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Hawaii Condominium Bulletin

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Frequently Asked Questions on Condominium Unit Renovations by Lance Fujisaki

About the Author: Lance Fujisaki, a partner in the law firm of Anderson & Fujisaki LLP A Limited Liability Law Partnership, has been a speaker at CAI seminars, the Hawaii Real Estate Commission sponsored Condorama series, and the CAI ABC's Workshop.

We are pleased to offer this timely reprint from the April 2021 CAI Hawaii Newsletter. During the pandemic, many homeowners have dedicated their time at home to renovating their units. Mr. Fujisaki provides general guidance for the governmental, statutory, and project document hurdles that must be met.

The COVID-19 pandemic has caused a surge in home improvement projects throughout Hawaii and the entire country as people spend more time indoors and, with reduced travel and entertainment activities, many homeowners have the resources to renovate their homes. In addition, many condominium projects are 30 to 50 years old, property values have spiked, and new and appealing materials and appliances are now available. It is not surprising that many associations are seeing an uptick in major renovations to units. This article provides answers to some of the frequently asked questions that have arisen over the years. Renovation projects can raise a host of other questions. This article focuses on the most commonly encountered questions.

Information in Section A of this article is based, in part, on the Revised Ordinances of Honolulu. If your project is on a different island, please check the ordinances of your county. The answers may be different depending upon the county that your condominium project is in.

A. General Overview of State and County Requirements

Board members and practitioners should always consult the applicable source material when trying to answer questions. The answers below summarize text from various statutes, ordinances or rules. When applied to specific circumstances, the text of the source material may not provide a crystal-clear answer. It is always a good idea to consult with an attorney or design professional when faced with significant, complicated or ambiguous issues.

continued page 3



Message from the Chair

Aloha No!

We are welcoming the gradual return of pre-pandemic normalcy to our lives in Hawaii! We can gather indoor in larger groups, go mask-less in most situations outdoors, and our keiki will be returning to in-person learning in our public schools full-time in the fall. It's been a long 15 months since March 2020, but we made it and are stronger for it.

Your condominium associations have settled in to the meeting protocols, either remotely or in remote/hybrid form so that all owners may participate. Some associations have saved money on meeting room rentals and out-of-state owners may participate remotely in the life and decision-making of their association. Our lives have changed in these ways for the positive, and we certainly have gotten adept at participating in Zoom meetings and remote educational events. Inquire as to whether the health and safety rules governing your association have eased as our community slowly re-opens; you may be able to meet up with and re-connect with your neighbors in the common areas once again.

During the pandemic, associations have seen an uptick in the number of owners conducting renovations, big and small, on their units. Inside this June bulletin you'll find an article by Lance Fujisaki, Esq., addressing governmental and association requirements for renovations conducted in condominium units.

It was a relatively quiet year at the Legislature for condominium governance. We highlight two condo governance bills that were transmitted to the Governor, who as of the date of this writing, has yet to sign or veto either of the bills.

Media reports tell us that more visitors to Hawaii are choosing to stay in private short-term rentals over traditional hotels. Many of these private vacation rentals will be in condominium associations. The Condo Specialist addresses the issue of vacation rental pools.

June through November in Hawaii is Pacific hurricane season. The Hawaii Emergency Management Agency has critical hurricane preparedness information available at its website, https://dod.hawaii.gov/hiema/public-resources/preparedness-information/. Make sure that you are prepared. Additionally, the April 2021 edition of CAI Hawaii's newsletter has suggestions for protecting your association's elevators in a hurricane situation.

Continue to stay safe and participate in condominium education learning. Check out the calendar of educational events scheduled for CAI Hawaii at their website, https://www.caihawaii.org/, and the Hawaii Council for Community Associations, https://hawaiicouncil.org.

Take a look too at REBs new educational videos at the link here https://cca.hawaii.gov/reb/hawaii-condo-living-guide/. They're small bites of valuable governance information that all owners should know. Ten videos are currently posted beginning with important things to know when purchasing a condominium unit to the legal requirements for budgets and reserve funds.

