr>
<td>PRU</td>
<td>Plan Review Use</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ZONING DISTRICTS</th>
<th>PD</th>
<th>AD</th>
<th>A-2</th>
<th>CD</th>
<th>R-1, R-2</th>
<th>R-1A, R-2A</th>
<th>R-1B, R-2B</th>
<th>R-3A, R-3B, R-3C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling and Lodging</td>
<td>F</td>
<td>F</td>
<td>F</td>
<td>F</td>
<td>F</td>
<td>F</td>
<td>F</td>
<td>F</td>
</tr>
</tbody>
</table>

1See standards in Article B

SECTION 5. Chapter 21, Article B, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new section to be appropriately designated by the revisor of ordinances and to read as follows:

"Sec. 21-8. Housing--Accessory dwelling units.

(a) The purpose of this section is to allow the creation of accessory dwellings for the purpose of alleviating housing shortage.

(b) It is intended that accessory dwelling units be allowed only in areas where wastewater, water supply and transportation facilities are adequate to support additional density.

(c) An accessory dwelling unit may be located on a lot in the R-5, R-7.5, R-10 and country zoning districts, with the following limitations:
(1) The maximum size of an accessory dwelling unit shall not be limited but shall be subject to the maximum building development standard in the applicable zoning district.

(2) Accessory dwelling units shall not be permitted on lots within a zero lot line project or on duplex unit lots.

(3) Each primary residence shall have a maximum of one accessory dwelling unit. No more than eight accessory dwelling units shall be permitted on any single lot. More than eight accessory dwelling units shall be processed under the established procedures for cluster housing, planned development housing or subdivision.

(4) An accessory dwelling unit shall not be allowed as an accessory to an ohana unit.

(5) The owner-occupant of the accessory dwelling unit shall occupy the primary residential unit or the accessory dwelling unit.

(6) One off-street parking space shall be provided for the accessory dwelling unit. One additional off-street parking space shall be provided for each bedroom over one in the accessory dwelling unit.

(7) 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 not use the condominium property regime established by HRS Chapter 514A to separate the ownership of an accessory dwelling unit from its primary dwelling. 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 Chapter 21 and be grounds for enforcement of the covenant by the director, pursuant to Section 21-2; 160, et seq., and shall 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.
(d) An accessory dwelling unit may be located on a nonconforming lot as long as all other applicable development standards are met.

(e) An accessory dwelling unit may be attached or detached from the principal dwelling unit and may have its own entry.

(f) An accessory dwelling unit may have a full kitchen.

SECTION 6. Chapter 21, Article 8, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new section to be appropriately designated by the revisor of ordinances and to read as follows:

'Sec. 21-8. Procedures for approval of accessory dwelling units.

The department, with the assistance of other agencies, as appropriate, shall adopt rules relating to accessory dwelling units, including rules to establish the following:

(a) Procedures for designating areas eligible for accessory dwelling units, including rules providing that:

(1) Only those areas that are determined by the appropriate government agencies to have adequate public facilities to accommodate accessory dwelling units shall be eligible thereto.

(2) Upon a finding by the responsible agency that wastewater treatment and disposal, water, or transportation facilities are not adequate to accommodate additional accessory dwelling units in any eligible area, no more accessory dwelling units shall be approved in that area.

(3) Notwithstanding the adequacy of public facilities, if the owners of 60 percent of the residential zoned lots in the same census tract sign a petition requesting that residential-zoned lots in the census tract be excluded from eligibility for accessory dwelling units and submit the petition to the department, no new accessory dwelling units shall be approved on residential-zoned lots in that census tract from the date the department certifies the validity of the petition. For purposes of this subdivision, the term "owners" shall mean the fee owner of property that is not subject to a lease and shall mean the lessees of property that is subject...
to a lease. For purposes of this subdivision, the term "lease" shall mean "lease" as that term is defined in HRS Section 516-1.

(4) The director may adopt rules and regulations pursuant to HRS Chapter 91 to establish procedures for, to implement and to further define the terms used in subdivision (3). These rules may include, but not be limited to, provisions relating to the form of petitions, determination of necessary signatures, where there is more than one owner or when the owner is an entity, the signing of petitions, validity of signatures, the withdrawal of signatures, the time frame for collection of signatures, verification of signatures, certification of results, duration of the prohibition and procedures upon the change of census tract boundaries.

(b) Standards and criteria for determining adequacy of public facilities, to include but not be limited to:

(1) Width, gradients, curves and structural condition of access roadways.

(2) Water pressure and sources for domestic use and fire flow.

(3) Wastewater treatment and disposal.

(4) Any other applicable standards and criteria deemed to be appropriate for the safety, health and welfare of the community."

SECTION 7. Section 21-10.2, Revised Ordinances of Honolulu 1990, is amended by adding a new definition of "Accessory dwelling unit" 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 residential unit."

SECTION 8. On an annual basis, the Director of Planning and Permitting shall submit a written status report to the Council documenting the number of new accessory dwelling units constructed each calendar year, the geographic location of the new accessory dwelling units, and the average size and floor area of new accessory dwelling units. The status report shall be submitted to the Council no later than December 31 of each year.

SECTION 9. The initial areas considered for designation of eligibility of accessory dwelling units shall be those areas that are eligible for ohana accessory dwellings. Within 30 days of the effective date of this ordinance, the Director of Planning
A BILL FOR AN ORDINANCE

and Permitting shall identify additional areas that have water and wastewater system design capacity sufficient to accommodate additional dwellings without detriment to the water and wastewater systems or to other users. Within 120 days of the effective date of this ordinance, the Director of Planning and Permitting shall prepare maps identifying areas eligible for accessory dwelling units. These maps shall be available for public inspection.

SECTION 10. 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.
A BILL FOR AN ORDINANCE

SECTION 11. This ordinance shall take effect upon its approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of __________, 20__

PETER B. CARLISLE, Mayor
City and County of Honolulu
PART III: THE LONG VERSION

1. INTRODUCTION

There has been a lot of research on secondary units on residential land, showing that it supports housing affordability by increasing the number of units available for renters, gives homeowners passive income thereby supporting neighborhood stability and aging-in-place, and supports long-term community goals such as reducing sprawl. But Honolulu already has a second unit ordinance (since
1982)\(^5\) and does not seem to be experiencing these same benefits. Are the promises of secondary units a lie – or is there some other mechanism at work, undermining the good intentions of policy makers? It is this intersection between intentions versus real world implementation of policies that interests me.

However, not all regulatory environments are the same. This paper deals with observations made specifically about the local government of the City and County of Honolulu, Hawaii and should not be generalized to other locations. This paper describes from an architect’s perspective, how the policy and enforcement mechanisms the local government currently uses to regulate the use of low-density residential property, are not working and are having the opposite of their intended effect. Within certain residential areas, households are doubling in density. This puts a strain on civic infrastructure such as wastewater, domestic water, solid waste pickup, and on-street parking. And when construction methods do not meet minimum safety requirements of the building code, this increase the risk of fire damage and jeopardizes life-safety.

While others debate whether or not homeowners should be allowed to have two units instead of one, entire communities are mobilizing to address the housing shortage by building these units and allowing tenants to occupy them illegally. This is perhaps on reason why, the following table lists the creation of secondary units as the number one strategy cities in British Columbia use to stimulate the production of affordable housing.\(^6\)

\(^5\) "Ohana Housing: A Program Evaluation." City and County of Honolulu Office of information and Complaint. September 1984. Previously available from the Municipal Reference and Records Center, which has since closed; currently available online, uploaded by writer to http://www.scribd.com/full/43559683?access_key=key-2607mkbucqqg63e7bds

1.1 WHAT IS A SECONDARY DWELLING UNIT (OHANA UNIT)?

Secondary units are customarily smaller structures that constitute an independent living unit (including a bedroom, kitchen facilities and a bathroom) in
addition to the principal residence. They have many names7 but in Honolulu, they are called Ohana Dwelling Unit ("Ohana" means family in the Hawaiian language). The term secondary unit, unapproved unit,8 and Recreation or Rec Room are used interchangeably throughout this paper, because in many cases living area is built and occupied without the proper permits and approvals and therefore cannot be considered a legal Ohana Unit. In this paper, an unapproved unit refers to a space that is accessory to a primary residence and is used as an independent dwelling unit with its own kitchen, bedroom(s), and bathroom.

In Honolulu, the Department of Planning and Permitting is charged with the regulatory aspects of the zoning and building codes and so regards the issue of secondary units on land zoned for single-family residential use with a degree of suspicion. However, the bottom line is that these types of living arrangements create needed rentals9,10 in a city with one of the highest costs of living and real estate prices11 in the nation.

1.2 AFFORDABLE RENTAL HOUSING

Organizations such as the AARP12, HUD13, EPA14, the Joint Center for Housing Studies of Harvard University (JCHS)15 and the SmartCode16, specifically name

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7 In other cities they are called Accessory Dwelling Units (ADUs), Secondary suites in Canada, granny flats, laneway housing, ECHO Housing (Elder Cottage Housing Opportunity) and many other names.
8 A common misconception is that unapproved units are equivalent to Bed and Breakfast homes (B&Bs) or Transient Vacation Units (TVUs). They are not the same. The key difference is the tenants’ length of stay. B&Bs and TVUs as defined in the Honolulu Land Use Code, provide accommodations to transient occupants for periods of less than 30 days. On the other hand, single family dwellings and Ohana Units are intended for long term residents and this has a stabilizing effect on neighborhoods.
9 Julia Reade and Zhu Xiao Di, “Residential Conversions,” Paper number W00-5, Joint Center for Housing Studies, Harvard University, August 2000.
10 Youtube features a short online video about the impact of ADU’s in Arvada, Colorado: http://www.youtube.com/watch?feature=player_embedded&v=LlDb2iG5p04
11 In 2012, the Honolulu housing market ranked #1 as the most unaffordable housing market in the United States. Among the several cities surveyed worldwide, only Hong Kong, Sydney and Vancouver were more unaffordable. Honolulu then clearly offers world class living expenses without providing a commensurate earning power. "8th Annual Demographia International Housing Affordability Survey: 2012. Ratings for Metropolitan Markets. Australia, Canada, China (Hong Kong), Ireland, New Zealand, United Kingdom, United States," by Performance Urban Planning. http://www.demographia.com/dhi.pdf Last Accessed October 08, 2012.
12 http://assets.aarp.org/rgcenter/consume/d17158_dwell.pdf
14 http://www.epa.gov/aging/bhc/guide/
“Accessory Dwelling Units” as a form of supportive housing for seniors and a source of affordable rental housing.

Of all the cities studied, Vancouver seems to have the most progressive regulations. Vancouver explicitly embraced Secondary suites as part of their strategy on producing affordable housing. For example, it has gone beyond simply expanding areas where second units are available. Its current strategy is to encourage secondary suites for all single-family dwellings. It plans to “incentivize a minimum standard of suite-ready status in all new ground-oriented housing (single-family homes, medium-density housing where appropriate), making it easier for homeowners to add secondary suites.”

Therefore, this thesis also seeks to reframe the discussion of unapproved Secondary units in light of their potential benefits to the:

- Community: by adding rental capacity, mostly within the Primary Urban Center;
- Construction and Finance Industries: by creating job opportunities as homeowners seek ways to utilize equity in their homes and hire builders; and
- Government Officials: by generating more revenue (i.e. through increased property valuation and infrastructure fees) without raising tax rates.

Second units on residential land hold great opportunity to contribute thousands of units to the housing supply. This fact if often overlooked by planners. Even the City’s own Primary Urban Core Sustainable Community Plan states that the "PUC [Primary Urban Core] is essentially “built-out” – i.e., there is no reservoir of vacant land designated for future urban use." Although the Plan suggests that only Kakaako can support new development, it is referring specifically to high-density, high-rises. While it is true that older neighborhoods in town cannot support high-density

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16 Based on Andrés Duany’s Form-Based Code http://www.transact.org/docs/AffHousingPolicyModule.pdf
18 Primary Urban Center Development Plan (Honolulu) http://www.honoluludpp.org/Planning/DevelopmentSustainableCommunitiesPlans/PrimaryUrbanCenter.aspx
redevelopment, they can absorb small-scale in-fill projects. Therefore secondary units can play a key role in providing thousands of additional dwelling units within the Primary Urban Center.

Also, finding ways to densify the urban core is particularly relevant as Honolulu struggles to find the residential densities crucial to support Transit Oriented Development (TOD) corridor.

1.3 THE FORGOTTEN PRIVATE SECTOR

Individual homeowners of residential land are often overlooked as large developers and government subsidies focus on building West Oahu. But large residential projects can take years to develop, whereas the individual homeowner is often ready, willing and able to take on small scale alterations and additions that can add dwelling units to a neighborhood, right now. Sprinkled throughout a community, housing capacity can be added with minimal or no public subsidies, requiring no ongoing maintenance or management on the part of the government.¹⁹

This paper is written from an architect’s perspective and proposes to:

1) Explain how the current system encourages the creation of unapproved dwelling units;
2) Show why continuing this pattern of growth is undesirable: it is not built to code and the gov’t loses control over where urban growth is occurring,
3) Provide an estimate of the potential number of secondary units and public revenue that could be generated if regulations were liberalized;
4) Explore the results from other cities’ second unit ordinances and lastly;

¹⁹ This is a timely topic, as the HHFDC is preparing sell nine affordable housing projects to private a developer because according to HHFDC Board Chairman and Executive Vice president of Commercial Lending at Bank of Hawaii, “When you look at the cost, it’s just obscene.” “State Set to Offload Affordable Housing.” By Gomes, Andrew. Honolulu Star – Advertiser, April 13, 2013. Accessed April 27, 2013. [http://search.proquest.com/docview/1326586620?accountid=27140](http://search.proquest.com/docview/1326586620?accountid=27140)
5) Make minor modifications to Honolulu’s existing building and zoning codes based on the above research.

1.4 REGULATION ADDS TO HOUSING COSTS

Reducing unnecessary regulation is critically related to Honolulu’s housing needs. In its most simplistic form, the problem can be reduced to a supply-demand issue. Government regulations make it unprofitable for the private sector to build housing. Meanwhile, the public sector finds that its costs are also too high. So then it falls to the private sector to find a solution.

If "market forces, alone, will not deliver necessary housing," then government could help by streamlining regulations, removing barriers that limit new affordable housing. When it comes to secondary units and illegal construction, a Santa Cruz Grand Jury report remarked, “the permitting processes are often too slow, too complex and too costly. Making the system simpler, cheaper and faster could encourage more people to comply. Amnesty programs could help. More people in compliance would mean more people are paying taxes and revenues would increase.”

And yet, recent legislative changes have only added more requirements, making construction within low-density residential (primarily single-family) zones more expensive and housing less affordable.

20 According to a 2008 committee convened by the Honolulu Mayor, the affordable housing crisis is seen as a “supply” issue (page 18). Furthermore, the report stated that when government steps in to create affordable housing, it “is estimated that it takes a subsidy of about $147,000 per unit to produce a one-bedroom one-bath affordable rental affordable to a household earning 50% AMI (Area Median Income).…. This assumes the land is virtually free and that these units are not subject to the general excise tax or real estate taxes. This means greater incentives are needed to encourage increased production of affordable housing.” (Mayor’s Affordable Housing Advisory Group 2008, 21) http://hawaiihousingalliance.com/docs/pubs/State, County, Legislative Housing Reports/Honolulu Housing/Comprehensive Housing Strategy for the City and County of Honolulu.pdf


Changes include the city’s adoption of the International Energy Efficiency Conservation Code in 2006 that has imposed new requirements for fenestration. New walls and roofs must now have insulation or heat reflective barriers. In addition Honolulu upgraded from the 1997 version of the Uniform Building Code to the 2003 International Residential Code (IRC) in 2006. As amended, the IRC 2003 requires that windows for homes meet hurricane impact resistance standards. In 2010, a state law went into effect, requiring Solar Water Heaters for all new single-family dwellings. That same year home-occupations were reduced to a 150 sq ft maximum size within a home, despite the trend that more people will be working from home. New residences are now required to have a hurricane safe room or a reinforced structural frame throughout. Although not adopted yet, there is a possibility that Automatic Fire-Sprinklers may be required in all single and two-family dwellings (in the 2012 code update to the Building Codes).

While there are conflicting sentiments about how much these changes actually affect long term homeownership costs, these changes increase upfront costs. However, this paper is not a philosophical debate about saving money versus saving lives. The objective is to highlight what owners do when the regulatory environment is too strict.

Reports from the IURD and JCHS repeatedly show that 1) with or without government approval, secondary units are being created within residential neighborhoods; and 2) these units rent at or below fair market value. While these findings might be troubling for officials charged with regulating land use, it also

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23 For those homeowners who are adamantly against installing a solar water heater in their new home, the state does allow owners to apply for an exemption. For example, if a homeowner installs a gas tankless (on-demand) water heater and a gas appliance such as an over of cooktop, the state will grant a variance and not require a solar water heater. “Solar Water Heater Variance” by the State Dept of Business and Economic Development. Accessed May 13, 2013. [http://energy.hawaii.gov/resources/planning-policy/solar-water-heater-variance](http://energy.hawaii.gov/resources/planning-policy/solar-water-heater-variance)


25 Institute for Urban and Regional Development (Wegmann 2011)

26 (J. a. Reade 2000)
highlights the potential win-win if public and private sectors cooperate (see Benefits section).

2. USE VS STRUCTURE VIOLATIONS

At the heart of the matter is the issue of Use versus Structure violations. This is one of the key reasons existing regulations are difficult to enforce. While the physical configuration of the structure may be legal; it’s only how the space is used (its occupancy) that makes it a violation of the zoning code and therefore illegal. (see Case Studies: Rec Room Loophole Illustrated, Chap 6.7)

2.1 DIFFICULT TO ENFORCE

Controlling how a space is used is difficult to enforce, especially when the activity occurs within a homeowner’s private residence. This is further complicated by the fact that catching someone in the act of living illegally in a Rec Room, requires 1) the alleged tenant to admit that they live there, 2) the City Inspector must gain admittance onto the property and/or visual access into the unit to inspect it, and 3) the Inspector must see that the physical configuration and appliances (ie. sink, refrigerator and stove) do not match approved permit drawings on file with the City. Essentially, determining whether or not a use violation has occurred requires the owner, the alleged perpetrator, to cooperate with the City Inspector, so that penalties can be levied against them.

This mode of enforcement selectively punishes the people who are the most cooperative with City Inspectors, while rewarding those who are more deceptive and unresponsive to inspection requests. An illegal Rec Room rental could continue if a City Inspector is unable to gain visual access to verify that the living arrangements are

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27 This paper is a well-timed exploration of the issues surrounding code enforcement and its impact on urban planning. In April 2013, the Honolulu City Council’s Planning Committee meeting minutes stated that the George Atta, FAICP, Director of the Department of Planning and Permitting is exploring the idea of adopting Form Based codes in place of the current Euclidean zoning.
Black boxes and gray spaces

in violation of the Code. Anecdotal evidence suggests that some homeowners coach their tenants on what to say if they are confronted by a City Inspector.

2.2 EASILY CONVERTED SPACES

Conversion of space from single-family dwelling to a dwelling with an illegal rental unit, can be as simple as closing a door. A building permit or significant alterations are not always involved. For example, actual examples of Realtor’s property descriptions from homes sold in Honolulu:28

- permitted addition w/full bath & own washer/dryer-great rental or mother-in law quarters
- 3/2 upstairs & 1/1 downstairs with wet bar, ideal for studio rental or multi-family
  Upstairs apartment could be incorporated into main house or used for additional family members or rental income.
- 3/2 up with study & 2/1 down with 1 individual studio in prestigious St. Louis Heights with excellent Hokulani school district. 3 separate entrances possible for extended family.

Some of the units are described as 2-story, suggesting that an interior stairway provided the connection between units. And by opening/locking this door, the family had flexibility to use the space as needed. The prominence of such descriptions in Realtors’ property descriptions suggests that this flexibility and possibility of rental income results in a higher comparable sales prices than homes that do not have this kind of space.

2.3 THE RECREATION ROOM LOOPHOLE

It’s not the layout or physical structure of the home that is illegal; it’s the how the space is used. (see also Use vs Structure) Rec Rooms are routinely issued building

permits. The physical structure and floor plan is conforming to all regulations. But the moment a tenant moves in and occupies the unit as a separate living unit, it becomes illegal. (See Case Studies: The Rec Room Loophole Illustrated, Chap 6.7)

What makes this such a popular loophole is that it’s difficult to enforce. For Euclidean zoning, the issue is controlling how a space is used. Particularly for second units on low-density residential neighborhoods, this is ambiguous and impractical. Enforcing second unit regulations on residential land puts the government in the awkward position of controlling human behavior: the presence or absence of tenants (who are essentially long term visitor(s) who pay money in exchange for their stay), the duration of their visit, and their relationship to residents (ie. when occupancy is restricted to relatives). In the Rec Room Loophole, these ambiguities of the zoning law have manifested themselves in the physical structure of homes.

In response, to the regulations, homeowners prefer floor plan configurations that give them the flexibility to easily convert a portion of the home into a separate rental unit or to use the space as part of the main house.\(^29\) To meet the definition of a single-family dwelling,\(^30\) a structure can only have one kitchen and at most, one accessory Rec Room (see Appendix A). “kitchen” Another common loophole is for landlords to move the refrigerator outside an unapproved unit during the inspection and claim that the space is not being rented. Without a refrigerator, the space can no longer be considered an unapproved unit, since by definition it must have all three components: a sink, refrigerator and cooking appliance to be considered a “kitchen.” With only two of the three components, it is considered a “Wet Bar.”

A Rec Room, including a Wet Bar and Bathroom is routinely allowed as an accessory to a primary residence. Homeowners routinely use this configuration to

\(^{29}\) Even Realtors have a specific code language to describe these situations (ie. 2/1 up 2/3 down with separate entry) that hints at the delicate balance between the legal configuration and potential illegal (but profitable) use as a separate rental unit.

\(^{30}\) The Honolulu zoning code defines a dwelling unit as “a room or rooms connected together, constituting an independent housekeeping unit for a family and containing a single kitchen....” Revised Ordinances of Honolulu, Chapter 21-10.1
obtain building permits and lawfully build the structure that is then used as an unapproved secondary unit.

Theoretically, there is no violation unless the Inspector witnesses someone living in the space. And in such gray areas, deceptive homeowners have the advantage. The presence of a bed, clothes and toothbrush suggests that someone is living in the Rec Room. But a quick thinking homeowner could explain that the space is for storage only – or as a hangout to watch TV – not for sleeping. Such uses are allowed under the zoning code. And when it comes to enforcement, the difference between an unapproved (illegal) unit and a legal second unit is like splitting hairs. Therefore, for a government administration, such discrepancies may not be worth the investment of man-hours necessary to enforce.

2.4 THE SEWER FEE LOOPHOLE

Perhaps in response to the private sector’s use of the Rec Room loophole to skirt the requirements of obtaining a legal second unit on residential zoned land, the public sector has found a loophole of its own to maximize the amount of revenue collected for sewer fees.

The City calculates the Sewer Base Charge based on the arrangement of rooms, not the actual or intended use.31 Thus a property with a detached Recreation Room (with a wet bar and bathroom) and a single-family dwelling would pay the same sewer base charge as a property with two single-family dwellings. This is unfair because while the City collects sewer revenue as if there were two legal dwellings, the

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31 An excerpt from an online FAQ explains how the Department of Environmental Services, Department of Wastewater Management determines its Sewer Service Charges: http://www1.honolulu.gov/env/vwwm/faq.htm

Q: What are the criteria for determining a dwelling unit?
A: A dwelling unit has its own entrance or access. It has its own kitchen or food preparation area. It has its own sleeping area separate from another unit. And, it may have its own mailbox or separate address at the same structure. It should be able to stand alone and not depend on any other part of the structure to reside at this location. …

Q: What constitutes a food preparation area or kitchen?
A: A food preparation area is an area containing fixtures, appliances or devices for: (1) heating, preparing or cooking food; (2) refrigerating food; and (3) washing utensils used for dining and food preparation and/or for washing and preparing food. The permanent removal of two-of-the-three above numbered elements is required to eliminate a food preparation area for sewer service charge assessment purposes.
Department of Planning and Permitting only allows one dwelling on the lot. Zoning rules prevent the homeowner from full use and enjoyment of the property as two legal units. While the City maximizes its sewer revenue, homeowners are not compensated with a step-up in equity, since a Rec Room cannot be legally occupied; it is not appraised as high as a full second dwelling.

Even worse, the City has little incentive to change its rules, since they reap huge monthly sewer fees regardless of whether these additional units are legal or not.32

2.5 AFFORDABLE HOUSING LOOPHOLE

To stimulate affordable housing production, there is a section in the state laws (HRS 201H-38)33 that allow and exemption in the local city laws to exempt housing projects from any zoning requirement and expedite permit review and approval. Under this provision, limitations that routinely make market rate projects financially unfeasible, such as the rezoning and subdivision requirements, maximum allowed height, density, parking and so on, can be modified. However, based on the application requirements34 eligible projects must meet substantial minimum requirements. Also, approval requires the approval of the City Council, which suggests that applicants are vulnerable to political and public pressure which can jeopardize project approval, making even this loophole a risky prospect. The fact that this exemption even exists suggests that government officials also believe that there are so many restrictions on the production of housing that they have written into the law and permitting procedures such an extensive exemption mechanism. This does not seem like sound policy. If certain aspects of the zoning code

32 One wonders if such a methodical and ongoing collection of sewer fees is legal. While the Dept of Environmental Services, Wastewater Management Branch is charging Rec Rooms a monthly sewer fee it is a quasi-acknowledgement that these are legal dwelling units. However, all other public and private agencies (Zoning, Utilities, Post Office house numbering, insurance companies, etc) do not recognize these units as legal second units.
33 (Permitting n.d.)
34 Ibid.
are not having the desired effect (ie. market forces alone are unable to produce sufficient housing), then should policies be changed so that the production of housing can occur more easily? Although discussion of these details is beyond the scope of this project, a good place to start would be to review recent applications to see what sections of the code are most commonly exempted.

3. CURRENT RULES ENCOURAGE ILLEGAL BEHAVIOR

The legal alternative to an Rec Room unit, is to apply for an Ohana Dwelling permit. However, the Ohana Unit comes with many restrictions that make it an unappealing option. Since the physical layout and configuration between a legal Ohana Unit and a Rec Room are so similar, many homeowners choose Rec Rooms instead of Ohana Units because the permitting fees and restrictions are much less.

The 5 major disincentives to Ohana Units include:

1) Ohana eligible areas limited to areas with adequate road, water, sewer infrastructure, and min lot size.
   a. Therefore the majority of residential properties in Honolulu are not eligible (see green zones in Figure 2);

2) Ohana Units must be attached to the main house (not a separate structure);

3) $5,878 sewer connection fee (see Appendix D);

4) 2 additional parking stalls;

5) 1-hour fire separation requires extensive retrofit work.
   a. The wall/floor assembly required between the primary residence and the Ohana Unit must comply w/ ASTM E-119. As many Ohana Units are conversions of existing space within an older home. Per this writer’s experience, it can be difficult to upgrade the older (T&G board walls) homes in Hawaii to comply with the current building code.35

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35 Further research could evaluate how second units are categorized in other cities. Are they accessory and therefore part of the main residence or are they considered as separate units that require a 1-hour separation?
### 3.1 REGULATIONS: OHANA UNITS vs REC ROOMS (used as a rental unit)

<table>
<thead>
<tr>
<th>Min Lot Size req’d</th>
<th>Ohana Unit (currently allowed)</th>
<th>Rec Rooms (as unapproved rental unit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-3.5:</td>
<td>Not allowed</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td>R-5:</td>
<td>5,000 sq ft</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td>R-7.5:</td>
<td>7,500 sq ft</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td>R-10:</td>
<td>10,000 sq ft</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td>Country</td>
<td>1 acre</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td>AG-1</td>
<td>5 acres</td>
<td>Allowed (on any lot size)</td>
</tr>
<tr>
<td>AG-2</td>
<td>2 acres</td>
<td>Allowed (on any lot size)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Max Floor Area</th>
<th>Unlimited</th>
<th>+/- 1,000 sq ft “Accessory” to Main House.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Max Lot Coverage</td>
<td>- 50% max lot coverage, 25% in Country</td>
<td>- 50% max lot coverage, 25% in Country</td>
</tr>
<tr>
<td>Attached or Detached to main house?</td>
<td>Attached (Detached Ohana’s are nonconforming)</td>
<td>Attached or Detached</td>
</tr>
<tr>
<td>Parking Req’d</td>
<td>2 additional stalls req’d</td>
<td>None (in general: 1 stall if increasing floor area of house over 3,000 sq ft - as per LUO table 21-6.1)</td>
</tr>
<tr>
<td>Occupancy</td>
<td>Occupants limited to people related by blood, marriage or adoption to occupants of the main dwelling</td>
<td>Unlawful to be used as a dwelling; often occupied illegally by family or paying tenants.</td>
</tr>
<tr>
<td>Kitchen allowed?</td>
<td>Full kitchen</td>
<td>Wet Bar only, but often illegal full kitchen</td>
</tr>
<tr>
<td>Floor Plan restrictions</td>
<td>None</td>
<td>Bedrms/Closets not allowed; subsequent alterations often made without a permit</td>
</tr>
<tr>
<td>Legal Forms req’d</td>
<td>Declaration of Restrictive Covenants</td>
<td>May require Affidavit, Declaration of Restrictive Covenants, depends on layout.</td>
</tr>
<tr>
<td>Sewer Connection Fee</td>
<td>$5,878 (FY2013-2014)</td>
<td>None</td>
</tr>
<tr>
<td>Monthly Sewer Fee</td>
<td>Additional $63.23/mo for 2nd dwelling + usage fee</td>
<td>Additional $63.23/mo for 2nd dwelling + usage fee. Some have no monthly fee; depending on configuration.</td>
</tr>
<tr>
<td>BWS 2nd meter</td>
<td>Allowed (extra charges apply)</td>
<td>Private submeter allowed</td>
</tr>
<tr>
<td>HECO 2nd meter</td>
<td>Allowed (extra charges apply)</td>
<td>Private submeter allowed</td>
</tr>
<tr>
<td>Trash</td>
<td>grey, blue and green bin</td>
<td>Increased use/demand, usually no added bins</td>
</tr>
</tbody>
</table>
Information in this table complied by writer.

A comparison between Ohana Dwelling Units and Recreation Rooms used as illegal rentals (see Table above) shows that full conformance with regulations, costs more and has greater restrictions. On the other hand, Rec Rooms are allowed in all residential zones, can be detached from the main house. Most importantly, because a Rec Room is not a legal dwelling, there is no verification of infrastructure adequacy before a permit is issued. A building permit to build a Rec Room can be issued in neighborhoods that have inadequate sewer capacity, insufficient water pressure in fire hydrants, or streets that are too narrow to accommodate a standard fire truck. Furthermore, a Rec Room permit is not required to pay any sewer connection fee (currently $5,878) and is not required to have any additional parking stalls above what would normally be required for an addition of the same size. A new Ohana Unit must pay the one-time sewer connection fee and it must provide two additional parking stalls besides the two stalls required for all single-family homes. As many properties lack the space for a total of 4 parking stalls, this further limits the number of properties that can build legal Ohana Units.

The current regulations actually create strong incentives for owners to prefer an illegal rental unit to a conforming one. Rec Rooms use the state and county infrastructure: sewers, water, and roadways but contribute minimally to taxes and fees. Furthermore, the potential to collect passive rental income (likely collected on a cash-basis since the rental activity itself is technically illegal) increases the likelihood that homeowners would deny the actual use of that space if they were ever questioned by officials.

Thus, the current regulations pit the needs of the community for housing and homeowners who want a passive source of income, against the interests of government officials who are struggling to control density and growth in Honolulu.
For policy makers, this conflict has been around for decades, but what are the long term side effects from such urban ailments?

3.2 EFFECTS OF THESE REGULATIONS ON THE COMMUNITY

“Planning and building regulations that are too complex and difficult to understand may deter people from building. In some cases, people may build illegally as they perceive it too difficult to deal with these government agencies. This illegal growth may pose safety hazards to occupants and neighbors, as well as affecting the community as a whole. Revenue is also lost as these structures are not assessed and people do not pay their share of taxes on these illegal structures.” 36

3.2.1 INCREASED FIRE HAZARD

While the Rec Room loophole allows homeowners to skirt Zoning code requirements and create more rental units, it also creates a safety hazard. A Rec Room has less strict building code requirements than a Bedroom or a separate dwelling unit. Left unchecked over the years, these units can accumulate to a potential fire hazard for the community.

Things that are not required for Rec Rooms but are necessary for legal second dwelling units: 1) Smoke detectors are required in all bedrooms and outside the bedroom. Detectors must be interconnected and hardwired – if one activates, they all alarm. 2) Egress window dimensions: bedrooms have minimum clearances to allow firefighters to enter and rescue people from a bedroom. There are also maximum sill heights to allow children to escape in case of fire. 3) A 1-hour fire-rated separation between dwelling units.

Under the International Residential Code (IRC) 2006, a primary residence and an attached Ohana Unit would be considered as a two-family dwelling. It would require a

1-hour rated fire-separation, such as a wall or floor/ceiling assembly separating each dwelling unit. However, if the homeowner applied as a Rec Room or Bedroom addition, such safety precautions would not be required to obtain a building permit and would likely be left off the drawings and therefore possibly omitted in the actual construction.

Considering the added complexity and costs to retrofit an older single-wall home in Honolulu, it is likely that most homeowners who convert an existing space into an illegal Rec Room rental unit do not voluntarily provide the same safety precautions required for legal Ohana Units. Furthermore, until 2009 (when Honolulu converted from the 1997 UBC to the IRC 2003), local amendments deleted the a 1-hour fire-rated separation requirement between two-family dwelling units. Considering the low number of Ohana units and two-family dwelling permits issued in Honolulu, this fire-separation between dwellings requirement is probably not well-known. Therefore, Rec Rooms used as dwellings (see Case Study #1) may not have the required fire-rated separation, smoke alarms or egress window and therefore constitute a danger to its occupants and neighbors. The more such units propagate in a community, the higher the risk.

