

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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DAVID K. TANOUE
ACTING DIRECTOR
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February 23, 2009

The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, & Ocean Resources
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

**Subject: House Bill HB 791
Relating to Group Living Facilities**

The Department of Planning and Permitting (DPP) **opposes** House Bill 791, which amends Chapter 46, HRS, to prohibit counties from establishing minimum distance (separation) requirements between group living facilities for the elderly and persons with disabilities.

The City & County of Honolulu recognizes that Hawaii's population may be aging rapidly and the number of elderly and disabled persons has increased dramatically. However, the City Council of Honolulu has determined that a minimum separation distance between all group living facilities (GLF), including those for the elderly or persons with disabilities, is necessary to ensure that such facilities do not occur in such great numbers or concentration that they adversely impact residential neighborhoods. HB 791 conflicts with this purpose. More specifically, HB 791 would nullify the Land Use Ordinance (LUO) regulation that requires a minimum separation of 1,000 feet between GLFs. If the City is not able to set a minimum separation distance, it is possible that GLFs could overwhelm a residential neighborhood by their sheer numbers and entirely change the residential character of the area.

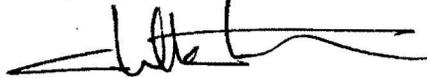
The U.S. District Court case from Nevada cited in the proposed bill, *Nevada Fair Housing Center, Inc. v. Clark County*, Nevada, 2007 WL 610640 (D. Nev.), is an unpublished opinion which means it has no precedential value in a court of law. In addition, the Nevada restriction struck down by this case violated the Fair Housing Act by treating disabled persons and non-disabled persons differently. The LUO does not treat disabled and non-disabled persons differently but merely provides some protection to our residential neighborhoods from being converted into commercial districts.

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In addition, Chapter 46-4, HRS, grants zoning power to the counties to implement the counties' general and development plans; and authorizes county councils to prescribe rules, regulations, and administrative procedures to exercise their zoning power. The bill infringes on county home rule.

Further, we are concerned that, by establishing an exemption exclusive to GLFs related to elderly housing, we may be vulnerable to claims of discrimination regarding Fair Housing Act requirements.

Very truly yours,



David K. Tanoue, Acting Director
Department of Planning and Permitting

DKT: jmf
hb791-bbt2.doc

Opposition to HB791

Sent: Sunday, February 22, 2009 11:30 AM

To: WLOtestimony; testimony; Rep. Ken Ito

Cc:



**House Bill 791
Public Hearing
Monday February 23, 2009
9:30am Conference Room 325
State Capitol
415 South Beretania Street
Honolulu, HI 96813**

**Committee of Water, Land, and Ocean Resources
Rep. Ken Ito, Chair
Rep. Sharon Har, Vice Chair
Dear Senators,**

I would very much like to speak in against this bill (HB791)) to prohibit counties from controlling independent care home distance standards in Hawaii. This is an arrogant bill initiated by care home operators with one thought in mind. Using economies of scale, they can make even more income by clustering adult residential care homes on a single block in a residential neighborhood. This bill is obscene!

The proliferation of ARCHs affects all communities statewide. It is a very lucrative business (in Manoa it is \$7000 per resident per month) and many owners who start an ARCH find they can easily afford buying more property and increasing their services and their wealth.

We have met for the past two years beginning in Feb 2007 with Senator Brian Taniguchi, Representative Kirk Caldwell, Councilwoman Ann Kobayashi, Director of Health Chiyome Fukino, the Dept. of Planning and Permitting and many others. Dozens of residents have attended meetings on my patio to discuss the problems of multiple care homes built adjacent to one another and the myriad health and safety problems that arrive hand in hand with these developments. We understand the importance of these care homes and totally support its concept.

It is when they negatively impinge on the surrounding residential neighborhood that we citizens are concerned. In Manoa, some adult residential care homes are located on sub standard streets with brittle infrastructure. Fire trucks may not fit on these tight roads. An ARCH owner on one street is now attempting to fit 13 unrelated people into a home and DPP has issued them a permit. In another case in Manoa, an ARCH owner has 3 adjacent care homes which have greatly affected the nearby neighbors. Medical waste blowing across the street, employee smoking outside, noise from shift changes and deliveries and patients and personnel, night lights shining at all hours, handicapped van pickups and drop offs, family visitors, limited parking, 6 foot high fences, increased traffic, are some of the ways that a quiet residential block has been transformed.

There are many more neighbors concerned about these homes than live in these homes and there must be a reasonable balance between the need for ARCHs and the needs of the surrounding communities.

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Since 2000, residential care homes have increased by 19%. I know Aina Haina, Maunalani Heights and Nuuanu are presently dealing with these same issues.

Neighbors object to the clustering of care homes. This has a significant negative impact on a quiet residential community. We tried to look at ways to restrict how many facilities can operate on the same block. Various legislation has been written for the past two years. Each time the community comes to testify, the Attorney General stonewalls the process of finding a balance or limiting ARCHs to 1000 yard apart which according to Mr. John Whalen was intended long ago. The Attorney General says such a law would violate the Fair Housing Act and then the bills die. We know states like Colorado and Arizona seem to have sensible distance requirements.

Hundreds of people have signed petitions encouraging distance requirements but their voices have now died with the past legislation. We feel helpless and don't know what to do so we don't even have meetings anymore.

Manoa takes pride in and care of its kupuna. I have cared for my 92 year-old severely handicapped mother for 15 years. Many others do much more. ARCHs are only one option for elderly care. Manoa supports the elderly and supports care homes. It is not the total number of homes that is a problem, but the dense proximity of these homes built next to one another. We have concerns about the safeguards of operating two or more homes completely independently as stated within the law. Staff carrying disease can pass this back and forth between homes. Any physician could tell you about the inherent dangers of the spread of infectious diseases in adjacent homes. A single case of flu virus, stomach virus, or tuberculosis could spread like wild fire, exacting significant morbidity and mortality. Any fireman would tell you that it would be much more difficult to evacuate 8 elderly persons from an elderly care home than 16 or 24 which could occur in adjacent homes.

Having reasonable regulations like distance standards, random audits for independence, checking health requirements for staff, stringent reporting of infectious diseases, proper infrastructure, adequate parking, evacuation fire plans, and much more should be discussed. We hope the legislature will take a proactive role with this issue. Just as the bed and breakfast and vacation rentals challenge our communities, so does the clustering of ARCHs.

HB 791 will give care home operators license to set up mini hospital complexes in residential neighborhoods. The counties need to set up reasonable and balanced guidelines NOW! Like the Department of Planning and Permitting, I am against this bill. Please oppose this selfish piece of legislation!

Jeremy Lam MD

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