Condominium association biennial registration has been ongoing since April 1, 2021. Make sure your association is registered by June 30, so that you can be eligible for subsidized mediation, seminars and future Condoramas!

To keep up with the latest condo issues, legislative news and educational events for the condo community, don't forget to sign up for the Commission's quarterly email subscription service. Get it at the link here, http://cca.hawaii.gov/reb/subscribe.

And finally, this is my last Chair's message to you. I was first appointed to the Commission in 2013, and my appointment as a Commissioner ends at the end of June. I've enjoyed my two terms working through real estate and condominium issues with the other Commissioners and the REB staff, and I thank all of you for your ongoing interest in condominium education. Enjoy your summer outdoors, and as always, keep up with condominium education virtually and stay safe.

Laurie A. Lee Chair, Condominium Review Committee



Frequently Asked Questions on Condominium Unit Renovations (cont. from page 1)

When is a building permit required?

Subject to the exceptions indicated in Chapter 18, Article 3(b) of the Revised Ordinances of Honolulu, owners must first obtain a building permit for any of the following work:

- "Install, remove, alter, repair or replace any plumbing . . . or any fixture"
- "Any electrical work"

This means, among other things, that the following work may require a building permit: replacement of kitchen and bathroom cabinets (requiring plumbing or electrical work) and bathtub replacements. A building permit will be required for shower conversions, alterations to walls, and new walls and plumbing and electrical work.

Are there any exceptions to the building permit requirement?

- Electrical repair work that does not aggregate over \$500 in valuation in any 12-month period.
- Plumbing repair work that does not aggregate over \$1,000 in valuation in any 12-month period and which involves or requires only the replacement of valves, pipes or fixtures
- Repairs which involve only the replacement of component parts of existing work with similar materials for the purpose of maintenance, and which do not aggregate over \$1,000 in valuation in any 12-month period, and do not affect any electrical, plumbing, or mechanical installations.
- Painting, installation of floor covering and cabinet work without limit as to valuation.
 (In many instances cabinet work will require a building permit because the new cabinets will require plumbing or electrical work.)

When are licensed contractors required?

- Generally, all plumbing and electrical work must be done by licensed contractors if it involves any new wiring or plumbing, even if a building permit is not needed.
- Work costing more than \$1,500 or requiring a building permit must be performed by licensed contractors.
- · Artificially dividing work into segments to evade this requirement is not allowed.
- A licensed plumber is required before the Association will shut down water service.

How may I qualify as an owner-builder?

You may not act as your own general contractor unless you are licensed. The owner-builder exemption from the Contractor Licensing Law only applies to constructing or improving stand-alone buildings or structures and not to modifications or alterations of apartments within multi-family structures.

When are stamped plans required?

The City requires that all plans and drawings submitted must be stamped by a licensed architect or registered professional engineer if the cost of the work is more than \$35,000.

B. Condominium Property A t and Governing Documents

Does Chapter 514B impose restrictions on alterations and additions to units?

Board members should become familiar with § 514B-140 which is applicable to all condominium projects in Hawai'i. This provision provides:

§514B-140 Additions to and alterations of condominium. (a) No unit owner shall do any work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, as reasonably determined by the board.

- (b) Subject to the provisions of the declaration, no unit owner may make or allow any material addition or alteration, or excavate an additional basement or cellar, without first obtaining the written consent of sixty-seven per cent of the unit owners, the consent of all unit owners whose units or appurtenant limited common elements are directly affected, and the approval of the board, which shall not unreasonably withhold such approval. The declaration may limit the board's ability to approve or condition a proposed addition or alteration; provided that the board shall always have the right to disapprove a proposed addition or alteration that the board reasonably determines could jeopardize the soundness or safety of the property, impair any easement, or interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property.
- (c) Subject to the provisions of the declaration, nonmaterial additions to or alterations of the common elements or units, including, without limitation, additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the

Frequently Asked Questions on Condominium Unit Renovations (cont. from page 3)

exclusive use of the unit, shall require approval only by the board, which shall not unreasonably withhold the approval, and such percentage, number, or group of unit owners as may be required by the declaration or bylaws; provided that:

- (1) The installation of solar energy devices by owners of condominium units shall be allowed upon written consent of the board; and
- (2) The installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.

As used in this subsection:

"Nonmaterial additions and alterations" means an addition to or alteration of the common elements or a unit that does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner.

"Directly affect" means the installation of television signal distribution and telecommunications equipment, solar energy devices, or wind energy devices in a manner which would specially, personally, and adversely affect an individual unit owner in a manner not common to the unit owners as a whole.

Very briefly, § 514B-140 address three categories of alterations:

First, Section (a) addresses work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, as reasonably determined by the board. If a board can reasonably determine that work will jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, the owner should not be permitted to perform the work.

Second, Section (b) addresses <u>material</u> additions or alterations, or excavations of an additional basement or cellar. (Although basements are rare in Hawaii, there have been cases of owners excavating beneath their apartments to increase the living area of their unit.) Although the term "material additions or alterations" is not defined in the statute, as noted below, the statute defines "nonmaterial additions or alterations." Presumably any work that does not qualify as "<u>non</u>material" will be deemed "material." Any work that falls within Section (b) requires (1) the written consent of sixty-seven per cent of the unit owners, 11 (2) the consent of all unit owners whose units or appurtenant limited common elements are directly affected, and (3) the approval of the board, which shall not be unreasonably withheld. These requirements are subject to the provisions of the declaration and Section (a) summarized above. In addition, boards have the right to disapprove proposed additions or alterations that the board reasonably determines will interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property.

Third, Section (c) addresses <u>nonmaterial</u> additions to or alterations of the common elements or units, including, without limitation, additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the exclusive use of the unit. Although the statute provides a definition of "nonmaterial additions and alterations," disputes may arise over whether work proposed by owners is actually "nonmaterial." Many boards require owners to show that the proposed work will not jeopardize the soundness or safety of the property, reduce the value of the project, impair an easement, detract from the appearance of the project or interfere with or deprive a nonconsenting owners of the use or enjoyment of any part of the project, or directly affect a nonconsenting owner.

Boards should consult with their legal counsel to ensure compliance with HRS § 514B-140. In some cases, the application of HRS § 514B-140 can be challenging. Improper approval or disapproval of applications to construct additions or alterations can lead to costly disputes. Boards should also take steps to inform owners of their obligations under HRS § 514B-140 regarding the construction of additions or alterations to their units.

Are there any other restrictions on alterations and additions to units?

Most declarations of condominium or horizontal regime and bylaws of condominium associations contain detailed restrictions on, and approval requirements for, alterations and additions to units. Depending upon the nature of the work, owner approval may be required, or amendments to the government documents may be required. Governing documents are specific to each project. Board members should become very familiar with the provisions of their governing documents on additions and alterations.

1 This means the owners of units to which are appurtenant at least 67% of the common interest.

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Frequently Asked Questions on Condominium Unit Renovations (cont. from page 4)

Please note that there are numerous other categories of additions or alterations that are regulated by federal, state or county laws, including but not limited to: antennas and satellite dishes, clotheslines, solar energy devices, electric vehicle charging stations, flag poles, fair housing issues, and additions and alterations to units that are installed on common elements, among many other things. To avoid violating the law, boards should consult with association counsel when faced with applications involving these types of additions.

C. Implementing Good Procedures

How should condominium association boards handle renovations to units?

Every project is different, and the answer will depend upon the physical conditions of the project, the provisions of governing documents, the resources available and the history of the project. Unfortunately, there are no "one-size-fits-all" answers. Practitioners often look to the Restatement (Third) of Property (Servitudes) § 6.8 (2000), a legal treatise often cited by courts, for guidance on community association law. Comment a. to § 6.8 states:

Prophylactic measures designed to prevent violations also are generally appropriate. Requiring prior submission of plans for construction or other projects that must comply with building, landscaping, or other restrictions, for example, alerts property owners to potential violations and may avoid costly after-the-fact injunctive proceedings.

Given the potential problems that may arise from work performed inside units, it is probably a good idea to implement formal procedures to regulate these activities, such as written design guidelines and procedures and application forms. If work is not properly performed, or work is performed without authority, other units may be adversely affected.

How can boards keep track of renovation projects in every unit?

For many projects, particularly those that are spread out over large areas, it may be daunting to regulate work inside units. Few projects have attendants to monitor who is entering the project. People may come and go unmonitored. While there are no easy solutions, at minimum, for many projects, it may be helpful to require owners to complete an application form for all work performed inside units. A simple application form, approvable by a site manager, may suffice for minor work, such as replacing plumbing faucets or repairing a light switch. The form should, among other things, identify the work to be performed, the contractor who will perform the work (if applicable), and confirmation that no other work will be performed. Work that is more substantial or structural in nature or that may have an adverse effect on the project should be covered in a more detailed application form that is reviewed by the board or a design review committee.

Among the objectives of the application process are to (1) provide documentation of the work performed inside units, (2) provide written representations that the owner will perform no other work in the unit other than that disclosed in the application, (3) identify the contractors who will perform the work, (4) educate owners of the approval process, (5) prevent owners and contractors from performing work without the approval of the Board, and (6) make it easier for the association to successfully enforce the governing documents against owners in the event that owners violate the governing documents or HRS Chapter 514B. Although this may create an administrative burden for onsite staff, documentation of work inside units is probably the most effective way to monitor and regulate work inside units.

Are there any tools available to help minimize future problems from additions or alterations to units?

Among the tools that associations can use, particularly when facing work that has the potential of creating future problems, are modification agreements recordable in the Bureau of Conveyances or Land Court of the State of Hawai'i. The purpose of recording modification agreements is to ensure that future owners are subject to the terms and conditions of approval, which may require removal of the additions or alterations in the event that they are causing harm to the project or impairing the association from repairing or maintaining the project. The City and County of Honolulu requires owners to record a Declaration of Restrictive Covenants before it will issue a permit for accessory dwelling units. (See link below.) In appropriate instances, associations may require a similar type of form for additions and alterations.

In summary, implementing renovation approval procedures can help owners comply with the governing documents and other legal requirements, and minimize the risk of protracted disputes with owners over unauthorized additions or alterations or improperly performed repairs to units. The key to avoiding disputes is to implement written procedures and forms that bring potentially problematic issues to the board's attention before the work is performed. Resolving disputes with owners over unauthorized work after-the-fact can be extremely costly and time consuming. Good procedures and forms can pay off significantly in a smooth-running association and renovation review process.

Ask the Condominium Specialist

l'd like to join my condo association's rental pool and place my unit in it for short-term rental availability. What is the law pertaining to this?

With Hawaii re-opening to visitors, the demand for rooms is rising. Media reports say that the present demand for private vacation rentals is exceeding the requests for traditional hotel accommodations.

Short-term rentals (less than 30 days) of condominium units are governed by the Hawaii Real Estate Licensing Law, HRS Chapter 467. It's a bit confusing to have a law governing condominium units in the chapter governing real estate activity in Hawaii, but there it is and HRS § 467-30 governs the activities of condominium hotel operators ("CHO").

There are two types of CHOs. Non-licensees (sole proprietors or entities that do not hold either a real estate salesperson's or broker's license) may operate as a CHO and manage the condominium units of others short term by registering as a CHO with the Real Estate Branch ("REB") and complying with the registration and fidelity bond requirements set forth in HRS § 467-30. Registration is for two years and must be renewed and current to maintain legal CHO activities. Find a list of CHOs currently registered with the REB at this link http://cca.hawaii.gov/reb/resources-for-condominium-developers-hotel-operators/.

Condominium hotel operators who hold an active real estate salesperson or broker's license are exempt from the registration and fidelity bond requirements of HRS § 467-30. The CHO is operated under the real estate brokerage, with the principal broker governed by the real estate law of HRS Chapter 467 and its accompanying rules and requirements. The principal broker is ultimately responsible for the activities of the CHO.