In 2011, a Honolulu newspaper described a fire in a two-story building in Liliha. While the Director of Planning and Permitting went on record as stating the building was actually an old nonconforming rooming house and therefore not required to have more safety precautions and upgraded to today’s code,37 the online permit record tells a different story. Department of Planning and Permitting property information records indicate this is a single-family dwelling built in 1921. A subsequent demolition permit describes the structure as a single-family unit. And an electric meter upgrade permit issued in 2009 also describes it as a single-family structure. The abundance of conflicting and incomplete information is typical of older in-fill projects. Clear, concise,  

and accurate information can be hard to come by. This is what makes owners skittish about the convoluted permit process.

It is perhaps no coincidence that illegal partitioning of apartment units creating greater densities than that permitted by code are commonplace in overcrowded cities. According to a New York housing advocate, “If the housing stock doesn’t meet the needs of people, they end up living in conditions that are unsafe.” 38 Not only are fires more frequent, but worse, government officials are uncertain how to alleviate this problem. 39 As the non-profit organization Chhaya Community Development Corporation points out, increasing fines and penalties for landlord/offenders will not create more housing. (Chhaya 2008)40

3.3 RULES HAVING the OPPOSITE EFFECT

In different parts of the world, including the US mainland, governments actively encourage homeowners to create secondary dwelling units to increase the supply of affordable housing. But in Honolulu, the government thinks that having strict rules will protect neighborhood character and allow planners to control urban growth. But the reality is that high housing costs are forcing homeowners and renters to turn to illegal rental units. True neighborhood density and urban growth patterns are masked by these unsanctioned living arrangements. (See Rec Room Loophole)

This creates an unstable living arrangement for renters, an unfair civic infrastructure and tax burden for conforming residential uses (ie properties that have only one dwelling unit), and government loses control over where growth is occurring and misguided about how to support future urban development.

39 Belsha, pg 3.
www.chhayacdc.org/pdf/Chhaya_reportHPD.pdf
4. RESTRICTIONS SQUEEZE OHANA UNIT PRODUCTION

Secondary Units were enacted by the State Legislature in 1981 (Act 229). The term “Ohana Dwellings Units” as they are commonly known, was coined by then Honolulu Mayor Eileen Anderson. Initially, there was no restriction that occupancy be limited to “ohana.” The statute only required that the counties allow a second dwelling unit by right, on any residential property that had adequate public facilities (i.e., sewer, water, roads). Implementation of the State mandate to allow second units proved troublesome at the local level. In the early 1980s, the counties raised the objection that the law removed their ability to control residential density and direct urban growth. Thus, the State amended the law in 1989 (Act 313) to make second units optional rather than mandatory. Despite the objections of the counties, the 1988 Legislative Reference Bureau study indicates that none of the counties had repealed their Ohana ordinances. (See Appendix C: History of Ohana Dwellings)

Similar to Hawaii, California enacted a second dwelling unit law in 1982. California originally promoted second units primarily as a source of affordable housing in all jurisdictions. In an effort to remove barriers to affordable housing, the California law went further to state that local agencies could not create requirements “so

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42 The following excerpt from HRS 46-4, the section currently in effect:
Current state law regarding second units (HRS §46-4 County zoning):
(c) Each county may adopt reasonable standards to allow the construction of two single family dwelling units on any lot where a residential dwelling unit is permitted.
Original Ohana law (as passed in 1981):
(c) Neither this section nor any other law, county ordinance, or rule shall prohibit the construction of two single family dwelling units on any lot where a residential dwelling unit is permitted; provided:
(1) All applicable county requirements, not inconsistent with the intent of this subsection, are met, including building height, setback, maximum lot coverage, parking, and floor area requirements; and
(2) The county determines that public facilities are adequate to service the additional dwelling units permitted by this subsection.
arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units….”\textsuperscript{43}

Despite the new California state law, not all jurisdictions allowed second dwelling units. Those jurisdictions that resisted had problems with illegally built dwellings. For example, San Francisco refused to allow second units. Consequently, "in the 1980s and 1990s, many new buildings were constructed with ground floor spaces (e.g., a recreational room, a wet bar, a bathroom, and a separate entrance) that were easily convertible to a secondary unit."\textsuperscript{44} In other words, in the absence of reasonable laws that permit increased density in areas of high market demand, the markets create illegal dwelling units.

The urban core of Honolulu is seeing a similar increase in the number of illegally built second dwelling units. This situation is aggravated by the fact that the core of Honolulu is essentially built-out.\textsuperscript{45} Under existing laws, very little space remains to legally add additional dwellings. The market response to strict regulation of Ohana Dwelling Units has been a strong preference for illegal rental units.\textsuperscript{46}

4.1 Declining Production Correlated with Increasing Regulations

But before these numerous restrictions, Ohana Dwelling Units were a very popular option for homeowners. Research on the historic numbers of permits issued shows the number of Ohana Dwelling Units declined in direct proportion to the number of added restrictions. The following shows the breakdown of Ohana Units permitted as a percentage of the total number of single-family dwelling units.


\textsuperscript{44} Ibid.

\textsuperscript{45} Primary Urban Center Development Plan (Honolulu) \url{http://www.honoluludpp.org/Planning/DevelopmentSustainableCommunitiesPlans/PrimaryUrbanCenter.aspx}

\textsuperscript{46} 48% of every single family home sold in June 2010 within the metro-Honolulu region, contained a living area that was described as a second unit. (based on MLS data and summarized on blog: \url{http://allkindsdrafting.blogspot.com/2010/09/case-study-48-of-homes-sold-contain-second.html}
<table>
<thead>
<tr>
<th>Ohana Units as a % of single-family permits</th>
<th>Year</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>25%</td>
<td>1982-1983(^{47})</td>
<td>First year Ohana Units allowed. The LRB report notes that many more applicants were denied because of inadequate sewer capacity.(^{48})</td>
</tr>
<tr>
<td>11%</td>
<td>1982 to 1990(^{49})</td>
<td>Restrictions added in 1990 and again in 1994(^{50})</td>
</tr>
<tr>
<td>1% to 2%</td>
<td>2004 to 2012(^{51})</td>
<td></td>
</tr>
</tbody>
</table>

Of the approximately 2,000 Ohana Units in existence, most of them were built before the zoning restrictions were added in the 1990s. The legislative reference bureau states that “As of July 17, 1987, 1,395 ohana zoning permits had been issued.”

Map from the 1982 “Ohana Housing: a Guide to Adding a Second Unit.” Hatched area is Ohana eligible zone in 1982. It has shrunk in subsequent years – compare with Figure 2.

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\(^{48}\) LRB, Pg 19.


\(^{51}\) Honolulu Dept. of Planning & Permitting: http://www.honoluludpp.org/ReportsNotices/CalendarYearBulletins.aspx
Of that number, 818 had been issued for new construction, and 577 had been issued for existing units”—existing in this case referring to both illegal units and New Ohana units added within the exiting footprint of a home. In other words, when secondary units became legal, a sizeable number of owners wanted to legalize their unit. Other cities report similar experiences. After Seattle liberalized their ADU requirements, “it is believed that many of those units existed earlier, but this made them legal.” One of the people interviewed in 1988 for the legislative reference bureau study, said when the Ohana Dwelling Unit legislation passed, "It legalized a pre-existing condition for tens of thousands of people." It seems even in the 1980’s the Rec Room Loophole was well known and well used. (see discussion on amnesty for illegal units in 7.8.6 Realigning Incentives)

It would not be fair to completely blame zoning regulations for the decrease in Ohana Unit permits, since limited sewer capacity has been a major limiting factor. According to the Hawaii state Legislative Reference Bureau’s 1988 report on the Ohana Dwelling Unit Program, more Ohana Dwelling permits would have been issued in the first few years of implementation, 1982-1983. However, up to 40% of Ohana applications were rejected because of inadequate sewers. It would be interesting to track those rejected applicants over the years to see how many were denied legal Ohana Dwellings and subsequently used the Rec Room Loophole.

To streamline processing of Ohana Permits, the City mapped areas with adequate sewer, roadways and water pressure to accommodate second units in the 1990’s. That is how the current Ohana Zone boundaries were established. Those areas without adequate infrastructure were not included in the Ohana Eligible Zone (see GIS

52 LRB, footnote 14, Chapter 2, pg 72.
53 (Hodgson n.d., 11)
54 According to a research report by Boulder’s planning department, most of the secondary units permitted in Seattle, “the majority were legalizing existing ADU’s.” City of Boulder Community Planning and Sustainability: Accessory Dwelling Unit Study, December 2012. Pg Colorado, pg 15.
55 LRB, Pg 103.
56 LRB, Pg 19.
map, green colored areas). Therefore sewer capacity is not the primary constraint; the regulatory environment is also a factor.

The very low number of Ohana permits issued in recent years in Honolulu (see chart), suggests that requirements are too restrictive. Ohana permits account for only 1% to 2% of New Dwelling permits. In fact, there were more Relocation permits than Ohana permits, meaning that people found it more feasible to haul an entire house from one property to another and spend the money to retrofit and bring it up to current building and energy conservation code, rather than apply for an Ohana permit.

4.2 Removing Ohana Size Restrictions

In 2006, City Councilmember Barbara Marshall pushed through a revision to remove floor area limits on Ohana Units. The stated purpose was to remove regulator barriers and to encourage more people to build Ohana Units. However, as this table shows, from 2006 onwards, there was no appreciable increase in the quantity of Ohana Units permitted.
This table also shows a sizeable increase in the amount people were spending per Ohana Unit. Between 2006 to 2007, the mean cost per unit increased from $96,965 to $151,000. The average amount people spend building their Ohana Unit has continued to increase further in subsequent years and continues to grow. However, the overall number of Ohana units created each year has remained unchanged.

Therefore, this simple analysis shows that size restrictions were not, in and of itself, the factor limiting Ohana production. Therefore, it seems plausible that if modifications to the Ohana regulations are proposed, liberalizing other restrictions while replacing a cap on maximum floor area, might be successful. While it is difficult to regulate who and how many people might occupy an Ohana unit, controlling the physical size may help to minimize neighborhood impact. This is a passive way to limit
overcrowding without active enforcement. Also, limiting the maximum number of people might better address community concerns for overcrowding.

4.3 Second Units in Maui vs Honolulu

The County of Maui changed the name of secondary units from Ohana Units to “Accessory Dwellings” and does not limit occupancy to family. Compared to Honolulu, the Maui continues to enjoy a healthy rate of new ADUs.57

57 Data compiled from Maui County website: [http://www.mauicounty.gov/DocumentCenter ii.aspx?FID=139](http://www.mauicounty.gov/DocumentCenter ii.aspx?FID=139) Although the chart shows declining numbers of Accessory Dwelling Permits, the overall construction industry experienced a decline and is reflected in a reduced number of permits in single family construction as well.
Most notably, a review of Maui’s Accessory Dwelling Unit (ADU) ordinance and this writer’s discussion with Maui planning staff has revealed that some of Maui’s requirements are almost completely opposite that of Honolulu. On Maui, the ADU can even be CPR’d separately from the main house.\textsuperscript{58} An interior connection between the ADU unit and the main house is prohibited. Also a separate entryway is required and floor area is limited in size.\textsuperscript{59} Per planning staff, Maui, also has a problems with illegal rental units. But their experience was that owners were obtaining building
permits for their ADU and then doing after-the-fact alterations to enlarge it by claiming some of the living area of the main residence for the ADU.

An owner using a portion of the main residence for the ADU is a use violation. However, Maui has addressed this issue by crafting their ordinance to address the physical structure or form of the ADU – it cannot share the same entrance as the main residence and it cannot have an interior connection. In comparison, Honolulu’s Ohana Unit ordinance and the problem with the Rec Room loophole is that it attempts to control user behavior rather than addressing the form of the structure. For example, Ohana Unit occupancy is limited to family and Rec Rooms are not supposed to be used as a living unit. Based on these aspects of secondary units, City Inspectors should have

<table>
<thead>
<tr>
<th>CITY OF SANTA CRUZ: # of Bldg Permits Issued</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Single Family Dwelling</td>
</tr>
<tr>
<td>New ADU</td>
</tr>
<tr>
<td>ADU as % of New Dwelling</td>
</tr>
</tbody>
</table>

Data compiled by writer from City of Santa Cruz, 200-2014 DRAFT Housing
an easier time enforcing ADU requirements on Maui, versus Ohana Units or Rec Rooms in Honolulu.60

4.4 The ADU Program in Santa Cruz

Similar to Honolulu, the City of Santa Cruz, California, also has high real estate values and struggles with housing affordability.61 In 2003, Santa Cruz modified its ADU law to make it easier for homeowners to get permits. Their stated purpose was to:

- provide more rental housing within the City core,
- preserve the city’s green spaces by supporting infill development, and
- encourage the use of public transportation.62

To accomplish this, Santa Cruz expanded ADU eligible areas to all zones where single-family dwellings were allowed and some multi-family areas. Santa Cruz also provided limited financing and owner education.63 As is typical of most jurisdictions that allow ADUs, occupancy is not limited to family. The “ADU Program Success” graph64 shows the results of their efforts to streamline the permit process to increase the number of ADUs that are permitted. Interestingly, during the Great Recession, 2007-2009, the number of Accessory Dwelling permits in Santa Cruz jumped to approximately 50% of the number of single family permits issued.

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60 This brings up an interesting issue of enforcement: Should government pass legislation that it knows it cannot reasonably enforce? In some cases (such as Singapore’s ban on internet pornography), it is understandable as a symbolic or moral gesture, even if it can never be effectively enforced. However, Ohana Unit’s occupancy restrictions reduce the supply of rental housing units available to the community. So the moral high ground supporting family-only occupancy, can be tenuous.
61 City of Santa Cruz, 200-2014 DRAFT Housing Element, Appendix F
62 A 2002 application for grant funding to the California Pollution Control Financing Authority (CPCFA) titled, “ADU Development Program.” Interestingly, in this document, it appears that Santa Cruz is applying for a grant to improve the ADU program because by developing housing within its urban core, not only will it reduce traffic causing sprawl, but such in-fill development also aligns with the City’s transportation oriented development or TOD goals.
63 City of Santa Cruz, 200-2014 DRAFT Housing Element, Appendix F
64 “Accessory Dwelling Units: Case Study” by HUD, Pg. 4.
4.5 Rates of 2nd Units in Santa Cruz vs Maui vs Honolulu

The results of Santa Cruz’s success can be seen by comparing the number of secondary unit permits issued during the same time interval:

<table>
<thead>
<tr>
<th>City</th>
<th>2nd Unit Permits as a % of Single-Family Permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Santa Cruz ADU Permits</td>
<td>43%</td>
</tr>
<tr>
<td>Maui</td>
<td>12% to 15%</td>
</tr>
<tr>
<td>Honolulu</td>
<td>1%</td>
</tr>
</tbody>
</table>

These numbers suggest that if Honolulu liberalized its current Ohana Dwelling policies it could expect to see more Ohana permits issued. Santa Cruz has experienced similar results. Other cities are following this example. Portland’s Bureau of Planning released a report in 2003 indicating favorable results from easing restrictions on 2nd units.65 Hoping to increase the number of ADUs in their city, Seattle recently eased its parking requirements and expanded the zone of eligible properties in 2012.66

65 (Accessory Dwelling Unit Monitoring Project; report to Planning Commission 2003, 6)
5. BENEFITS OF MORE OHANA UNITS

5.1 Flexibility of Use

Ohana units can support multigenerational living arrangements even without an occupancy restriction. Ohanas give families the flexibility to adapt different living arrangements to suit their needs. Extra space can be used temporarily to help family members to save or pool their resources, yet owners also have the option to rent to a tenant if family moves out.

The value of occupancy restrictions was questioned even in the 1988 Hawaii Legislative Reference Bureau study, “[Even] when used for non-family members, [Ohana units] help to alleviate the housing shortages experienced by all four counties. The family restriction works as long as there are family members who are available to occupy the Ohana Dwelling Unit. But young couples may eventually move to their own home, and elderly relatives will eventually pass on. If the unit must remain vacant because no family member is available to live there, not only is a valuable resource wasted, but the family may be caught in a financial bind if it is unable to realize any income at all from the unit to offset the payments on the debt incurred to build the unit. In a worst-case situation, this restriction could devastate the family if the loss of income from the unit that must remain vacant leads to foreclosure on the entire lot.”67

5.2 Affordable Rentals

Secondary units also supplement the inventory of affordable rentals. On the continental United States, ADUs rent for close to or below Department of Housing and Urban Development established affordable rental rates. In California, the County of Marin reports that in some jurisdictions, “Second Units are an important source of

lower income housing.” In some cities, market forces alone are sufficient to keep rents affordable. Other jurisdictions require the owner to occupy either the main house or the ADU unit, prohibiting absentee owners. Further research is needed to confirm the correlation between owner-occupancy and affordable rents.

