Sec. 21-2.80 Conditional zoning--Agreements.

Before the enactment of an ordinance for a zone change, the city council may impose conditions on the applicant's use of the property. The fulfillment of these conditions shall be a prerequisite to the adoption of the ordinance or any applicable part of it.

(a) The conditions to be imposed must have already been performed before council action on the zone change, or be enforceable by the city to ensure performance after council action. The conditions shall be fulfilled within the time limitation set by the council or, if no time limitation is set, within a reasonable time.

(b) The conditions shall be imposed only if the council finds them necessary to prevent circumstances which may be adverse to the public health, safety, and welfare.

(c) The conditions shall be reasonably conceived to fulfill needs directly emanating from the land use proposed in the following respects:

1. Protection of the public from the potentially deleterious effects of the proposed use; or
2. Fulfillment of the need for public service demands created by the proposed use.

(d) Changes or alterations of conditions shall be processed in the same manner as the zone change.

(e) The conditions shall be set forth in a unilateral agreement running in favor of the council, acting by and through its chair. No ordinance with conditions shall be effective until the agreement, properly executed, has been recorded with the bureau of conveyances or the land court of the State of Hawaii, or both, as appropriate, so that the conditions imposed by the agreement shall run with the land and shall bind and give notice to all subsequent grantees, assignees, mortgagees, lienors and any other person who claims an interest in such property. The agreement shall be properly executed and delivered to the city prior to council action on the ordinance with conditions; provided, however, that the council may grant reasonable extension in cases of practical difficulty. The agreement shall not restrict the power of the council to rezone with or without conditions. The agreement shall be enforceable by the city, by appropriate action at law or suit in equity, against the parties and their heirs, successors and assigns.

(1) Declarants, or the declarant's heirs, successors or assigns, shall prepare and submit to the director an annual report detailing the status of compliance with each condition associated with the agreement, which shall include supporting documentation as appropriate, such as, but not limited to, copies of construction and building permits, copies of deeds and restrictive covenants, financial records, phasing plans, build-out summaries, site plans, master plans, or other relevant information verifying compliance. Failure on the part of the declarant, or the declarant's heirs, successors or assigns, to fulfill this requirement shall be grounds for establishing a violation of
this subsection.

(2) When the conditions of an agreement have been fully performed and none of the conditions are of a continuing nature, the director may fully release the declarant, or the declarant's heirs, successors or assigns, from the agreement. The director may also execute and record a partial release from the conditions of an agreement upon the successful performance of any specific condition which is not of a continuing nature. Any required fees associated with such a release shall be the responsibility of the declarant, or the declarant's heirs, successors or assigns.

(3) The director shall prepare and submit to the council an annual report summarizing the status of compliance with conditions associated with outstanding agreements. This report shall also include a list of agreements for which a full or partial release has been executed by the director for that year, which shall include at least the liber and page or land court document number of the recorded release.

(f) Failure to fulfill any conditions to the zone change within the specified time limitations may be grounds for the enactment of ordinances making further zone changes upon initiation by the proper parties in accordance with the charter.

(g) The council may require a bond, in a form acceptable to it, or a cash deposit from the property owner or contract purchaser in an amount that will assure compliance with the conditions imposed. The bond shall be posted at the same time the agreement containing the conditions is recorded with the bureau of conveyances or land court of the State of Hawaii, or both, as appropriate.

(h) For the enactment of an ordinance for a zone change where conditions are to be imposed on the applicant's use of the property, and there exist applicable conditions associated with an earlier ordinance for a zone change, the preexisting conditions, in whole or in part, may be repealed by the new ordinance for a zone change or incorporated into the new unilateral agreement.

(Added by Ord. 99-12)