

**COUNTY OF HAWAI‘I PLANNING DEPARTMENT**  
**BACKGROUND AND RECOMMENDATION**

**INITIATOR: PLANNING DIRECTOR**  
**AMENDMENT TO CHAPTER 25 (ZONING CODE), ARTICLE 2, DIVISION 6**  
**OF THE HAWAI‘I COUNTY CODE 1983 (2016 EDITION, AS AMENDED)**  
**RELATING TO USE PERMITS.**

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The Planning Director is initiating an amendment to Chapter 25 (Zoning Code), Article 2, Division 6 of the Hawai‘i County Code 1983 (2016 Edition, as amended), to update the time and revocation requirements for the Windward Planning Commission and Leeward Planning Commission to act on and revoke a Use Permit to be consistent with the Planning Commission Rules of Practice and Procedure.

**BACKGROUND**

Currently the Zoning Code does not allow for a reasonable time frame for the Planning Commission (Commission) to render a decision on Use Permit applications. Additionally, the Zoning Code does not currently allow the Planning Director (Director) to initiate revocation proceedings for Use Permits. The proposed changes are intended to make the Zoning Code consistent with Planning Commission Rules of Practice and Procedure, which currently allows for a reasonable time for the Commission to render a decision on Use Permit applications after the close of public hearing(s) and also allows for the Director to initiate revocations of Use Permits that may be abandoned and/or noncompliant.

The proposed amendments will make the following specific changes:

- Removes the requirement that the Commission shall render a decision within ninety days after acceptance of a Use Permit application and replaces it with a requirement that the Commission either approve or deny a Use Permit application no later than sixty days after the close of public hearing(s).
- Clarifies that the Commission can add conditions of approval that are not limited to hours of daily operation and terms of the Use Permit.
- Clarifies that if the Commission fails to render a decision on a Use Permit application in the required time, it is deemed approved unless a contested case

hearing pertaining to the permit is pending before the commission, replacing the broader “written objection” language in the current code.

- Clarifies the authority and procedures for revocation of a Use Permit by an applicant, the Director, and the Planning Commission.
- Clarifies that the Director shall provide written notice of the revocation of a Use Permit to the property owner should the Director proceed with the revocation of a Use Permit.

Note that should these amendments be approved by the Hawai‘i County Council, Rule No. 7 of the Planning Commission Rules of Practice and Procedure relating to Use Permits will not need an amendment.

Chapter 25 (Zoning) of the Hawai‘i County Code 1983 (2005 edition) is proposed to be amended as attached **Planning Department Exhibit 1**. (Material to be deleted is bracketed and struck through; material to be added is underscored)

### **PROPOSED AMENDMENTS**

This bill is initiated by the Planning Director to amend the Zoning Code as follows:

#### **Section 25-2-64. Action on a use permit.**

- (a) “Within [~~ninety~~] sixty days [~~after acceptance of a use permit application~~] following the close of the public hearing or public hearings as the case may be, or within such longer period as agreed to by the applicant, the Commission shall either deny or approve the application. The Commission’s decision shall be accompanied by a statement of factual findings supporting the decision [~~;~~ together with any conditions imposed upon a use permit approval].
- (b) In approving any use permit application, the Commission may issue the approval subject to conditions, including but not limited to hours of daily operation and terms of the use permit. The conditions imposed by the Commission shall bear a reasonable relationship to the use permit granted.
- (c) If the Commission fails to render a decision within the prescribed period, the application shall be considered as being approved, provided that no [~~written objection~~] contested case hearing pertaining to the use permit is [received] pending before the Commission.”

**Section 25-2-67. Revocation of a use permit.**

- ~~[(a) — A use permit shall be revoked by the commission at the request of any property owner who holds the use permit sought to be revoked or at the request of any other person with the property owner's consent upon the submission of a written statement to the commission verifying that the use approved under the use permit issued has either not been established or has been abandoned.~~
- ~~(b) — The commission may revoke any use permit upon request of the director if:~~
- ~~(1) — There have been continual violations of the use permit; or~~
  - ~~(2) — The use authorized under the use permit is creating a threat to the health or — safety of the community; or~~
  - ~~(3) — The use authorized under the use permit has been abandoned for a — continuous period of two years.~~
- ~~(c) — The proceeding to revoke a use permit, upon request of the director, shall require written notice to the property owner and to the person who has been issued the permit prior to the commission taking action to revoke the permit.~~
- ~~(d) — A property owner or other person affected by the proposed revocation of a use permit ordered by the commission, may, within thirty days after the mailing of the commission's order, appeal the commission's action to the third circuit court pursuant to chapter 91, Hawai'i Revised Statutes.]~~
- (a) "A use permit may be revoked by the director in the event that any property owner who holds the permit sought to be revoked or any other person, with the property owner's consent, submits a written statement to the director verifying that the development approved under the permit issued has either not been established or has been abandoned.
- (b) A use permit may be revoked by the commission upon the request of the director when the director determines that the following conditions exist:
- (1) There has been noncompliance with the conditions of the permit; or
  - (2) The use authorized under the permit is creating a threat to the health or safety of the community.
- (c) The director shall provide written notice of the proceeding to revoke a use permit

to the property owner and to the person who has been issued the permit prior to the commission taking action to revoke the permit.