In Vancouver, secondary suites are an explicit component of their strategy to provide more affordable rental housing.

5.4 Neighborhood Diversity

One of the goals of affordable housing is to avoid concentrating low-income tenants in one area of the city. Second units allow a broader dispersion of affordable rental units within residential communities. Email correspondence with a California developer revealed high levels of satisfaction with his neighborhood. “I live in the development described in the article [(in Santa Rosa, CA)]; and I can tell you that it works exactly as described. The net effect is not only to improve the overall affordability of housing on a given piece of land; it also produces a broader mix of incomes, ages, ethnicity and household types in the neighborhood. I witness the social

and cultural value of that every day when I look out the window.” (Strachan, Email correspondence. 2010)

5.4 Ease of Implementation

Expanding the number of Ohana Units will use existing infrastructure; not only utilities such as roads and sewer lines, but also personnel. Existing government policies and personnel can readily be adapted to administer a modified Ohana Dwelling program, possibly re-tasking inspectors and personnel to assist with providing technical assistance and over-the-counter support for an Amnesty Program to legalize existing illegal second units (see Realigning Incentives 7.8.6). In Honolulu, Ohana zones have already been mapped to identify areas where they can be added.

5.5 Economic Stimulus

In a slow economy, Ohana Units can provide a cost-effective option for a community to add dwelling units and improve housing affordability. Interior Alterations generally cost less than building a new detached dwelling. Also, since the second unit is built on the same property, there is no land acquisition cost. A 1984 program evaluation of Ohana housing reiterates: “It was a slow year for single family residential construction on Oahu in 1982-83. However, in the program’s first year of implementation, Ohana units comprised roughly one-fourth of all single family construction. Without the Ohana zoning provisions, these units probably would not have been built.”

Based on concerns that Ohana zoning would increase the property value/sales price of these properties and thus defeat any gains in housing affordability, this writer contacted a California developer who responded that although it does cost more in total, the costs are lower on a per unit basis:

69 ibid
Yes, a property with a granny unit will be worth more than one without. However, that price difference effectively produces an affordable housing unit (the granny unit) at a cost far lower than an equivalent unit can be produced via subsidy. The process also brings down the effective cost of the main house by making available the granny unit rent as an offset for a portion of the mortgage payment.

It is important not to confuse the value of the property with the affordability and value of the housing units themselves. They are two different things. Higher density development generally means a higher price per square foot for the underlying land; however, it also generally means a lower price per unit of housing, all else being equal. (Strachan, Email correspondence. 2010)

5.6 Increase Government Revenue

Ohana Units can help stimulate the construction industry, which will produce a ripple effect as homeowners secure financing, purchase, build and rent their homes. Increasing property valuation and equity would seem to have the effect of raising property tax revenue without raising tax rates and seemingly, only those who elect to improve their properties would be affected. Increased utility infrastructure fees, especially the re-occurring monthly base sewer charge, are all byproducts of installing Ohana units.

5.7 Supplement Senior Income

ADUs support aging in place by providing a supplemental source of (rental) income and thus prolong independence. ADUs can also provide a companion living arrangement for security and where a reduced rent is exchanged for assistance with chores or maintenance around the home. For seniors, risk of falls and fears about neighborhood crime rates may be reduced by having someone they can trust living in the ADU.
5.8 Aging-in-Place

Honolulu households are more crowded than the national average, and residents are accustomed to living with extended family. Multigenerational living arrangements are common, with two or three generations of family combining their resources to occupy one house. Moving back home to live with parents after getting married is in most cases not a social preference as much as an economic necessity. In such cases, grandparents can look after grandchildren, which save parents money on daycare. And as grandparents age, the younger generations are available to take turns caring for grandparents.

A major challenge in relying on this strategy as public policy, is that the configuration of the homes in multigenerational living arrangements, is often illegal. Although families are living together, even families need privacy and their own separate entry and kitchen. Oftentimes, a single-family dwelling is converted into a two-family dwelling or three unit apartment complex on a property zoned for single-family use only.

Demographic trends indicate that compared to the national average, Hawaii has a higher percentage of adults over the age of 65. In the future, there will be proportionally less people working and contributing to the tax base, as compared to people who are retired or relying on government subsidies. Allowing ADUs provides retired homeowners a means to earn passive rental income can help reduce dependency of government resources and improve rental opportunities for students and young families.

5.9 Built Green

Current Building and Energy Codes will require all additions/alteration work to be energy efficient. Ohana Units are consistent with Smart Growth principles. Most exiting Ohanas are located within the urban core of Honolulu, reducing commute time and congestion. Future Ohanas will also be urban infill, meaning they are built within
existing neighborhoods and use existing utility and roadway infrastructure. Without infill development, the only alternative is to up-zone residential to apartment density or rezoning of conservation or agricultural land, converting green fields into urban use. In 1984, the number of Ohana Dwelling Units built at that time helped reduce sprawl: “theoretically, about 45 acres of additional land would have been required had these additional units been constructed in a typical subdivision.”

5.10 Reduce Commute Time

According to the Oahu Regional Transportation Plan, commute times from West Oahu to downtown Honolulu will exceed 80 minutes (see graphic map) by 2030. Therefore an urban planning strategy that displaces some of that urban growth from the dark red area and locates it within the Primary Urban Core or PUC (lightest pink) can help to reduce workforce commute times. Also, if these projections have not included illegal rental units, then they might not accurately model future density and usage patterns. Of the 2,000 legal Ohana units, 1,300 are located within the PUC; Manoa has the most Ohana permits issued of the neighborhood board areas. The majority of existing Ohana Units is within the Primary Urban Center. The table contained within figure 2 shows that the distribution of Rec Rooms is concentrated in Districts 3, 4, 5 and 6 – Districts that are located within the PUC or further east, not west. Therefore, considering the impact of Rec Rooms would change the Oahu Regional Transportation Plan’s projections.

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6. QUANTIFYING ILLEGAL UNITS

6.1 How Many Potential Ohana Units

6.1.1 Existing Rate of Ohana Units Production as Lower Bound

It is doubtful that if Ohana regulations are eased, the rate of production will dip below current levels. Therefore, the existing rate of 1% is the baseline, lower bound estimate.

6.1.2 Existing Rate of Recreation Room as Upper Bound
The number of Rec Rooms (spaces that are suspicious for containing an illegal rental unit) that were issued building permits in 2011, was 567 or 42% of single- and two-family permits, is the upper bound. Because it is unlikely that not everyone who builds these spaces had the clear intention of renting them out, actual rates of Ohana production will likely always remain significantly below the Rec Room rate – which can be seen as the idealized rate. For example, even if there were absolutely no restrictions or barriers and owners could simply choose if they wanted an Ohana unit, like a free upgrade, there will likely be those who for whatever reason, elect not to take it.

More likely, the actual rate would really depend on the specific provisions of the modified Ohana requirements and prevailing economic conditions. Ability to obtain financing, future employment prospects and rental market conditions all affect housing production. Evaluation of other cities might yield some useful benchmarks.

6.1.3 Comparison with Santa Cruz Rates of Production

If Honolulu had similar 43% adoption rate as Santa Cruz, it would have approximately 36824 new Ohana units in 2009. These units would be built and managed without any government subsidy (ie. built, managed and maintained by small private homeowners) and in fact would generate reoccurring tax revenue and fees for the county and state.

6.1.4 Using Honolulu’s Historical Rates of Production

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24 According to City and County of Honolulu Dept. of Planning and Permitting website, 856 building permits were issued for new dwelling units in 2009. 43% of this amount is 368 units.
Estimating potential future production rates based on historic rates: in the first year Ohana Dwelling Units were legalized in Honolulu in 1982-83, they accounted for 25% of residential permits. It’s possible that if regulations are relaxed, Honolulu would experience at least an initial surge of Ohana permits that would taper off as the number of eligible declined and sewer capacity further exhausted. However, in 1982, there were almost no regulations limiting Ohana units, except for infrastructure requirements. There was not even a WSFC sewer charge at that time. But for comparison purposes, 25% of 780 (the number of one and two-family permits issued in 2011) is 195.

After the first phase of regulations were imposed, the rate of Ohana units produced dipped to 11%. If applied to the number of one and two-family dwellings created in 2011, this would be 86 units.

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75 "Ohana Housing: A Program Evaluation" (1984)
The literature on second units suggests artificially high rates of adoption. A survey of 49 cities in the 1989 revealed that the national average rate of second unit creation was 1 per 1,000 dwellings.\textsuperscript{76} Per ACS information, Honolulu County has 194,817 one and two-family structures.\textsuperscript{77} Therefore, based on national historic rates of second unit production in other cities. Honolulu could expect to see about 1,948 new Ohana permits per year. This writer feels it would be a more accurate estimate of second unit production is to cite the number of Ohana units anticipated as a percentage of single and two-family dwelling units created per year. It should be noted that 2011 housing production rates were near historic lows (blue cell); approximately $\frac{3}{4}$ the number of residential units created in 2003 (red cell – see table).\textsuperscript{78}

\section*{6.2 How Many Public Housing Units}

Comparatively, Hawaii Housing Finance and Development Corporation (HHFDC) planned to deliver 380 (government subsidized) new or preserved housing units in 2010.\textsuperscript{79} As the Department of Business, Economic Development, and Tourism (DBEDT) acknowledges, “market forces alone will not deliver necessary housing.” Statewide, approximately 23,000 affordable and workforce housing units are needed.\textsuperscript{80} Looking at the near future, the HHFDC’s 2012 Annual Report shows declining numbers of new affordable housing units (see five-Year Production Plan table).\textsuperscript{81} Considering the dwindling availability of state and federal funds to subsidize affordable housing projects, it seems apt to look at easing restrictions on private development, particularly those that produce affordably priced rentals, such as second units.

\section*{6.3 Illegal Units in San Francisco}

\textsuperscript{76} (Danbury, Accessory Units: An Increasing Source of Affordable Housing 1991)
\textsuperscript{77} Numbers include only 1-unit attached/detached and 2-unit dwellings; NOT included: multifamily or hi-rises (Bureau 2007-2011 American Communit Survey 5-Year Estimates)
\textsuperscript{78} (Census varies)
San Francisco is similar to Honolulu in terms of above average real estate prices and limited supply of buildable land. According to a report by the San Francisco Planning & Urban Research Assoc, a 1996 survey conducted by the San Francisco Planning Department examined the external appearance of homes (ie. comparing address numbering to # of permitted units, counting # of mailboxes on site, etc) and concluded that approximately 8% all housing units were illegal. The report states:

This [8%] figure is probably low because many unauthorized units cannot be detected from the street and would not have been recorded in an exterior survey. In the mid-1980s, a survey of the sale records of single family dwellings indicated that approximately 10 to 15% of the dwellings had an illegal secondary unit. Given the current housing shortage and high rents, it is quite likely that the creation of new unauthorized units is continuing, but at what rate is unknown.

According to 2007 -2011 ACS Census Bureau survey, there are:

194,817 Residential Households in Honolulu

\times 8\% \quad \text{Conservative Estimate of Illegal Dwellings on Oahu}

15,585 Estimated illegal dwelling units on Oahu

### 6.4 Methods of Finding Illegal Units in the Literature

From the literature review it was noted that quantifying unapproved dwelling units has been a challenge for many studies. Methods have varied from cross-referencing different government databases such as the US Census and Components of Inventory Change (CINCH) reports. Other studies have used municipal and private databases such as the local building permit record compared to Realtors’ MLS listing.

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83 (Bureau 2007-2011 American Communit Survey 5-Year Estimates)
IURD, JCHS
descriptions. Others have done physical drive-bys to count the number of trash cans, entry doors and mailboxes.

While such methods are useful to provide preliminary estimates on the prevalence of unapproved units, there are limitations. For example, listings in MLS rely on realtor descriptions of the property. While many descriptions sound like a home may contain a separate rental unit, careful parsing of the language suggests that what may be described as an extra space for a rental unit is actually a spare bedroom with its own bathroom and possibly a wet bar that can be easily segregated from the main house. For example, a 2-story home with an exterior and interior stairway could lock the door at the top of the interior stairway to create separate up and downstairs units. Preliminary analysis of Honolulu properties using this method of data gathering yielded some interesting results. However, analysis of these properties was determined too complicated. An in-depth permit history would be required to validate whether what the realtor described as existing conditions were built under a permit or not. Furthermore, many homes contained spaces that are often done without a permit or can involve very minor changes such as locking a door to an interior stairway. The benefit of such spaces is that they give homeowners maximum flexibility to adapt the space to changing spatial needs. However, for the government, such conversions to and from an unapproved unit can occur overnight and are impossible to track.

Other studies have conducted more detailed inspections of a random sample of properties to extrapolate the number of unapproved units in a given neighborhood. However, the problem with these studies is that the actual concentration can vary depending on neighborhood time of year. For example, near the University of Hawaii,

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85 Student thesis
occupancy of surrounding rental units in the neighborhood may decline during the summer and between semesters.

### 6.3 Using Building Permits to Find Unapproved Units

Therefore, this paper examined data from the building permit registry. Search criteria included the following: 1) building permits that were issued in 2011 that required either an affidavit or a restrictive covenant; 2) one and two-family dwellings or R-3 occupancy (multifamily structures were not included); and 3) not a Demolition permit, Farm dwelling, or an Ohana unit; these types of permits also require an affidavit or a restrictive covenant.

### 6.4 Potential sources of error

Potential sources of error include: 1) not everyone who gets a building permit actually completes the work as indicated on the permit. Some projects get cancelled; others are altered, scaled back or may take several years to complete. 2) As mentioned in the use vs structure discussion, there is no absolute way to determine how the structure will be used and occupied. 3) The scope of projects reviewed is limited to building permits that were issued within a single year – 2011.

### 6.5 Building Permit Approach vs Other Methods

However, this approach as compared to other studies discovered in the literature review is perhaps more comprehensive since it reviews all sanctioned construction activity within a specific period. Thus, it is perhaps one of the most effective ways to gauge the effects of existing policies surrounding the creation of secondary units.

Another strength of this approach is that it includes only those homes whose layout is suspicious for being used as an unapproved rental unit. During the building

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Further research, especially of the 2005-2009 period might shed more light on how the volume of unapproved units created in an economic recession, compares to the number of one and two-family dwelling units.
permit plan review process, the City’s Residential Plans Examiners try to discourage the use of portions of the home as separate rental unit(s). Applicants whose plans include spaces that are easily configured to be separate rental units can be required – at the Plans Examiner’s discretion – to sign an affidavit or a restrictive covenant as a condition of permit approval. (See Appendix) These documents record the promises the current owner makes that the spaces will not be used as a separate dwelling unit. Affidavits are kept on file by the Department of Planning and Permitting. In more extreme cases where the layout is highly suspicious (ie a detached Recreation Room containing a wet bar and a bathroom), the Plans Examiner will require a Restrictive Covenant. The main difference between an Affidavit and a Restrictive Covenant is that the Covenant is recorded in the Bureau of Conveyances, which then runs with the land, similar to a deed restricting the maximum height or setback for a property, except that this covenant limits how a property is allowed to be used. (See Appendix)

This authority is stated in the Rules of Practice and Procedure of the Department of Planning and Permitting:

One of the purposes of this system is to notify future owners of the limitations on the use of these spaces, so they cannot claim ignorance of the restrictions. The bottom line is that despite these administrative measures, such documents are not effective in prohibiting unapproved rental units from being created or occupied. Considering how little they are actually used in code enforcement actions and that illegal uses remain illegal (ie. using a single-family dwelling as a two-family dwelling without obtaining proper permits) regardless of whether these documents are filed properly or not, it seems that these documents can generally be considered a regulatory barrier, serving scant practical purpose.

6.6 Using the Wrong Tools

This is a critical point: While the City allows the physical configuration of these spaces; it is the use and activities of the occupants that makes these illegal rental units a violation of the Housing and Building codes. (see Use vs Structure, Chap 2)

Essentially, when the City tries to prevent the spread of these types of illegal units,
they are trying to control people’s behavior, using policies and tools meant to control the built environment. While there is a relationship between physical configuration of a structure and how it is used, as the primary means of regulating use, this is the wrong approach.

6.7 Case Studies: The Rec Room Loophole Illustrated

Although not emphasized in the literature on illegal rental units, the next section on Case Studies, shows how Rec Rooms in Honolulu are routinely issued building permits. The challenge confronting policymakers is how to deal with the gray area between use vs structure. The following case studies illustrate why it is so difficult for the Department of Planning and Permitting to prevent these gray areas from getting a building permit.

6.7.1 Case Study #1

A Garage converted into a Bedroom. Although the bedroom is attached to the main house, the yellow colored area could easily be converted into a separate rental unit. Per this writer’s interview with the homeowner’s Architect, the City Plans Examiner required that the existing door between the kitchen and laundry area be removed and a 3’-6” cased opening be provided. This specific dimension is interesting because if it is built according to plan, it makes it inconvenient for the owner to close-off the bedroom as a separate rental unit. The owner would have to special order a custom-sized 3’-6” door to fit the opening or patch the surrounding area to reduce the opening to a standard 3’-0” size. These changes would tend to discourage but not be a serious deterrent to the use of a Rec Room for rental income.

Per this writer’s experience, City Plans Examiners try to make the physical connection between the main house and the potential rental portion as wide as possible to discourage it from being easily separated and converted into a rental unit.
This project required an affidavit.

CASE STUDY #1

Floor plan as approved by the Dept of Planning and Permitting, redrawn by writer.

Gamma Map Diagrams

1. As Approved by Permit (above floor plan):
The entire home is approved as a single-family dwelling. The Rec Room does not have direct access to an exterior exit. There are two entries into the house

2. The Rec Room is easily converted into a separate rental unit independent from the main house. Owners would likely use the door off of the Living Room as their primary entry and add a door between the Kitchen and Laundry (shown dashed) for privacy. Laundry “A” is easily shared in the common area.
6.7.2 Case Study #2

Rec Room with an Exterior Entry; it is attached to the main house, but does not have an interior connection. The flexibility and creativity available to homeowners and their architect makes it difficult for Plans Examiners to prevent unapproved units. The bedroom technically has no exterior connection; it is connected and integrated into the main house. As approved, the plans do not show a connection between the Bedroom and the Rec Room. Yet it is easy for an owner to add a door between the Rec Room and the Bedroom and to permanently close the door from the bedroom to the main house. This simple alteration would create a compact 1-bedroom unit, which could easily be rented separately from the main house. This project also required an affidavit.

To discourage unapproved rental units, Plan Examiners turn to regulating the physical structure, ie. the type of door allowed. As per this writer’s experience obtaining building permits, if the floor plan of a detached Rec Room contains a wet bar and a bathroom, the Plans Examiner will not allow it to have solid core door. It must be a French door (glass) or a sliding glass door. Individual bedrooms, especially if there is a Wet Bar nearby, are discouraged from having an Exterior door, since they could be easily converted into a separate rental unit. However, such arrangements do not preclude a homeowner from using these types of spaces as separate rental units. It is more of an inconvenience, as glass doors are less secure for the tenant who occupies the unapproved unit.
CASE STUDY #2: Hypothetical conversion of Rec Room into a separate rental unit

Carport
Storage
Bedroom Family
Room
Great Room
Bedroom Den
Bedroom
Bath
Rec Room
Bath
Porch
Kitchen
Bath
Bath
Bedroom

Gamma Map Diagram shows configuration of Rec Room space as approved

Gamma Map Diagrams

1. Before the Rec Room addition, the entire home functioned as a single-family dwelling.

2. The homeowner obtains a permit to legally build a Rec Room (yellow area). Rec Rooms are not allowed to have a closet or bedrooms. However, with a few minor alterations, such as adding a door or locking a door; the Rec Room can be enlarged to be a 1-bedroom unit.
CASE STUDY #2 (cont'd):
Potential modified floor plan. Demonstrates simplicity of the Rec Room Loophole.
6.7.3 Case Study #3:
The demand for homes that are configured to include a secondary unit can also be seen in predesigned home kits. Homeowners who can’t afford the services of an architect to customize their home to include a separate rental unit can select from a variety of predesigned home kits that include plans and materials from Honsador Lumber. The Oahu model floor plan is notable for its entry, at the bottom of the stairway. Adding a door at the 1st floor Living Room easily converts this home into separate dwelling units. The 1st floor already has a Wet Bar and its own separate entry off the Family Room.
The fact that homes like these are available for purchase off-the-shelf from suppliers who can supply all materials precut and ready to assemble on site, shows how sophisticated and ubiquitous the Rec Room loophole has become.

As a single-family dwelling, the Oahu model unit would not be required to provide a 1-hour fire-rated separation between units (ie. the floor-ceiling assembly). Consequently, if the initial homeowners added a door at the stairway and sold the home, the physical configuration could easily become a de facto separate, second unit.

Gamma Map Diagrams:
1. The upstairs and downstairs levels share a common entry. However, the 1st floor also has a second separate entry off of the Living Room. This makes this single-family dwelling easily converted into two separate units.

2. This diagram shows the functional configuration as two separate dwelling units. The 2nd floor maintains
6.8 Not a Deterrent

Collectively, these case studies show that while the Affidavit/Restrictive Covenant requirement and other requirements imposed by Plans Examiners are not effective at discouraging illegal rental units from obtaining permits or being built. More importantly, these measures affect how a structure is configured and do not get to the heart of the issue, which is how these spaces are used. However, the affidavit/Restrictive Covenant requirement does create a useful criteria for further investigation.
7. MAPPING THE DISTRIBUTION OF ILLEGAL UNITS

Most of the previous studies in the literature review quantified actual or intended use of these spaces. But at best, this is a moving target. Should a friend visiting for a week in the guest bedroom be counted as an illegal occupant? What about someone who pays to stay a little longer than a few weeks? The degree of suspicion is the issue here. But instead, of focusing on the occupants, this thesis attempts to focus on the spatial configuration.

The following is a map of properties that were issued a building permit in 2011 that also required an Affidavit or Restrictive Covenant. This is an important distinction. Based on the physical configuration at the time of building permit issuance, City Plans Examiners determined that portions of these properties were taking advantage of the Rec Room Loophole. Since the City Plans Examiners had already made the determination that the configuration was suspicious, (see actual floor plan layouts in previous section), it was not necessary to review the layout of each permit individually.

7.1 Search Criteria

It was the intent of this study to show the quantity and distribution of structures that were issued building permits using the Rec Room Loophole. Therefore, search criteria included:

- All Building Permits issued in 2011
- Honolulu county (entire island of Oahu)
- Residential (R-3 occupancy – one and two-family detached dwellings)
- Affidavit and/or Restrictive Covenant required
- Exclude: Demolition Permits, Farm Dwellings, Relocation Permits, Ohana Permits – as these permits all typically also require affidavits and/or restrictive covenants.
7.1.1 Distribution of Rec Rooms across Honolulu

Figure 2: This is a portion of the Primary Urban Center, Council District 5
7.2 General Description of Findings

The map shows green areas are the Ohana Eligible Zone. These are the areas that the City has determined to generally have adequate sewer, road widths and water capacity. The red areas are properties that were issued a building permit in 2011 based on a floor plan configuration that Residential Plans Examiners decided was suspicious for containing a second dwelling unit. In Honolulu, these spaces are commonly referred to as Accessory Recreation Rooms or Rec Rooms. Although the plans were approved, these permits were tagged as requiring an affidavit and/or restrictive covenant in which the owner of the property agreed in writing to not convert the space into an illegal use (such as a separate rental unit).

7.2.1 Political Divisions

Purple lines on the GIS map (Figure 2) represent political boundaries known as City Council Districts. Each district has one elected official; together there are nine City Council Members who have the power to change Ohana Unit requirements.

7.2.2 Analysis of Rec Room Data

Rec Room permits issued in 2011 were concentrated in District 3, 4 and 6. These are the oldest residential neighborhoods of Honolulu with high concentrations of single-family homes. In 2011, 567 Rec Rooms were issued building permits, as
compared to 780 new single and two-family dwelling units. However, only 8 Ohana Unit permits were issued (see adjacent tables).

Only 138 out of 567 Rec Rooms were located within the Ohana Eligible Zone. However, approximately half of all Rec Rooms were permitted within the Primary Urban Center (PUC), (Figure 4 shows the extent of the PUC). Within the PUC, the majority of Rec Rooms occurred within the Ohana Eligible Zone. Future research should attempt to clarify why these properties did not build Ohana Units. Outside of the Primary Urban Center, the overwhelming majority of Rec Rooms did not occur within the green-colored Ohana Eligible Zone.

7.3 Discussion of Findings

7.3.1 Rec Rooms as Gray Spaces

The high occurrence of Rec Room permits suggests that Rec Rooms fulfill an important function that conventional Single-Family and Ohana Units do not. One possibility is that Rec Rooms provide government officials and homeowners a sort of gray space – semantically as well as physically. During the permit process, simply changing the label of the room from “Studio” or “Dwelling” to “Rec Room” allows officials to look-the-other-way and approve spaces that they know will likely end up as illegal rental units. Yet such approvals allow the City to collect more sewer fees. For homeowners, obtaining a permit gives them some peace of mind, knowing that the physical structure has been lawfully sanctioned, giving them greater flexibility to decide how and if such their Rec Room should be rented.

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92 Data from Censtats.census.gov shows 734 single-family and 0 two-family permits being issued in 2011. The discrepancy between this and the numbers tabulated above is due to the Census figures reporting the number of permits issued, whereas to this writer, the number of dwelling units created was the more crucial statistic. For example, alterations/addition to an existing single-family structure can create a second legal dwelling. But this might not be counted in the statistics as it is would be tabulated as a remodel or alteration permit. Also, some alterations reduce the number of existing units within a structure (usually for multifamily). Review of Data of components of Inventory Change (CINCH) data may yield more insights. (Organized by Joint Center for Housing Studies 2001) http://www.huduser.org/Publications/pdf/rehab_forum_report_doreen.pdf

93 Future analysis could show an overlay, quantifying the number of Ohana zoned property along bus routes. Note that the strategy of densifying areas where transit services are available supports TOD.
Table 1 & 2: Data compiled by writer based on Dept of Planning and Permitting data.

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<th>Use</th>
<th>Qty</th>
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<td>New Dwellings (one &amp; two-family)</td>
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2011 Building Permits

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</table>

Rec Room Permits by Zone

Table 3: Data compiled by writer based on DPP data. Seven (7) properties had TMKs that did not match the GIS base layer and could not spatially mapped.

<table>
<thead>
<tr>
<th>City Council District</th>
<th>Rec Room District</th>
<th>Rec Room Permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3</td>
<td>23</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>51</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>116</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>110</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>58</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>96</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>40</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>49</td>
</tr>
<tr>
<td>9</td>
<td></td>
<td>27</td>
</tr>
<tr>
<td>total</td>
<td></td>
<td>567</td>
</tr>
</tbody>
</table>

Count does not match total because a few properties overlap District boundaries and so were counted in both Districts.
7.3.2 Lack of Information of Lack of Choice?

The distribution of Rec Room permits suggests that even when owners are in the Ohana Eligible Zone, they still do not create Ohana Units. Have they really exhausted all other options for developing second units or are they just not aware that they have a choice?

In 2011, Rec Rooms were most commonly created by owners in the R-5 and R-7.5 Residential zones. (See Table 3) One possibility is that homeowners prefer Rec Rooms because they lack the minimum lot size. Based on the zone, Ohana Units require a minimum lot area as follows:

Table 2A: Data compiled by writer based on the Land Use Ordinance, ROH Chapter 21

<table>
<thead>
<tr>
<th>Zone</th>
<th>Min Lot Area for Ohana Unit</th>
<th>Min Lot Area for a Two-Family Dwlg</th>
<th>Min Lot Area for a 2nd Detached Dwlg</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-3.5</td>
<td>Not permitted</td>
<td>7,000 sq ft</td>
<td>7,500 sq ft</td>
</tr>
<tr>
<td>R-5</td>
<td>5,000 sq ft</td>
<td>7,500 sq ft</td>
<td>10,000 sq ft</td>
</tr>
<tr>
<td>R-7.5</td>
<td>7,500 sq ft</td>
<td>14,000 sq ft</td>
<td>15,000 sq ft</td>
</tr>
<tr>
<td>R-10</td>
<td>10,000 sq ft</td>
<td>Not permitted</td>
<td>20,000 sq ft</td>
</tr>
<tr>
<td>R-20</td>
<td>20,000 sqft</td>
<td>Not permitted</td>
<td>40,000 sq ft</td>
</tr>
</tbody>
</table>

In the R-5 zoned properties, 25 properties were disqualified from an Ohana Unit based on lot size alone; in the R-7.5 zone, it was 11 properties (see Table 4). Based on lot size alone, the overwhelming majority had sufficient lot area to either create an Ohana Unit, add an attached dwelling or a detached dwelling unit.94 Thus, it is possible that many homeowners are not aware of their options to build legal

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94 The next phase of research should examine the sewer adequacy of these properties to see if they had indeed applied for an additional unit before deciding on a Rec Room. Also check on owner-occupancy status of these properties. Does the existing pattern of use suggest these units will remain owner-occupied?
second units and instead prefer Rec Rooms because they are so convenient (see Table 1).

7.3.3 Low Level of Public Awareness

The low numbers of Ohana Unit permits reflects the general public’s awareness of these kinds of permits. When this writer presented material on changing Honolulu’s Ohana Unit ordinance to different professional groups, including the Honolulu Board of Realtors, many audience members believed that Ohana Units could no longer be created and that the City had stopped issuing them since the 1980s. If professionals do not know about Ohana Units, then the community at-large may also be unaware that there are alternatives to a Rec Room. Thus educating the public would be an important component of any program to streamline dwelling unit regulations.

7.3.4 Show NIMBYs the Status Quo

District 3, Kailua, is known for its beautiful beachside community, known for illegal Bed and breakfast (B&B) uses within single-family dwellings. Changing the requirements for Ohana Units would probably trigger great controversy in this district since B&B uses are perceived as similar to secondary units. However, opponents of should consider that in 2011 Kailua had the highest number of Rec Room permits issued of all Districts in Honolulu (see Figure 1B). Therefore, the current rules and loopholes available provide little deterrent to the proliferation of illegal rental units. Seeing the quantity of Rec Rooms being built in Kailua and the ineffectiveness of current regulations can help politicians better address NIMBY’s and others concerned about their community.

Quantifying the number of Rec Rooms

Realigning Incentives (Amnesty Program)

When Ohana Units were first introduced in 1982, the majority of applicants were owners with existing illegal units who wanted to legalize their structures. Other
jurisdictions are also actively seeking to cultivate illegal units into conforming status to help create affordable housing units.

In 2008, the County of Marin’s amnesty program was offered to the community as a quasi-private-public coordinated effort to increase the supply of (legal) housing. Recognizing that most applicants would not be able to meet the strict application of building code requirements, some requirements were waived (see Appendix E). Furthermore, reduced permit fees and technical assistance created a huge incentive for owners to comply. As stated on their website:

There are many unpermitted second units in Marin County which may or may not meet basic health and safety guidelines. This Amnesty Program is intended to encourage healthy and safe conditions in existing units.

- This is an opportunity to legalize unpermitted second units for half the permitting cost.
- Some permit standards have been adjusted to accommodate existing buildings while focusing on tenant health and safety.
- A legal second unit can increase your property value.
- *Free technical assistance will be available* on how to legalize an unpermitted second unit.95

At the close of the [year long] Amnesty period, new Second Unit applicants and those who did not participate in the amnesty program will be required to comply with more stringent Second Unit development standards and standard fees will apply.

This amnesty program was one of the few efforts to openly acknowledge the relationship of poor economic conditions and illegal dwelling units. “The high demand for affordable apartments, coupled with poor economic conditions that impel many homeowners to look for additional sources of income, is expected to spur an increase in second unit development over the next few years. In addition, changing

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95 “Second Unit Amnesty Program Summary,” County of Marin. Last Accessed May 14, 2013. [http://www.co.marin.ca.us/comdev/comdev/CURRENT/second_unit_amnesty.cfm#answer2](http://www.co.marin.ca.us/comdev/comdev/CURRENT/second_unit_amnesty.cfm#answer2)
demographics, as described earlier in this element, will create a long-term increase in demand for ‘granny’ units for aging parents. 96 HUD also recognized that “the program is expected to save existing second units, which would otherwise be lost through code enforcement actions.” 97

The response to Marin’s amnesty program was greater than expected and the County is currently planning a second amnesty program, this time to include unpermitted and non-conforming agricultural worker housing units. 98

However, for older illegal units that have been providing their owners tax free rental income for years, the known risks outweigh the unknown certainties. The unknowns include the risk that even under an amnesty program they may be required to pay for expensive retrofits and ultimately not be eligible to become a legal unit. The known factors include the guarantee that if the unit is successful legalized, there would be higher property taxes and the expectation that all future rental income should be reported and taxed. These can be strong incentives to remain in the shadows.

Some of the benefits of having a legal second unit are abstract. Such things as the potential to increase property equity may not matter to some homeowners. Indeed, even residential appraisers seem puzzled about how to properly value a second unit and there seems to be a lack of consensus on the topic. 99 Also one wonders if the standard homeowner’s insurance policy would cover a fire caused by a tenant who was renting a portion of the house illegally.

96 (Marin n.d.)
7.4 Foregone Sewer Revenue

In Honolulu, the Department of Planning and Permitting has reported that there are approximately 17,000 properties within the Ohana eligible zone and about 2,000 legally established Ohana Units. From these numbers, we can calculate that since existing Ohana units are considered legal dwellings, they are assessed the monthly sewer service charge and therefore contribute more than $1.5M every year in reoccurring sewer fees. (See Appendix for other sewer fee calculations).

If greater numbers of Ohana units and other secondary units are allowed, they would contribute to taxes and other municipal fees. Considering uncaptured GET revenue on rental income, uncaptured property tax value, and other trickle-down economic effects, the amount of revenue lost each time the Rec Room loophole is used, may be considerably higher than this amount.

