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Changes on ohana unit rules need sorting before approval

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Hailed by supporters from Mayor Kirk Caldwell to building industry officials to homeless advocates as the quickest and easiest way to boost the number of affordable rental units on Oahu, the idea of loosening up laws for homeowners to create second dwellings on single-family residential lots is gathering steam at City Hall.

Resolution 14-200, which directs the Caldwell administration to bring forth a bill allowing for more accessory dwelling units, also called ADUs, advanced out of the City Council Zoning and Planning Committee this month and is expected to get final approval by the Council on Dec. 10.

But while there appears to be broad support for the concept of expanding the ADU program, the discussion is still at the ground level. A number of key details need to be hashed out, including which zones would be eligible, the minimum and maximum lot sizes where they could be placed and how big the ADUs themselves should be.

And then there's the question of whether the unknown number of existing, nonconforming ADUs should be "grandfathered," or become legal, provided they meet certain health and safety standards.

The few people who have testified against the resolution so far say they worry more ADUs will overtax their neighborhoods' roads, street parking and other infrastructure and that "grandfathering" existing second dwellings will legitimize multitudes of illegal transient vacation units (TVUs) and bed-and-breakfast establishments.

Expansion of the ADU program is the third plank of Caldwell's draft Islandwide Housing Strategy, unveiled in September. The mayor estimates between 17,000 to 22,000 single-family lots could be eligible for a secondary home, and that "at least 250 units per year" could be added in the initial years of the program.

Caldwell said that at numerous coffee hours held with developers on his affordable housing plan, "what comes out loud and clear is that it's controversial," adding, "There's all kinds of issues from parking to sewer capacity to TVUs."

Existing city law allows for a limited number of ohana dwelling units, a type of ADU, in some Oahu neighborhoods. Department of Planning and Permitting officials said no one has kept track of the number of ohana units that have been approved over the years and that current software is not designed to spit out such numbers.

The Hawaii Appleseed Center for Law and Economic Justice, which supports expanding ADU policies, estimates there are currently about 2,000 legal ohana units.

First allowed in 1982, they made up nearly 25 percent of all single-family construction building permits until the city first imposed the policy requiring that ohana tenants needed to be related by blood, marriage or adoption of the property owners. In 2011, Appleseed estimated, the number of ohana-related building permits was down to 2 percent of single-family construction.

What's now being considered is not limited to family members.

"Small cottages, additions or converted garages will provide well-located, well-managed housing choices plus additional income for owners, or more accessible units for elders to move into as they 'age in place,'" Caldwell's draft plan states.

Caldwell's draft housing strategy calls for lifting the current accessory dwelling/ ohana requirement that units be attached, and consider lowering on-site parking requirements (currently a minimum of two) when it is reasonable to do so.

A resolution by Councilman Ron Menor includes a draft bill that calls for ADUs with one or no bedrooms to be required to provide only one parking stall.

About half a dozen groups submitted oral or written testimony in support of Menor's resolution.

Scott Morishige, executive director of the homeless advocacy group PHOCUSED, said ADUs have a track record of providing affordable housing — and doing so without much government outlay.

"ADUs are a straightforward way to add to our affordable rental housing inventory without government subsidy, since homeowners cover the cost of development and the rents charged for ADUs are often affordable to low- and moderate-income renters," Morishige said in written testimony.

But several Oahu residents also voiced opposition to the measure.

"Rampant illegal rentals (are) already negatively impacting neighborhoods all over our island," Scot Drown said in written testimony. "Increasing ADUs in our residential communities will cause narrow streets to become impassable to residents and first responders due to tenant parking."

Kailua resident Ursula Rutherford, a longtime community advocate, said she fears ADU expansion will let unscrupulous homeowners use the dwellings as illegal vacation rentals.

More inspectors need to be hired by the city to enforce existing zoning and building laws, she said.

"The failure to enforce (existing) regulations has resulted in the proliferation in our residential neighborhoods of thousands of illegal vacation rentals."

City Deputy Planning Director Art Challacombe, at the committee meeting, said there are no current plans to hire more permanent employees if the ADU program is expanded, although temporary contract help might be needed initially.

Challacombe, in a written response later to a Star-Advertiser query, disputed Rutherford's claims about lax TVU enforcement. The department "responds to all complaints, including violations of the building code and the land use code," Challacombe said. "What is difficult is obtaining sufficient evidence to issue a Notice of Violation and Notice of Order for an illegal vacation rental unit."

Council Zoning Chairman Ikaika Anderson told the Star-Advertiser that the Council will look at ways to

address second dwellings being used illegally as TVUs, and will consider seriously any city request for more inspectors.

"We do want to make sure that we're not opening the door for unscrupulous scofflaws to break the law," Anderson said. Requiring a minimum rental period for ADUs, perhaps three months or six months, is one provision he wants to put in.

Caldwell said another way of discouraging abuses is by raising the fines on violators.

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