Many condominium associations have "rental pools" run within the association. You may join your association's rental pool or opt to place your unit or units in a different CHO. If the rental pool affiliated with your association is run under a real estate brokerage, again, there is no registration requirement with the REB.

One benefit of placing your unit in a rental pool run under the auspices of a real estate broker is that should you make a claim against the CHO, the Real Estate Recovery Fund is potentially available for any successful claims that may be made against the CHO. The Real Estate Recovery Fund is not available for any claims against registered CHOs, i.e., those not operated by a real estate licensee. (One of the many requirements for successfully registering a CHO with the Real Estate Branch is to provide a copy of a letter from the CHO to be delivered to all unit owners in the association, even owners not in the rental pool advising them that the Real Estate Recovery Fund is NOT available to any owners in the association who make a claim against the CHO.) In the case of a CHO registered with the REB, the required fidelity bond insurance coverage is insurance against any theft of funds by employees of the CHO.

The information provided herein is informal and intended for general informational purposes only. Consult with an attorney familiar with the Hawaii condominium law for specific legal advice regarding your situation.

Is Your Association Registered?

Biennial condominium association registration is required by HRS § 514B-103. Associations of 6 or more units have until June 30, 2021, to complete a timely online registration for the 2021-2023 period. After June 30, 2021, online registration will no longer be available and registrations will be delinquent. Late registrations must call the Real Estate Branch and request a paper application for the association; late registrations will be assessed delinquent penalties as well. So, if you haven't yet registered, do it!! Your condominium association will be in compliance with the law, and eligible for subsidized dispute resolution, educational seminars, and free Condoramas!

Mediation Case Summaries

From March 2021 through May 2021, the following condominium mediations or arbitrations were conducted pursuant to Hawai`i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations in the District Courts while mediation providers conducted community outreach in their respective communities.

The Mediation Center of the Pacific, Inc.

Owner vs. AOUO Alleged violation of bylaws and house rules relating to property damage. Mediated; no agreement.

Owner vs. AOUO Alleged violation of bylaws and house rules relating to maintenance fees. AOUO declined mediation.

Owner vs. AOUO Alleged violation of bylaws and house rules relating to health and safety issues AOUO declined mediation.

in the association.

AOUO vs. Owners Alleged violation of house rules relating to noise. Mediated; no agreement.

Dispute Prevention and Resolution, Inc.

AOUO vs. Owner Issues surrounding renovation by owners of their unit and whether glass used in the renovation complies with governing documents.

AOUO vs. Owner AOUO alleges Owner caused delay to required plumbing work in unit.

Mediated to agreement.

AOUO vs. Owners Issue regarding whether the installation of AC condenser units required Mediated to agreement.

a vote of approval by unit owners.

Owner vs. AOUO Owner claimed vote taken to amend the declaration was improper. Mediated; no agreement.

Owner vs. AOUO Owners alleged AOUO was not in compliance with the Hawaii reserve law. Mediated to agreement.

Owner vs. AOUO Owner alleged AOUO was not enforcing smoking rules of the association. Mediated to agreement.

Owner vs. AOUO Owner alleged AOUO was not enforcing the house rules to the detriment of Mediated; no agreement.

the safety of the owners.

Owner vs. AOUO Owner alleged misuse of maintenance fees by board. After mediating, parties

agreed to attend a settlement conference to finalize agreement.

Owner vs. AOUO Owner alleges breach of fiduciary duty by board, resulting in potential Mediated to agreement.

financial, physical and mental harm to the owners.

Owner vs. AOUO Owners alleged AOUO failed to remediate water damage as required by Mediated to agreement.

project documents.

Owner vs. AOUO Issues involving interior improvements to owner's unit and whether they Mediated to agreement.

were legal pursuant to the project documents.

Charles W. Crumpton Crumpton Collaborative Solutions

AOUO vs. Owner Owner challenged legitimacy of previous settlement by AOUO with a Mediated to agreement.

different owner, alleging that the resulting special assessment to owners

to pay for legal fees was unfair.