Every 2 months, the Board of water Supply sends a water bill that includes a Sewer Base Charge and a Sewer Usage Charge. (see Appendix D for how these fees are calculated) In 2010, the City expects to collect approximately $23 Million per month in sewer service charges; this is primary source of revenue for the Wastewater system.

Dwelling units created illegally without a permit do not contribute to this revenue stream and increase the burden for legal dwelling units, since there are fewer customers to shoulder the cost burden.

Based on figures from a 2012 Municipal Bond Prospectus, the City Wastewater Branch has by its own count:

\[
130,078 \times \$65.76 \text{ Monthly Sewer Base Charge (Eff. FY2013-2014)}
\]

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101 On the BWS bill, $65.76 Sewer Base Charge/Month x 2,000 existing Ohana units x 12 months = $1,578,000 every year. See also: http://www1.honolulu.gov/env/wwm/faq/sewer_service_charges.htm
103 Ibid
104 Ibid, table 14
$8,5583,929. Monthly Sewer Charge collected monthly (not including usage fee)

Theoretically, if every estimated illegal unit were instantly converted into a legal unit with a landlord that paid the required sewer fee per dwelling unit, the City Wastewater Branch monthly revenues would increase by:

\[
15,585 \text{ Estimated Illegal Dwelling Units on Oahu} \\
\times \$65.76 \text{ Monthly Sewer Base Charge} \\
= \$1,024,870. \text{ Potential Additional Monthly Sewer Base Charge collected}
\]

That's an 11% increase in fees for the Wastewater Branch. The Department of Environmental services currently has a policy of charging Rec Rooms the Sewer Base Charge. (see Sewer Fee Loophole) Depending on how long they have had this policy in place, they are already beginning to capture the majority of this revenue going forward. However, this writer suspects there are many thousands more older second units that may not have been permitted and would therefore elude the Sewer Base Charge.

The history of Ohana Units suggests that homeowners want to comply. (see Restrictions Squeeze Ohana Unit Production, Chap 4)

105 Ibid Table 28, history of Major Wastewater Revenue Sources
8. OBJECTIONS TO CHANGE

The three primary objections to modifying Ohana unit regulations in Honolulu are presented and addressed in the following paragraphs.

8.1 Objection #1: Concerns about Parking

If more units are allowed in residential neighborhoods, then there will be even less on-street parking;

This writer’s presentation to the Palolo Neighborhood Board in 2011, confirms that parking is a very touchy subject for communities, especially in areas where existing off-street parking is crowded.

8.1.1 Counterargument to Concerns about Parking

While this concern is shared in almost every community where secondary units are considered, in practice, several major cities with exiting second unit programs have reduced their off-street parking requirements to encourage more of second units. Thus, while it would be easier to gain community support by having cumbersome parking restrictions, this would also have the effect of reducing the number of legal second units created.

To restrict that amount of traffic and on-street parking, it may be more effective to try to restrict the number of people living in each second unit. And the best way to do that might be to restrict the overall size of the second unit. Reinstating the Ohana size limit may therefore be an effective passive mechanism to limit overcrowding (See Removing Ohana Size Restrictions, Chap 4.2) and thereby reduce Ohana units’ impact on off-street parking demand.

106 Demographic trends suggest that the average number of people per household is decreasing. Also, second units are commonly installed ‘in the homes of ‘empty nesters,’ single parents and single residents, who tend to have fewer cars.” Accessory Dwelling Units: Issues and Options. Municipal Research and Services Center, Report No. 33. Oct 1995.
This writer’s interview with a DPP inspector, there are not that many complaints generated by Rec Rooms. Neighbors primarily complain when tenants’ cars start to block neighbor’s driveways and this does not occur very often.\textsuperscript{107}

Based on the high rates of Rec Room permits, it seems that the community has spoken. There is a strong demand for housing and while supporters of a liberalized Ohana unit policy may not be vocal, they may be seen in the high numbers of Rec Room permits. This should help to comfort politicians’ fears of neighborhood opposition. Furthermore, it should be pointed out that the distribution of Rec Rooms is because of current regulations. Most importantly, Rec Rooms do not trigger an automatic parking requirement. For Rec Rooms, parking is only triggered if the total floor area of the main house + the Rec Room, exceeds 2,999 sq ft. One additional stall is required if floor area is 3,000 sq ft or more.

\textbf{8.2 Objection #2: City cannot enforce existing rules}

Because the Rec Room loophole is well known in Honolulu, people are concerned that if the City cannot enforce the current regulations now, officials may not be able to control the situation if the rules are relaxed further.

\textbf{8.2.1 Counterargument to City’s Lack of Enforcement of Existing Rules}

Because the question of use and observable human behavior is involved, enforcing the Housing Code is more difficult than citing owners for Building Code violations. (see Use vs Structure, Chap 2) This is perhaps the weakness of Euclidean zoning code in general: that it regulates how a property is used, as compared to other zoning codes, such as the form-based code.

Considering how widespread the practice is, the actual number of violation notices and complains related to illegal dwelling units is small. This suggests that the current situation of self-regulation is functioning well. But then this also suggests that

\textsuperscript{107} Future research could attempt to quantify actual stats/counts on #of complaints from DPP related to parking and Rec Rooms.
if second units more freely available and allowed out in the open, then owners might not be so discrete or careful about whom they rent to. However, it should also be pointed out that one of the mechanisms that make self-regulation possible for second units, is that the landlord- homeowner resides on the same premises as the tenant. Therefore, this paper should clarify that second units do not only create affordable rentals, they increase housing opportunities particularly for quiet, considerate tenants.

8.3 Objection #3: Too many Ohana Units will change the neighborhood

Allowing more units will change the character of existing neighborhoods.

8.3.1 Counterargument: Ohana Units Would Not Changing the Neighborhood

If city must accommodate additional density, then second units have the least impact on a community, as compared to large multifamily structures like a highrise. While planners look to Kapolei to absorb housing demand, secondary units in the urban core can add substantial housing capacity. This strategy is consistent with smart growth, reducing commute times and relying on existing infrastructure.

The 1998 Legislative Reference Bureau Study said it best: "Ohana Zoning, while blamed for some infrastructure problems, is one useful safety valve that takes care of some housing needs. The blame associated with ohana, such as increased on-street traffic and consequent decreased road capacity, is merely a symptom of the general overcrowding. If affordable, legal housing is not available, people will create and live in illegal units. Legalizing ohana zoning at least allows some element of governmental control over building standards and infrastructure requirements, and brings a small amount of revenue back into the system for water [and sewer] improvements."

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108 Future research could study the owner-occupant rate in Honolulu and other cities.
109 LRB pg 39-40.
Easing Ohana rules does not necessarily include changing the underlying development standards. Such things as max 50% lot coverage, maximum height and height setbacks will all still apply.

While a senior DPP staff planner was interviewed for this project expressed reservations about modifying Ohana Dwelling provisions without public input, it should be emphasized that the sheer abundance of Rec Room permits speaks for itself. More importantly, the current ordinance already approved second units within the residential zone, if initial modifications are limited to the Ohana zone as a first step to gauge its effectiveness, then changes would be consistent with density limits that are allowed under present code.

A 2009 survey by John M. Knox and Associates110 asked respondents, in regard to housing whether they favor of oppose local government from doing the following:

- “encourage small Ohana cottages on single-family lots for homeowners to rent out”
  - 62% favored, 27% opposed.
- “use zoning to direct new housing into existing neighborhoods and urban areas instead of open undeveloped areas”
  - 51% were in favor and 33% opposed.

A different survey of residents in Seattle111 suggests how modifying Ohana rules might play out in Honolulu:

- 71% said that the backyard cottage in their neighborhood fit in with the surrounding homes.

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84% noticed no impacts on parking or traffic directly related to the cottage (though some cottages had not yet been occupied).

83% were supportive or strongly supportive of backyard cottages.

54% would consider living in a backyard cottage.

89% believe single-family homeowners should be allowed to build a backyard cottage on their lot.
9. RECOMMENDATIONS

9.1 Proposed Amendments to Zoning Code (Honolulu Land Use Ordinance)

1) Instead of modifying existing Ohana Dwelling Unit requirements, create a new residential use category: Accessory Dwelling Units (ADUs). Ohana Units have a long established history of nonconformities: size limits, attached/detached configuration, and CPR limitations that would make it very complicated to adjust. A new separate use category would be simpler to administer because existing Ohana Units could apply for a permit to change their status from “Ohana” to “ADU” and conform to the new rules for ADUs.

2) Phase-in changes if there is too much opposition. Limit changes to existing Ohana Eligible Zone and target specific City Council Districts that have a high rate of Rec Room permits. Limiting an initial phase to the existing Ohana Eligible Zone, means there would be no change in density from what is currently allowed. This should help to calm NIMBY fears.

3) Prohibit ADUs from being CPR’ed and conveyed separately from the main residence. CPR and selling the ADU would encourage speculative land development, which would further drive real estate sales prices higher.

4) Define ADUs and Ohana Dwellings as “Accessory” to the principal residence.

5) Apply floor area limits to what they were pre-2006. Maximum size based on zone.

6) Parking:
   a. Reduce from 2 stalls per residential dwelling unit to 1 stall per bedroom, with a 1 stall minimum per ADU.
   b. Allow properties that are within 400m (1/4 mile) radius to public transportation (ie. a bus stop) a reduction of 1 (one) parking stall.
Consider eliminating on-site parking requirements completely for ADUs. This distance is considered a 5 min walkable distance. Liberalizing the parking restrictions would increase the number of potential (legal) housing units created. Retaining strict requirements incentivizes the creation of illegal units.

7) New Subdivisions: Consider adding ADU incentives in new subdivisions. For example, give developers density bonuses for providing infrastructure (ie. wider streets, domestic and hydrant fire flow capacity) that can support future added residential density.

8) Allow ADUs on nonconforming lots (ie. Allow ADUs on R-5 zoned land even if lot size is below 5,000 sq ft). No change is required to existing development standards: ie. setback, heights, max lot coverage.

9) Configuration: allow Ohana units to be attached or detached to the principal residence. This will reduce the incentive of building iADUs (which can be detached), if legal units have the same benefit.

10) Occupancy: Remove family-only occupancy restriction. This does not reflect the community’s needs and the City cannot enforce it.

11) Require Owner-Occupant to reside in either ADU or the principal residence.

12) Relationship to nonconforming Ohana Units: Older Ohana Units (pre 1990s) could be detached. Liberalizing requirements under a new separate category might actually make regulation easier, since some (but not all) former nonconforming Ohana Units would under the category of ADU, could be considered conforming. This is a rather complex area and needs further input from Dept of Planning and Permitting staff.

13) Reintroduce design guidelines; celebrate good design with clear visuals. Show people what kinds of projects are possible. This can help address neighborhood concerns that more units will change their neighborhood.
For example, to minimize disruption and noise between neighbors, other cities state that the second unit’s entryway cannot face its neighbor. Or if the concern is visual impacts, the second unit’s entry can be prohibited from opening on the side of the house that faces the street frontage.

a. Regulatory efforts that focus on shaping the built form rather than attempting to control human patterns of use and behavior are more likely to succeed because they can be objectively observed and therefore the rules (i.e., form-based code) would seem to be easier to enforce.

b. Graphic guidelines can help people visualize possibilities instead of only seeing negative results. The *Ohana* guidebook produced in the 1980’s has useful examples. Information can substitute as regulation; do not underestimate the power of good ideas. Instead of telling people what not to do, pictures can help people to imagine the possibilities.

Image from “Ohana Housing: a guide to adding a second unit on your lot.” City and County of Honolulu. 1982
9.2 Proposed Amendments to the Building Code

1) Consider amending (IRC) International Residential Code 2003 Sec 317.1 to
ADD EXCEPTION #2: Type X gyp board (on the floor-ceiling, demising wall,
and on all structural supporting members) may be used to provide dwelling
unit separation between an Ohana Unit and a single-family detached
dwelling.

   a. Rationale is that if the ADU is an accessory use and either the ADU or
      the principal residence is owner-occupied, then the occupancies
      have an established relationship and can assist each other in a fire.
      Also, the ADU would be limited in size.

   b. Furthermore, the IRC requires an approved fire-rated assembly
      (ASTM E-119 one-hour fire wall) that is difficult to install in older
      single-wall homes, unique to Hawaii. As it is anticipated that many
      ADUs will be conversions of existing spaces within older homes (ie.
      garages or Ohana Units, with the primary residence located above
      and/or to the side), retrofit costs required to meet the current code
      requirements for dwelling unit separation would add significantly to
      costs. (see Appendix F for in-depth discussion)

   c. Also, require that smoke alarms between Ohana and principal
      dwelling be interconnected and hard-wired as one.

2) Waive all city permit fees (especially the sewer connection fee) for a limited
time to incentivize compliance. Reduce reoccurring monthly sewer base
charge for ADUs to a rate that is comfortable for homeowners to pay. If it is
too high, this will discourage legal ADUs.

3) Offer a limited time amnesty program to legalize units and expand the
supply of housing. The more lenient the exemptions are, the more units
can be legalized. Experience of this writer suggests that many older homes have existing basement areas lack the minimum required ceiling height for habitable spaces: 7’-0”. (see Marin County’s building code exemptions, Appendix E)

a. Amnesty and relaxing building code requirements will be a tough sell to code officials. However, the need for strict compliance must be balanced against the reality that when regulations do not meet a community’s needs (ie. the codes become too onerous or complex), people will find loopholes or simply ignore the rules. Community outreach and code education efforts will create goodwill and foster code compliance. The technical assistance and coordination offered will help spread the word about the ADU program and change the mindset of officials and homeowners from distrust to cooperation. The essential task for lawmakers is to weigh the value of providing more housing against the standards prescribed for fire and life-safety, as they pertain to residential neighborhoods.

9.3 Proposed Amendments to Wastewater Rules

1) Amend ROH Chapter 14: Assign ADUs a reduced ESDU value. Since ADUs are accessory and typically subordinate in size to the primary residence, they should not be equivalent to 1 ESDU. Instead, consider rating ADUs at 0.15 to 0.5 ESDU. Adjusting the sewer demand criteria may help expand the Ohana Zone – the areas eligible for ADUs.

2) Waive Wastewater System Facility Charges (WSFC) also known as the Sewer Connection Fee, currently $5,878, as it is a strong deterrent to legal secondary units. According to the City’s wastewater bond prospectus: “The WSFC accounts for approximately 1.2% of revenues… it is not considered a
major source of funds on which to base financial capability.”\textsuperscript{112} Moreover, the monthly sewer fee that is collected will make up for the waived WSFC in about 7 years. As the monthly sewer fee is ongoing for the perpetual life of the unit, it is worth more than a one-time fee, especially if the alternative is propagation of illegal units.

3) Reduce monthly sewer service charge for Ohana units to 40% of legal dwellings. Studies in other cities show that the actual usage pattern of accessory units is between 30% to 50% (Chapple 2012) of a single-family dwelling. Perhaps the best way to regulate actual wastewater produced is by limiting the maximum size of the dwelling. If the floor area of the ADU is less than the main dwelling, then the number of occupants and resulting sewer usage, should also be less than the principal dwelling. It is actually unreasonable to charge an accessory dwelling the same monthly sewer base charge as the main dwelling, since they are not of equal status. For example, the accessory dwelling could not be subject to a condominium process and sold separately; it must remain an accessory to the main house.

4) The bottom line for compliance is that too high a monthly fee will deter legal units.

9.4 Add a Reporting Requirement

1) Add a requirement for the Dept of Planning and Permitting to monitor effectiveness of ADU regulations and report annually to the City Council. Data tracked should include the number of new ADUs permitted and built per calendar year, where they are distributed throughout the various neighborhoods. General characteristics of the lots that add an ADU, and the number of building permits that required an affidavit or restrictive

covenant, as per the procedure followed in this paper. It is important to track the effectiveness of this program and propose further refinements, as reflected in the needs of the community.

9.5 Government Transparency

1) As the information contained in this paper was accumulated largely through government sources, access to information is important. However, it should be emphasized that these findings and recommendations are based on years of practical experience working with homeowners through the permit process. What data was used to create the maps and diagrams is very little compared to typical urban planning research. One reason is because access to more data has been limited. Much more detailed analysis could be performed with just a few more bits of relevant information.

   a) Thus while not typically an urban planning concern, this paper raises the issue of privacy. The Oahu General Plan (and possibly all community land use plans) lack guidelines that specifically address information policy: What data will City Planners and government officials make readily available and what data should be protected? How could this information be used? How will providing it be in the public interest? Or alternatively, how will data be protected? At issue is not only whether the data is available or not; it’s also a question of formatting the data that in part, determines how accessible it will be. In architecture we speak of accessibility, referring to ramps and the Americans with Disabilities Act (ADA). Interestingly, when it comes to mobile apps and IT, accessibility also means being able to access data in ways that allows it to be used for other purposes. For example, in researching this paper, much of the information was manually counted and recorded from hardcopy printouts from the
Dept of Planning and Permitting. While the information on building permits can be publically accessed by computer, it is not formatted in a way that allows the records to be easily searchable. Thus, while the data is technically available to answer simple questions such as: how many building permits were issued for Rec Rooms in Honolulu? The data remains relatively inaccessible and such simple questions are therefore notoriously difficult to answer. Ironically, while much of the useful data to such research questions that seems to be withheld, in actuality, it is already available. For example, through daily logs or reports, information is leaking out slowly, just not in a format that is useful.

b) Thus regional development plans should include a component on information policy and transparency. What kinds of information should be shared and made public. How should it be shared? How much should be charged for access for nonprofit vs development use.

9.6 Raise Permit Fees if it means faster Permits

The real objection to regulation is uncertainty, not necessarily costs, per se. Therefore, if it would eliminate staffing shortages and expedite administrative review, then the City should raise building permit fees and other fixed or known fees, anticipating only minor disruptions in permit volume. As Mayer states, “development or impact fees have relatively little impact on new construction, but regulations that lengthen the development process or otherwise constrain new development have larger and more significant effects.” (Mayer and Somerville 2000)
10. CONCLUSION

In Honolulu, the community response to strict regulations of Ohana or secondary units on low-density residential zoned land, is a strong preference for building Recreation Rooms, also referred to in this paper as illegal Accessory Dwelling Units (iADUs). Research conducted in Part III included a review of all building permits issued in 2011, revealed that 567 iADU permits were issued, versus 780 permits for one and two-family dwellings, and 8 Ohana Units (See Part 1 of this thesis for an expanded 8-year study: 2005 to 2012). This paper suggests that the production rate of legal Ohana units has declined over the years, which seems related to increasing restrictions imposed in the 80’s and 90’s. Today’s regulations place the highest restrictions and fees on Ohana Units, while iADU have the lowest fees and least (perceived) restrictions. Hence, current regulations are structured as an incentive for homeowners to apply for an iADU or Rec Room permit and then convert the use into an unapproved rental or dwelling unit.

10.1 Realigning Public and Private Incentives

In explaining the permit process and inspection mechanism, this paper suggests that current regulations focus too much on use, which makes enforcement difficult. Using the example of iADUs on residential land, this paper shows that land use regulations are tantamount to restrictions on human behavior (use and occupancy), rather than regulating physical structures. This makes the land use code easy to circumvent and difficult to enforce. Even worse, the rules are having the opposite of their intended effect. By encouraging the continued use of the Rec Room Loophole, more Rec Rooms are built that do not meet fire-safety provisions. Over time as more and more homes operate iADUs, the community’s exposure to hidden fire hazards increases. Furthermore, the government is less able to plan for and allocate infrastructure to support urban growth.
Instead, the City’s efforts might be more productive if they eased restrictions, and focused on well-crafted yet easy to follow design guidelines. Moving away from regulating use and instead focus on the building form, if not adopting a form-based code that emphasized setbacks, locations of entryways and buffers between neighbors, would make regulations easier to enforce and better address people’s concerns about adverse neighborhood impact. Other modifications to the current regulations are included in the Recommendation section of this paper.

Lastly, this paper points out that current rules place the public and private interests on opposite ends of the regulatory spectrum. It is this writer’s observation that most owners prefer to comply with the rules; it is only when compliance becomes unreasonable that rule bending occurs. Homeowners do not open their home to strangers by preference. Rather, it is financial need that is driving this behavior.

Thus, a temporary amnesty program would encourage owners of preexisting secondary units that were constructed illegally, to bring them into compliance with a more permissive version of building and zoning code requirements. The goodwill generated by the efforts of the public sector providing technical expertise and assistance on the confusing topic of Ohana and Rec Room permits, would go a long way to creating large numbers of needed legal housing units.

This is important for its tangible as well as intangible benefits. Minimum fire-safety requirements that are overlooked in iADUs could be provided in legalized ADUs. Homeowners insurance policies that might not cover illegal improvements or uses should apply to uses established under a permit. Property values should reflect the step-up in value created by the change in status to a legally recognized second dwelling unit. Essentially for new and existing second units that are now legal, this would be equivalent to creating real estate equity by redefining the words used to describe the use of these spaces.
When public and private interests are aligned, together Honolulu could create significantly more housing units, ease supply constraints and improve housing affordability. While this is difficult, there is tremendous opportunity for non-profit organizations such as the Honolulu Board of Realtors and the Honolulu Chapter of the AARP with its development of a Home Modification Curriculum, to fill the leadership role, uniting community needs with local expertise and resources.

“...very little effort has been made to get the remodeling industry involved in promoting accessory apartments, even though it would stand to benefit substantially from work installing the apartments. The savings and loan industry could make money from loans for installations, and real estate agents could make money by managing units for older homeowners, as well as by selling homes more easily because byers would have the rental income from an accessory apartment. There may not be enough profit potential for any one of these groups to put forward an initiative to market accessory apartments by itself. However, each would be very likely to benefit if they were all brought together in a marketing partnership under the leadership of an Area Agency on Aging or a similar organization.”

Modifying current regulations to remove major incentives to illegal rental units is only the first step (see Recommendations, Chap 9)!

---

113 (i.e. Hare 1985, 4)
11. IMPLICATIONS AND FURTHER RESEARCH

Although the data in Part III is limited to 2011 permit data (Part I of this thesis contains an expanded 8 year study: 2005 to 2012), it shows that approximately 40% of all dwelling units created were not legally sanctioned. If this trend has been sustained in years past, the actual number of housing units could be substantially different from official counts of legal units. This brings to light some interesting policy questions: How should long-range planning for Oahu regard these haphazard living situations? Are illegal dwellings included in infrastructure planning? If most of these units occur within the urban core, should they be encouraged as a legitimate densification strategy?

Further research could quantify the fiscal impacts if these unsanctioned living arrangements were legalized and included in the tax base (general excise tax on rental income, increase in property tax valuation, conveyance tax, personal income taxes, permit fees, sewer base charges). Spill-over economic impacts could also be studied to quantify the impacts of legalizing ADUs, such as more home refinancing, stimulating construction activity, reduced commute times if more workers could find housing within the urban core, and quantifying how much is saved when a senior stays at home instead of falling into institutional care.\textsuperscript{114}

\textsuperscript{114} Hawaii ranks at the top of national care home and nursing facility costs. Hawaii is also home to an above average proportion of seniors. Finding alternatives to institutionalization is critical.
Explore alternative funding sources to create accessory dwellings. Funding for housing and funding for health care are handled by separate entities with entitlement mechanisms that are completely divorced and unintegrated – see table below (Lawler 2001). Because accessory dwellings support aging-in-place, they provide opportunities to explore better methods and policies that integrate health and housing funding.

**Primary Points of Bureaucratic Disconnect Between Housing and Health**

<table>
<thead>
<tr>
<th>HOUSING</th>
<th>HEALTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managed by the IRS and the Department of Housing and Urban Development.</td>
<td>Managed through the Department of Health and Human Services.</td>
</tr>
<tr>
<td>Funded as tax deductions, tax credits, subsidies and grants to individuals and municipalities.</td>
<td>Funded as entitlements, subsidies and grants to individuals and states.</td>
</tr>
<tr>
<td>Calculated as tax credits and deductions before the annual revenue projections. Budgetary programs calculated by appropriations.</td>
<td>Calculated as Medicare entitlements program by the Finance Committee before budget allocation. Budgetary programs calculated by appropriations.</td>
</tr>
<tr>
<td>Administered by the state.</td>
<td>Administered by the locality.</td>
</tr>
<tr>
<td>Awarded: To an individual or family meeting financial criteria; assistance is received when unit becomes available.</td>
<td>Awarded: To any individual who meets physical and financial criteria; individual receives services immediately after qualifying.</td>
</tr>
<tr>
<td>Operate: Under 30-year mortgages and affordability requirements ranging from 10 to 40 years.</td>
<td>Operate: Using 1-to-2-year funding cycles.</td>
</tr>
<tr>
<td>Subsidy: Follows the housing unit.</td>
<td>Subsidy: Follows the individual.</td>
</tr>
<tr>
<td>Performance Measured by production: Number and affordability of units created.</td>
<td>Performance Measured by need: Number of individuals left unserved.</td>
</tr>
</tbody>
</table>

For example, if ordered by a physician, some medical insurance providers will cover home retrofit costs, such as installing grab bars or a wheelchair ramp. Further research could explore the viability of a pilot program to expand the scope or limits of coverage (via medicare or medicaid) to include more comprehensive home alterations. For many families, the annual costs of institutional care for seniors, especially in Hawaii, may exceed the costs of such home alterations. Preliminary calculations suggest
$6,000/month x 12 months = $72,000/year, which on an ongoing basis, suggests that one-time alteration costs might result in greater savings for individuals, their families and shrinking pool of available public health care funds.

Census Undercounting. While Part I of this thesis compared production rates of iADUs to legal one-and two-family dwellings, it remains to be seen whether the federal government would consider this as evidence of census undercounting and if so, could this be used to secure more federal funding, grants, or programs if we could demonstrate greater need? As this thesis suggests, Honolulu may contain a substantially larger population, lower per capita incomes, higher percentage of overcrowding, greater municipal density, and so on because of the Rec Room loophole.

Research from California\textsuperscript{115} and the Pratt Center in New York, working with Chhaya Community Development, has shown that in those cities, US Census has not counted vast numbers of illegal units (Neuwirth 2008).

\textit{More recent housing data from 2005, though not directly comparable to the Census counts in 1990 and 2000, suggests a persistence of unaccounted-for new housing units….. From 1990 to 2005, the four boroughs outside Manhattan had roughly 103,000 unrecorded new units, or nearly 40 percent of all the new housing created during that period. This Census data provides one of the most clear and accurate snapshots of the city’s stock of illegal apartments}\textsuperscript{116}.

Form-based code in Honolulu. Structure vs Use violations suggest that enforcing use provisions is a daunting if not unproductive activity. Awareness of this issue is timely since as per Planning Committee April 2013 minutes, the new Director of Planning and Permitting (DPP), George Atta, has stated that one of the priorities of

\textsuperscript{115} “The 2000 U.S. Census reported 263 two-unit dwellings in Mill Valley, or approximately 75\% of the existing legal second unit stock. The Building Department surmises that the number of second units is being under-reported by property owners who wish to avoid a mandatory sewer connection fee (currently $1,350 per hook-up) or a property tax reassessment. Given that the Census count is not accurately reflecting all of the documented existing legal second units in the City, it is highly unlikely that the Census is including any illegal units in its two-unit dwelling count.” “Marin Countywide Housing Element Workbook: Available Sites Inventory Worksheet.” Pp 206-207. Available online. Accessed May 14, 2013. \url{http://www.marinhousingworkbook.com/index.php?option=com_docman&task=doc_download&gid=257&Itemid=10}

\textsuperscript{116} (Neuwirth 2008, 4) \url{http://prattcenter.net%2Fsites%2Fdefault%2Ffiles%2Fpublications%2FHousing%2520Underground.pdf}
DPP is “expanding the zoning code by evolving the land use ordinance into a flexible form base.” This is an interesting opportunity to see if a form-based code that relies on structural or physical elements to mitigate the impacts of use, also contribute to easier enforcement of the zoning code.

In Honolulu, sewer capacity remains the premier issue limiting urban growth and development in general (not just housing). No amount of Zoning regulations can address sewer inadequacy. Future research could identify trunk lines and pumping stations that should be targeted for upgrades. For example, if the Sand Island Wastewater Treatment Plant is under capacity but the Ala Moana pumping station is over capacity, then it seems that additional dwelling units could be provided if resources are focused on relieving this bottleneck. If the private sector is ready, willing and able to build, then the public sector could help by ensuring adequate infrastructure to support that growth.

12. BIBLIOGRAPHY


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Planning Department. "Regulatory Reform for Small-Scale Residential Projects." Report to the Board of Supervisors, County of Santa Cruz, 2008.
http://accessorydwellings.org/2012/12/05/portland-extends-waiver-of-sdcson-accessory-dwelling-units/ (accessed 01 09, 2014).


Strachan, Alan, interview by Questor Lau. *Email correspondence*. (July 30, 2010).


Zoning Code Inquiry about
Recreation Rooms and Bar Sinks

This responds to your letter of February 19, requesting clarification of the Department of Planning and Permitting (DPP) policy on accessory recreation rooms and bar sinks for dwellings in Residential Districts.

The maximum number of detached recreation rooms permitted on a single residential lot is one per dwelling unit. This would also be true for recreation rooms that are attached to the dwelling, but have no interior connection to the dwelling.

The DPP does not have a "policy" that limits the number of wet bars a dwelling unit may have. However, if more than one wet bar is proposed, a restrictive covenant may be required. The number of wet bars permitted is not contingent on the "dwelling configuration". Essentially, the dwelling must meet the Land Use Ordinance (LUA) definition of a dwelling unit, i.e., it must consist of a room or rooms connected together, constituting an independent housekeeping unit for one family and containing a single kitchen.

Note that the purpose and intent is to prevent "recreation rooms" from becoming illegal dwelling units - that is, to avoid having a "wet bar" become a full kitchen thereby effectively constituting another dwelling unit on the lot.
March 15, 2004

The DPP does not have a policy regarding the maximum floor area of recreation rooms. However, any proposed recreation room may require a restrictive covenant. This would also be the case for an attached recreation room that does not have an interior connection to the dwelling unit.

If you have any further questions, please contact Robert Bannister of our staff at 527-5025.

Sincerely yours,

ERIC G. CRISPIN, AIA
Director of Planning and Permitting

EGC:nt

Doc. No. 284854
14. APPENDIX B

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION, made by ________________________

____________________________________

[full name of fee owner(s)]

whose address is _______________________________________

hereinafter referred to as "Declarant(s)."

WITNESSETH:

WHEREAS, by Deed dated ________________________, 19___,

recorded in the Bureau of Conveyances of the State of Hawaii in

Liber_______, Page____, as Document No.___________ (and/or)

filed in the Office of the Assistant Registrar of the Land Court of

the State of Hawaii as Document No.___________ and noted on

Transfer Certificate of Title No.___________, Declarant(s)
became the sole owner(s) in fee simple of that certain parcel of land situate at _______________,
City and County of Honolulu, State of Hawaii, being (a portion of) the lands identified by Tax Map Key ______-____-____, and more particularly described in Exhibit "A", attached hereto and made a part thereof (hereinafter "Property"); AND

WHEREAS, pursuant to Chapter 21, Revised Ordinances of Honolulu 1990, as amended (hereinafter "Land Use Ordinance"), only one single-family detached dwelling may be erected and maintained on the Property, a ______-square foot zoning lot located within a ______-District, except under the provisions of the Land Use Ordinance relating to Ohana Accessory Dwellings; AND

WHEREAS, on September 10, 1992, Ordinance Number 92-101 was approved amending the provisions of the Land Use Ordinance relating to Ohana Accessory Dwellings; AND

WHEREAS, the purpose of the amended ohana provisions is to encourage and accommodate extended family living without substantially altering existing neighborhood character; AND

WHEREAS, Declarant shares with the City and County of Honolulu an interest in the use of the property to accommodate extended family living; AND

WHEREAS, one way of realizing use of the property by family
members would be to allow an ohana accessory dwelling upon the property; AND

WHEREAS, ON ________________, 20__, an application for a building permit for an ohana accessory dwelling was filed at the Customer Services Office, Department of Planning and Permitting, City and County of Honolulu; AND

WHEREAS, Sections 4-3 and 4-4 of the Rules Relating to Ohana Accessory Dwellings, which became effective on January 22, 1994, require the Declarant to record a Declaration of Restrictive Covenants restricting the occupancy of the Ohana Accessory Dwelling to members of the family occupying the principal dwelling on the Property, and agreeing not to submit the lot to the condominium property regime as defined under Chapter 514A, Hawaii Revised Statutes.

NOW, THEREFORE, Declarant hereby covenants and agrees to subject the property described in Exhibit "A" to the following conditions:

1. The ohana accessory dwelling shall be occupied by persons who are related by blood, marriage or adoption to the family residing in the principal dwelling, provided that the principal dwelling is occupied by a family composed of persons who are related by blood, marriage or adoption.

2. Neither Declarant nor the Declarant's heirs, successors or assigns shall submit the Property or any portion thereof to the Condominium Property Regime established by Chapter 514A, Hawaii Revised Statutes.
3. This Declaration of Restrictive Covenants shall not be amended, terminated, extinguished or canceled without the express written approval of the Director of Planning and Permitting of the City and County of Honolulu, State of Hawaii.

4. Failure to maintain the development in accordance with this Declaration of Restrictive Covenants shall constitute grounds for the City and County of Honolulu to revoke or suspend any permit to which this Declaration of Restrictive Covenants pertains.

5. The City and County of Honolulu, State of Hawaii, shall have the right to enforce the Declaration of Restrictive Covenants and the conditions contained herein by appropriate action at law or suit in equity against the Declarant and any person or entity claiming an interest in the property by or through the parties hereto.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that this Declaration of Restrictive Covenants shall run with the land and shall bind, inure to the benefit of, and constitute notice to respective successors, grantees, assignees, mortgagees, lienors, and any other person or entity who claims an interest in the property by or through the parties thereto.

IN WITNESS WHEREOF, the undersigned has/have hereunto set his/her/their hand on this ______ day of ______, 20__.

DECLARANT:

__________________________

__________________________

__________________________
Black boxes and gray spaces
15. APPENDIX C

15.1 The History of Ohana Units

The state of Hawaii passed “the nation’s first growth-management law [at the state level] in 1961.” Honolulu therefore has a long history of regulation of land uses. One theory is that strict land use regulation causes high real estate prices. Randal O’Toole of the Cato Institute makes the case by comparing real estate prices in cities with high and low levels of regulation. This connection between regulation causing elevated housing prices was echoed by the state of Hawaii Affordable Regulatory Barriers Task Force (2008):

> Adequate supply of affordable homes is a critical component of economic viability and economic development. In 2007, U.S. Census Bureau statistics showed that 45.7% of homeowners in Hawaii, the second highest in the country, were paying at least 30% of their income toward housing costs, almost ten percent above the national average of 36.9%. More money being spent on housing costs means less money invested in other sectors of our economy, and impacts the quality of life for the homeowner or renter. The statistics also showed that Hawaii residents pay the highest median rent in the nation, and that owner mortgages are third highest in the nation [emphasis added], second to California and New Jersey.\(^{118}\)

The 1981 enabling legislation linked the importance of multigenerational living and housing affordability\(^{119}\) – core concepts of aging in place. A 1984 Program Evaluation of Ohana Housing states, “It was a slow year for single family residential construction on Oahu in 1982-83. However, in the program’s first year of implementation, ohana units comprised roughly one-fourth of all single family construction [emphasis added]. Without the ohana zoning provisions, these units

\(^{118}\) (State of Hawaii 2008)  
\(^{119}\) (Jaworowski 1988)
probably would not have been built. Theoretically, about 45 acres of additional land would have been required had these additional units been constructed in a typical subdivision.\(^{120}\)

But implementation of the state mandate to allow second units proved troublesome at the local level. In the early 1980s, the counties raised the objection that the law removed their ability to control residential density and direct urban growth. Thus, the State amended the law in 1989 (Act 313) to make second units optional rather than mandatory.\(^{121}\) However, it is important to note that despite the objections of the counties, the 1988 (Hawaii state) Legislative Reference Bureau study indicates that none of the Hawaii counties had repealed their Ohana ordinances. In fact, Maui has replaced its Ohana Dwelling designation and has adopted Accessory Dwelling Units.\(^{122}\)

According to a recent report by the Honolulu Department of Planning and Permitting, Honolulu County stopped issuing Ohana Dwelling permits from Jan 1990 to early 1994.\(^{123}\) Although not explicitly stated in the City’s report, there is widespread perception amongst realtors interviewed for this report that the restriction against CPR’ing an Ohana Unit was added to prevent developers from building, CPR’ing and then selling the 2\(^{nd}\) (Ohana) dwelling unit. What was originally one residential property

\(^{121}\) The following excerpt from HRS 46-4, the section currently in effect:
  • Current state law regarding second units (HRS §46-4 County zoning):
    (c) Each county may adopt reasonable standards to allow the construction of two single family dwelling units on any lot where a residential dwelling unit is permitted. Original Ohana law (as passed in 1981):
    (c) Neither this section nor any other law, county ordinance, or rule shall prohibit the construction of two single family dwelling units on any lot where a residential dwelling unit is permitted; provided:
    (1) All applicable county requirements, not inconsistent with the intent of this subsection, are met, including building height, setback, maximum lot coverage, parking, and floor area requirements; and
    (2) The county determines that public facilities are adequate to service the additional dwelling units permitted by this subsection.
\(^{122}\) http://library.municode.com/index.aspx?clientld=16289&statedl=11&stateName=Hawaii
zoned for single-family dwelling use, would have become two separate single-family homes, essentially doubling residential density.

On Jan 22, 1994, the City once again started issuing Ohana Dwelling permits\textsuperscript{124}, but this time, under strict limitations designed to prevent the previous abuses. In 2006, due largely to the efforts of City Councilmember Barbara Marshall (and in spite of written objections from the Department of Planning and Permitting, who instead favored capping the maximum size at 1,000 sq ft), an ordinance was passed that removed maximum floor area limitations for Ohana Dwelling Units. The stated goal was to stimulate the production of Ohana Units and thus create more affordable housing in Honolulu. Despite this, Ohana Units still have not gained widespread adoption among eligible properties because the provisions are too restrictive. Some of these restrictions include:

1) Ohana eligible areas limited to areas with adequate road, water and sewer infrastructure,
2) Ohana Unit must be attached to the main house (cannot be a separate structure),
3) $5,541 sewer connection fee (likely to increase in FY2011-2012),
4) 2 additional parking stalls,
5) Extensive amount of retrofit work required to provide the required 1-hour fire wall separation (a wall/floor assembly that must comply with ASTM E-119). It is difficult to upgrade the older single-wall homes in Hawaii to comply with a building code written on the mainland.

Interestingly, the rules meant to discourage abuse of the Ohana Unit program created a morass of red tape, grinding the production of new Ohana Units to a halt. At

\textsuperscript{124} Ibid.
the same time, homes overcrowded with growing families and landlords desperate for rental income, found a new loophole – the Recreation Room.
16. APPENDIX D

Table 31 shows the Wastewater System Facility Charge (WSFC) increases scheduled to go into effect each year for at least the next several fiscal years. This is a one-time fee a developer must pay when adding a new dwelling unit.

Table 30 shows the monthly re-occurring monthly sewer fees charged per residential dwelling unit. The red arrow points to the current Sewer Service Charge. In July 2013, the fee will increase to $65.76/month.

This information comes from the City and County of Honolulu Wastewater System Revenue Bond, dated September 20, 2012

http://www1.honolulu.gov/budget/wwrb2012os.pdf These numbers can also be found in the current City ordinance, ROH Chapter 14, Appendix 14-C and 14-D, available online at:


<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011/12</td>
<td>$5,707</td>
</tr>
<tr>
<td>2012/13</td>
<td>5,878</td>
</tr>
<tr>
<td>2013/14</td>
<td>6,055</td>
</tr>
<tr>
<td>2014/15</td>
<td>6,236</td>
</tr>
<tr>
<td>2015/16</td>
<td>6,424</td>
</tr>
<tr>
<td>2016/17</td>
<td>6,616</td>
</tr>
</tbody>
</table>
### Table 30

**Schedule of Non-Residential Sewer Service Charges**

**Effective July 1 of:**

**Domestic Strength Wastewater:**

1. **Metered Water Usage:**
   - (1) Monthly base charge per Equivalent Single Family Dwelling Unit (ESDU):
   - **2012:** $63.23
   - **2013:** 65.76
   - **2014:** 68.39
   - **2015:** 71.81
   - **2016:** 77.55

---

<table>
<thead>
<tr>
<th>DATE</th>
<th>PAYMENTS/ADJUSTMENTS/CHARGES</th>
<th>AMOUNT</th>
<th>BALANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>07/26/2012</td>
<td>Payment - Thank You</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Balance before Current Charges</strong></td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Water Charge</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Water Billing Charge</td>
<td>7.02</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Water Usage Charge (per 1000 gallons)</td>
<td>56.95</td>
<td></td>
</tr>
<tr>
<td></td>
<td>17 @ 3.350 = 56.95</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total Water Charges</strong></td>
<td>63.97</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Sewer Charge</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sewer Base Charge</td>
<td>252.92</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sewer Usage Charge (per 1000 gallons)</td>
<td>52.78</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3 @ 0.000 = 0.00 (lifetime allowance &amp; water use credit)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>14 @ 3.770 = 52.78</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total Sewer Charges</strong></td>
<td>305.70</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL AMOUNT DUE</strong></td>
<td>$369.67</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Payment Must Reach Us By</td>
<td>10/22/2012</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cons: 17 thousand gals</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Est = Estimated Bill*
Above: an actual sewer bill, charged to a residential property that contains one primary Residence and one Ohana Unit. The sewer fee is billed every other month. So each bill is for 2 months. The rate of each month’s sewer fee is given from Table 30 (Appendix D).

1 primary Residence + 1 Ohana Unit.

\[(\$63.23 \times 2 \text{ months}) + (\$63.23 \times 2 \text{ months}) = \$252.92\]

This amount is 41% of the total sewer bill. Without the 2\textsuperscript{nd} unit, this sewer bill would be $179.24. It should also be noted that as of Jul 1, 2013, the Sewer Base Charge has increased to $65.76.
17. APPENDIX E

SECOND UNIT AMNESTY PERMIT
SELF ASSESSMENT CHECKLIST

This checklist is provided as a tool for Second Unit Amnesty applicants. It should be used as a road map to understand and determine the feasibility of obtaining a Second Unit Amnesty Permit. Much of this information should be gathered and assessed before a permit application is submitted. Please refer to the Amnesty Guidelines and Frequently Asked Questions sections of this information packet for further details, or visit www.co.marin.ca.us/second_unit for information.

The applicant is responsible for any fees or upgrades required by other agencies (Water District, Sewer/Sanitary District, Fire, etc) and is strongly recommended to research these details prior to submitting an application.

Basic Requirements

- Owner must reside on property in either the main residence or the second unit (see Guidelines for exceptions)
- Proof that unit was in existence prior to June 2003
  - Provide records such as utility bills, rental contracts, or Assessor’s records
- Unit size between 220 square feet and 750 square feet
  - Size can exceed 750 square feet in some cases. See Amnesty Permit Guidelines item 2.D.2

Second Unit Housing Inspection

- Independent entrance to the second unit
  - Exterior entry door minimum size of 3 feet wide by 6 feet, 8 inches high
- Light and ventilation for each habitable room
  - Bedroom window egress and second floor ladder (ladder not required if unit is sprinklered)
  - Smoke detector for each sleeping room and adjacent hallway
- Adequate ceiling height in all rooms
  - 7 feet 6 inches in all habitable rooms, 7 feet in kitchens, halls and baths
- Structure free of rot, mildew and substantial termite damage
- Stairs, handrails, guardrails, hallways meet Uniform Housing Code. Contact the Building & Safety division for questions regarding specific items.

  Bathroom
  - Tub/shower
  - Lavatory/Toilet
  - Water closet
  - Mechanical ventilation or operable window

  Kitchen
  - Sink
  - Stove/oven (No microwave substitution)
  - Refrigerator
Second Unit Housing Inspection (continued)

Plumbing
- Hot/cold water
- Gas/propane lines
- All fixtures must be trapped and/or vented
- Low-flow water fixtures in both units

Heating (Must provide 70 degrees, 3 feet above the floor)
- Thermostat / heating control in second unit
- Separate access to gas shut-off

Electrical
- Separate access to electrical panel (Min. 100 Amps)
- Required receptacles in every room
- GFCI receptacles (2-wire electrical systems will be acceptable if not hazardous and are age-appropriate to the building).
- All utility configurations should provide tenant with unobstructed access to shut-offs valves.

Fire suppression and safety
- Residential fire sprinklers are required for detached units over 600 square feet.
- One hour rated separation materials between second unit and main unit.
- See Fire Protection section for Fire Department access and adequate water supply.

Utilities (water, sewer, septic)

Consult your local Water District for service approval and any connection fees (see your utility bills for contact information).
Consult your local Sanitary District for service approval and any connection fees.
- Well or Spring as drinking water source.
  - See Environmental Health Services staff for guidelines and assistance.
  - Also see Fire Protection section for fire suppression requirements.
- Septic Systems
  - See Environmental Health Services staff for guidelines and assistance.
  - Redwood tanks will require replacement.

Public Works related items

One parking space (covered or uncovered) for the second unit in addition to the required or existing parking for the primary residence. Tandem parking may be considered. Parking dimensions for constrained locations are 9 feet by 20 feet. Parking dimensions for unconstrained locations are 8 feet, 6 inches by 18 feet.

Flood Zones
- (Detached unit) If the unit is in Special Hazard Flood Area, the building may need to have the lowest floor at or above the Base Flood Elevation (BFE).
- (Attached unit) Applicant should provide DPW with a valuation of the structure before any work (non-permitted) occurred and a cost estimate of the work done. If the cost to value exceeds 50%, the lowest floor must be at or above the Base Flood Elevation (BFE).

Fire Protection

Acceptable Fire Department (County or District) access for driveway and turnaround
Adequate water supply for fire suppression (County or District)
18. APPENDIX F

This section explains why it is difficult to upgrade older T&G board homes, typical of many older homes in Honolulu, to meet a 1-hour fire-rated separation that would be required for existing homes that want to add a legal Ohana unit. (Rec rooms do not have this requirement) Intumescent Paint can technically be substituted in these situations.

The ASTM E 119 (Standard Test Method for Fire Tests of Building Construction and Materials) is a test standard that various construction assemblies must meet to be considered fire-resistive. As required by the 2003 International Residential Code, the 1-hour fire-rated wall between dwelling units in a two-family home must meet this ASTM E 119 standard. This is a change from the last building code. Before September 2007, our jurisdiction followed the Uniform Building Code 1997, which as amended by Honolulu County, did not require any fire-rated separation between units in a two-family dwelling.

A wall assembly that has been tested and approved as meeting the ASTM E 119

standard, describes such things as the type of screw used to secure the gypsum board to the wall, spacing of the screws, alignment of the gypsum board (ie. stagger joints). There are different ways of achieving the same fire-resistance rating, using the same or different materials or combination of materials.

It is not sufficient to add a layer of 5/8" type-X gyp bd to each side of a single wall (1" thick T&G boards). That is NOT a tested, approved assembly that complies with ASTM E-119 and therefore not sufficient to provide the one-hour fire rated wall between dwelling units in a two-family dwelling. Although Table 721.2.1.4(2) of the 2003 and 2006 International Building Code (IBC) lists 5/8" type X gypsum wallboard as providing 40 min on protection, the Honolulu Dept of Planning & Permitting has will not accepted even 2-layers of type X on each side, as an approved alternate to an ASTM E-119 approved detail, example shown below.

Therefore, upgrading pre-1980’s Hawaii-style homes to comply with the min requirements of the building code would require adding an interior "double wall" or 2x4 stud wall that by code, must extend up to the underside of roof sheathing. Similar complications arise when an owner wants to create separate units: upstairs-downstairs, as the floor-ceiling assembly must also therefore comply as a ASTM E-119 tested fire-rated assembly. This writer’s anecdotal experience suggests that this would require many older homes in Honolulu to supplement floor joists with larger sized members, since the dimensional lumber used on older homes is too small to meet current assembly requirements. The sizes used are no longer manufactured and have not been tested and approved for use with gypsum board as a 1-hour fire-rated barrier.

Prior to the adoption of the 2003 IBC an IRC Building Codes in Honolulu building codes were amended locally to not require any fire-separation between two-family dwelling units (R-3 occupancy). (see Increased Fire Hazard) A Recreation Room does

125 The exact time the building code and conventional building practices were changed from T&G “single-wall” construction to conventional 2x4 stud framing, is hard to pin-point. The building code even today still allows T&G boards to be used as the perimeter, load-bearing wall. So it is likely a conventional building practices that changed gradually. And it is this writer’s experience that until the late 1980’s “single-wall” homes were still being built.
Illegal Rentals therefore pose a potential risk to occupants and neighbors. Not all cities have the same requirements for fire-separation. Portland does not require a 1-hour fire-rated wall for existing construction. The fire-rated separation is only required for new construction.

The main difference between wall assemblies and coatings (ie. paint) is that in and of itself, paint is typically not tested as an assembly because it really depends on what the paint is applied to. However, its other properties, like ability to resist the spread of fire or transfer thermal heat can be measured. Those properties can improve survivability in a fire. It would be possible to apply the Intumescent Coating to a specific type of wall assembly and test it to ASTM E-119 standards, however, the general appeal of an Intumescent Coating is that you can apply it on various types of existing construction and assemblies that do NOT meet the typical standard.

- National Gypsum Assoc - further info on ASTM E 119 and 5/8" gyp board
- American Wood Council - sample wall and floor-ceiling assemblies

When converting a portion of an existing home into an attached Ohana Dwelling or attached Accessory Dwelling Unit, an ASTM E-119 approved 1-hour fire-rated wall is required between the main house and the 2nd unit. This is a life-safety requirement.

For older single-wall homes in Hawaii (see wall section), this often requires costly retrofits to construct a new 2x4 stud wall with 5/8" type "X" gyp bd. All structural members supporting the wall should also be provided 1-hour fire-rated protection.

In Honolulu, per this writer’s prelim discussions with the Department of Planning and Permitting, an Intumescent Coating is an accepted substitute in lieu of the stud wall. However, it remains to be seen if they will accept its widespread use in residential homes as a substitute for an ASTM E-119 1-hour rated wall. Past experience

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126 http://www.portlandonline.com/bds/index.cfm?a=68689
127 http://www.nationalgypsum.com/resources/safetyinformation/

193
suggests the main barriers to widespread implementation are 1) cost of coating and shipping remain high 2) City would require a special inspector to certify that the coating was applied properly. The architect of record can sign this form, but it is added liability. 3) The specific material and thickness of the substrate needs to be approved. Documentation from the manufacturer is required, certifying that the coating has been tested on this particular substrate so as to be equivalent to an ASTM E-119 1-hour fire-rated assembly.