

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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MAYOR



DAVID K. TANOUE  
ACTING DIRECTOR

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DEPUTY DIRECTOR

February 5, 2009

The Honorable John M. Mizuno, Chair  
and Members of the Committee on Human Services  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

**LATE  
Testimony**

Dear Chair Mizuno 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.

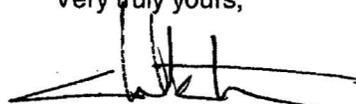
The U.S. District Court case from Nevada cited in the proposed bill, *Nevada Fair Housing Center, Inc. v. Clark County, Nevada*, 2007 WL 610640 (D. Nev.), is an unpublished opinion which means it has no precedential value in a court of law. In addition, the Nevada restriction struck down by this case 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,

A handwritten signature in black ink, appearing to read "David K. Tanoue", written over a horizontal line.

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

DKT: jmf  
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