West Hawai'i Mediation Center

Owner vs. AOUO Owner disputed accrued fine for tenants' smoking in the unit.

Agreement occurred after intake with the parties.

Legislative Update

It was a relatively quiet legislative session this year for condominium governance bills. At the date of this writing, two governance bills remain alive for potential passage.

Senate Bill 329 shortens the notice period from sixty days to thirty days for a board to sell, store, donate, or dispose of personalty when the identity and address of the owner are known. It removes the publication requirement and permits the board of directors of a condominium association to proceed directly to the sale, storage, donation, or disposal of personalty that has been abandoned in or on the common elements of a condominium when the identity or address of the owner is unknown. This bill was enrolled to the Governor on April 29, 2021.

House Bill 599 authorizes condominium associations to conduct electronic meetings and electronic, machine, or mail voting during a state of emergency or local state of emergency, or any meeting noticed during such emergencies and for which the applicable emergency has since expired. This bill was transmitted to the Governor on April 28, 2021.

In summary, SB 329 makes it easier for associations to dispose of abandoned property even if the owner is unknown, and HB 599 will give condominium associations more options for meeting during a declared state of emergency, notwithstanding that the governing documents may be silent about alternative forms of meeting.

The Governor may sign either bill by July 6 and the bill will become law, or he must inform the Legislature of his intent to veto any bill by June 21, 2021, and veto by July 6, 2021; if a bill is not signed into law or vetoed by July 6, the bill becomes law automatically.

To follow these two bills, use this link https://www.capitol.hawaii.gov/home.aspx.

Frequently Asked Questions on Condominium Unit Renovations (cont. from page 5)

Please read the excellent resources below for more information:

General list of forms: http://www.honoluludpp.org/ApplicationsForms/BuildingPermits.aspx

The City's website contains an informative brochure entitled, "Do You Need A Building Permit?," revised July 2011: http://www.honoluludpp.org/Portals/0/pdfs/construction/dpp_brouchure.PDF

A sample Declaration of Restrictive Covenants is contained here:

http://www.honoluludpp.org/Portals/0/pdfs/construction/ADU%20instructions062620.pdf

The Department of Commerce and Consumer Affairs, State of Hawai'i, including Real Estate Commission, has many helpful publications:

Condominium Living In Hawaii: Renovations And Repairs

https://cca.hawaii.gov/rico/files/2019/08/CONDO-190718-Condo-Living-Renovations-and-Repairs.pdf

Contractor Frequently Asked Questions https://cca.hawaii.gov/pvl/files/2018/08/Contractor FAQ-18.pdf

Hiring Electricians and Plumbers https://cca.hawaii.gov/rico/files/2014/02/Hiring Electricians and Plumbers.pdf

Hire A Licensed Contractor Because... https://cca.hawaii.gov/rico/files/2019/08/CLB-190718-Hire-a-Licensed-Contractor.pdf

Disclaimer: This article is not intended to provide legal advice. Rather, it is intended to provide general information. Every condominium project is different and has different needs, conditions and requirements. Please consult with your association's attorney for advice in addressing the specific needs of your association.

About the Author: Lance Fujisaki, a partner in the law firm of Anderson & Fujisaki LLP A Limited Liability Law Partnership, has been a speaker at CAI seminars, the Hawaii Real Estate Commission sponsored Condorama series, and the CAI ABC's Workshop.

2021 Real Estate Commission Meeting Schedule

Real Estate Commission - 9:00 a.m.

Friday, June 25, 2021
Friday, July 23, 2021
Friday, August 27, 2021
Friday, September 24, 2021
Friday, October 22, 2021
Friday, November 19, 2021
Friday, December 17, 2021

Until further notice, Laws & Rules Review Committee, Condominium Review Committee, and Education Review Committee Meeting items will be discussed at Real Estate Commission Meetings.

Real Estate Commission Meetings will be held online via the Zoom platform until the Department resumes in-person meetings. Thereafter, all meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at www.hawaii.gov/hirec or call the Real Estate Commission Office at 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at 586- 2643 to submit your request.

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