- (d) A property owner or other person affected by the proposed revocation of a use permit ordered by the commission, may, within thirty days after the mailing of the commission's order, appeal the commission's action to the third circuit court pursuant to chapter 91, Hawai'i Revised Statutes."

### **RECOMMENDATION**

For the reasons cited above, the Planning Director recommends that the Leeward and Windward Planning Commission send a **favorable recommendation of this bill to the Hawai'i County Council for the amendment to Chapter 25 (Zoning) of the Hawai'i County Code 1983 (2016 edition, as amended) relating to action timing and revocation of a Use Permit application.**



BILL NO. \_\_\_\_\_  
(PLANNING DEPT.)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 25, ARTICLE 2, DIVISION 6 OF THE HAWAI‘I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO USE PERMITS.**

**BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I:**

**SECTION 1.** Purpose. The purpose of this amendment is to update the decision-making timeframe for use permits and clarify requirements and procedures for the Planning Director, Windward Planning Commission, and Leeward Planning Commission to revoke a Use Permit. The proposed amendments are intended to make the Zoning Code consistent with the Planning Commission Rules of Practice and Procedure.

**SECTION 2.** Chapter 25, article 2, division 6, section 25-2-64 of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

**“Section 25-2-64. Action on use permit.**

- (a) Within ~~[ninety]~~ sixty days ~~[after acceptance of a use permit application]~~ following the close of the public hearing or public hearings as the case may be, or within such longer period as agreed to by the applicant, the commission shall either deny or approve the application. The commission’s decision shall be accompanied by a statement of factual findings supporting the decision ~~[, together with any conditions imposed upon a use permit approval].~~
- (b) In approving any use permit application, the commission may issue the approval subject to conditions, including but not limited to hours of daily operation and terms of the use permit. The conditions imposed by the Commission shall bear a reasonable relationship to the use permit granted.
- (c) If the commission fails to render a decision within the prescribed period, the application shall be considered as being approved, provided that no ~~[written objection]~~ contested case hearing pertaining to the use permit is ~~[received]~~ pending before the commission.
- (d) Concurrent requests may be acted upon by the commission in conjunction with a use permit application.”

**SECTION 3.** Chapter 25, article 2, division 6, section 25-2-67 of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

**“Section 25-2-67. Revocation of a use permit.**

- ~~[(a) A use permit shall be revoked by the commission at the request of any property owner who holds the use permit sought to be revoked or at the request of any other person with the property owner’s consent upon the submission of a written statement to the commission verifying that the use approved under the use permit issued has either not been established or has been abandoned.]~~

- ~~(b) The commission may revoke any use permit upon request of the director if:~~
- ~~(1) There have been continual violations of the use permit; or~~
  - ~~(2) The use authorized under the use permit is creating a threat to the health or safety of the community; or~~
  - ~~(3) The use authorized under the use permit has been abandoned for a continuous period of two years.~~
- ~~(c) The proceeding to revoke a use permit, upon request of the director, shall require written notice to the property owner and to the person who has been issued the permit prior to the commission taking action to revoke the permit.~~
- ~~(d) A property owner or other person affected by the proposed revocation of a use permit ordered by the commission, may, within thirty days after the mailing of the commission's order, appeal the commission's action to the third circuit court pursuant to chapter 91, Hawai'i Revised Statutes.]~~
- (a) A use permit may be revoked by the director in the event that any property owner who holds the permit sought to be revoked or any other person, with the property owner's consent, submits a written statement to the director verifying that the development approved under the permit issued has either not been established or has been abandoned.
- (b) A use permit may be revoked by the commission upon the request of the director when the director determines the following conditions exist:
- (1) There has been noncompliance with the conditions of the permit; or
  - (2) The use authorized under the permit is creating a threat to the health or safety of the community.
- (c) The Director shall provide written notice of the proceeding to revoke a use permit to the property owner and to the person who has been issued the permit prior to the Commission taking action to revoke the permit.
- (d) A property owner or other person affected by the proposed revocation of a use permit ordered by the commission, may, within thirty days after the mailing of the commission's order, appeal the commission's action to the third circuit court pursuant to chapter 91, Hawai'i Revised Statutes."

**SECTION 4.** Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material and underscoring need not be included.

**SECTION 5.** Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

**SECTION 6.** This ordinance shall take effect upon its approval.

INTRODUCED BY:

COUNCIL MEMBER, COUNTY OF HAWAI'I

\_\_\_\_\_, Hawai'i

Date of Introduction:

Date of 1<sup>st</sup> Reading:

Date of 2<sup>nd</sup> Reading:

Effective Date: