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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAWAII LEGAL SHORT-TERM  
RENTAL ALLIANCE, a Hawaii non  
profit,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU,  
a municipal corporation; DEPARTMENT  
OF PLANNING AND PERMITTING OF  
THE CITY AND COUNTY OF  
HONOLULU; DEAN UCHIDA IN HIS  
OFFICIAL CAPACITY AS DIRECTOR  
OF THE DEPARTMENT OF  
PLANNING AND PERMITTING;

) CIVIL NO. 1:22-cv-00247-DKW-RT

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**PLAINTIFF HAWAII LEGAL  
SHORT-TERM RENTAL  
ALLIANCE'S MOTION FOR  
PRELIMINARY INJUNCTION;  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF  
ANDREEA GRIGORE;  
DECLARATION OF GREGORY W.  
KUGLE; EXHIBITS 1-11**

*Caption continues on next page*

JOHN DOES 1-10; JANE DOES 1-10; )  
DOE CORPORATIONS 1-10; DOE )  
PARTNERSHIPS 1-10; and DOE )  
ENTITIES 1-10, )  
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Defendants. )  
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**PLAINTIFF HAWAII LEGAL SHORT-TERM RENTAL ALLIANCE’S  
MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff HAWAII LEGAL SHORT-TERM RENTAL ALLIANCE  
 (“Plaintiff” or “HILSTRA”), by and through its attorneys, Damon Key Leong  
Kupchak Hastert, files it’s Motion for Preliminary Injunction.

This Motion seeks a preliminary injunction that enjoins the Defendants from  
enforcing Ordinance 22-7 on and after its effective date of October 23, 2022, until  
and unless the Defendants establish a process to protect preexisting lawful uses of  
residential dwelling and lodging units for rental to transient occupants for 30 to 89  
days. The injunction must apply to both the use and advertising restrictions of  
Ordinance 22-7, which makes it unlawful to rent or advertise for rent dwelling or  
lodging units for less than 90 days, when those units are located outside of the  
Resort and associated Apartment zoning districts.

This motion is brought pursuant to Rules 7 and 65 of the Federal Rules of  
Civil Procedure and Rule 10.2 of the Local Rules of Practice for the United States

District Court for the District of Hawaii and is based on the record and files herein,  
and any evidence adduced during the hearing on this motion.

DATED: Honolulu, Hawaii, July 7, 2022.

DAMON KEY LEONG KUPCHAK HASTERT

*/s/ Gregory W. Kugle*

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Attorneys for Plaintiff  
HAWAII LEGAL SHORT-TERM RENTAL  
ALLIANCE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

HAWAII LEGAL SHORT-TERM	)	CIVIL NO. 1:22-cv-00247-DKW-RT
RENTAL ALLIANCE,	)	
	)	
Plaintiff,	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>MOTION</b>
vs.	)	
	)	
CITY AND COUNTY OF HONOLULU,	)	
a municipal corporation; DEPARTMENT	)	
OF PLANNING AND PERMITTING OF	)	
THE CITY AND COUNTY OF	)	
HONOLULU; DEAN UCHIDA IN HIS	)	
OFFICIAL CAPACITY AS DIRECTOR	)	
OF THE DEPARTMENT OF	)	
PLANNING AND PERMITTING; JOHN	)	
DOES 1-10; JANE DOES 1-10; DOE	)	
CORPORATIONS 1-10; DOE	)	
PARTNERSHIPS 1-10; and DOE	)	
ENTITIES 1-10,	)	
	)	
Defendants.	)	

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**MEMORANDUM IN SUPPORT OF MOTION**

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## **INTRODUCTION**

This case is about legal long-term rental of Oahu residential dwelling units; not illegal short-term rentals. For nearly 40 years, the City and County of Honolulu (“City”)’s zoning law – the Land Use Ordinance or LUO – has allowed a residential dwelling or lodging unit to be rented for 30 days or more to transient occupants. Month-to-month rentals are commonly used by travelling nurses and doctors, military families transitioning to or from base housing, contractors performing jobs on Oahu, neighbor-island visitors, and others. However, Ordinance 22-7 will make this illegal on October 23, 2022, by making it illegal to rent, or advertise for rent, a dwelling unit for less than 90 days<sup>1</sup> located outside of the Resort zoning district and limited Apartment zoning districts. Ordinance 22-7 is attached as Exhibit “1.”

This Motion seeks a preliminary injunction against the enforcement of Ordinance 22-7 until the City creates a process to allow existing 30-89 day rental properties to continue to operate as nonconforming uses, as required by State law and Constitutional due process. “A nonconforming use is a lawful use in existence on the effective date of the zoning restriction and continuing thereafter in

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<sup>1</sup> Ordinance 22-7 changed the definition of “transient vacation unit” to: “a dwelling unit or lodging unit that is advertised, solicited, offered or provided, or any combination of the foregoing, for compensation to transient occupants for less than [30] 90 consecutive days, other than a bed and breakfast home[.], timeshare unit, or hotel unit.” *Id.* at Section 12.

nonconformance to the [new] ordinance.” *League to Save Lake Tahoe v. Crystal Enterprises*, 685 F.2d 1142, 1145 (9<sup>th</sup> Cir. 1982) (citation omitted). “A provision permitting continuance of a nonconforming use is ordinarily included in zoning ordinances because of the hardship and *doubtful constitutionality* of compelling the immediate discontinuance of nonconforming uses.” *Id.* (emphasis added). Other Hawaii counties that have enacted zoning laws regulating the rental of residential dwelling units have complied with State law and due process by including a nonconforming use process to recognize and protect preexisting lawful uses.<sup>2</sup> Ordinance 22-7 is fatally flawed unless and until the City and its Department of Planning and Permitting (“DPP”) recognize and protect the preexisting lawful uses of Plaintiff’s members and similarly situated Oahu property owners and property managers.

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<sup>2</sup> See, e.g., Kauai County Code § 8-17.10(a) (“The purpose of this section is to provide a process to identify and register those single family transient vacation rentals as nonconforming uses which have been in lawful use prior to March 7, 2008 and to allow them to continue subject to obtaining a Nonconforming Use Certificate as provided by this Section.”); Hawaii County Code § 25-4-16.1 (“In addition to registering pursuant to 25-4-16(b)(1), the owner of any short-term vacation rental which operated outside of a permitted zoning district prior to April 1, 2019, shall obtain a short-term vacation rental nonconforming use certificate in order to continue to operate.”).

## **STATEMENT OF FACTS**

### **I. PLAINTIFF HAWAII LEGAL SHORT TERM RENTAL ALLIANCE (“HILSTRA”)**

Plaintiff is a Hawaii not-for-profit 501(c)(4) organization whose purpose is to lobby and educate government officials, property owners, vendors and the general public about the legal rental industry on Oahu and across the State. Declaration of Andreea Grigore (“Grigore Decl.”). Plaintiff was organized in 2020 following the passage of Ordinance 19-18 in 2019 and its members participated in litigation against the City, *Kokua Coalition v. Department of Planning and Permitting*, Civil No. 1:19-cv-00414 DKW-RT (hereinafter *Kokua II*), to protect the rights of property owners and property managers to conduct legal long-term rentals to transient occupants on Oahu. *Id.* Plaintiff’s members and others similarly situated advocated against the passage of Ordinance 22-7, as did many other Oahu property owners, managers and others interested in maintaining a vibrant rental market on Oahu that is subject to fair regulation. *Id.* Plaintiff brings this lawsuit on behalf of itself, its members, and other similarly situated owners, managers and operators. *Id.*

Many owners of properties that have been lawfully used for rentals for periods of 30-89 days rely on that rental income to offset the costs of ownership and/or to finance their retirements. Grigore Decl. Many owners have made decisions to purchase and/or to finance based on their ability to rent for periods of

30-89 days. *Id.* If unable to continue to rent their properties for periods of 30-89 days, many will have to sell. *Id.*

## II. USERS OF LEGAL 30-89 DAY RENTALS

There are many types of transient occupants<sup>3</sup> who choose to rent residential dwelling or lodging units on Oahu for periods of 30 to 89 days: (1) Oahu residents who are between the purchase and sale of a primary residence or entering a lease-back after sale; (2) neighbor-island families travelling to Oahu to receive medical care or attend events; (3) travelling healthcare workers temporarily working on Oahu, like the 500 travelling clinicians who came to Hawaii during the Covid pandemic<sup>4</sup>; (4) military families that are transitioning to or from on-base housing; (5) contractors who are performing work on Oahu; (6) residents of military housing temporarily displaced by the Red Hill fuel leak, or other Oahu residents displaced by fire or flood; (7) others who while temporarily on Oahu prefer to stay closer to work or school than in the Resort zoning districts. Grigore Dec. Month-to-month leases for tenants who don't have the ability (whether financially or otherwise) to commit to a rental term in excess of 90 days will be deprived of a

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<sup>3</sup> Ordinance 22-7 defines "transient occupant" as "any person who rents a lodging or dwelling unit, or portion thereof, for less than 90 consecutive days, and whose permanent address for legal purposes is not the lodging or dwelling unit being rented." *Id.* at Section 12.

<sup>4</sup> See <https://www.khon2.com/coronavirus/more-than-500-healthcare-workers-travelling-to-Hawaii-to-help-hospitals/?ipid=promo-link-block2> (last viewed June 28, 2022).

critical and necessary housing sector, further limiting an already tight Oahu housing market. *Id.* This residential dwelling option will not be available after October 23, 2022, once Ordinance 22-7 takes effect. *Id.*

In addition, the legal rental of properties for periods between 30-89 days has created many spin-off jobs, like property managers, yard care services, house cleaners, pool care, chefs, concierge services, and maintenance and handyman services. Grigore Decl. These services are often more necessary when a property is rented to a transient occupant than for a property that is owner-occupied or leased for a year at a time. *Id.* Many of these employment opportunities will vanish if Ordinance 22-7 is permitted to take effect on October 23, 2022 without any provision made for preserving existing uses. *Id.*

### **III. CITY DID NOT REGULATE TRANSIENT VACATION UNITS UNTIL 1986**

The City first regulated transient vacation units (“TVUs”)<sup>5</sup> in 1986 when it adopted the LUO by Ordinance 89-96 (1986).<sup>6</sup> The LUO defined a TVU as “a dwelling unit or lodging unit which is provided for compensation to transient occupants for less than 30 days, other than a bed and breakfast home.” LUO § 21-

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<sup>5</sup> The City also first regulated Bed and Breakfasts (“B&Bs”) in the same ordinance, which are essentially TVUs in which the owner, lessee, operator or proprietor also resides. Because B&Bs are effectively treated the same as TVUs under the LUO, both will be referred to as TVU herein.

<sup>6</sup> Ordinance 86-96 (1986) is attached as Exhibit “2” to the Declaration of Counsel.

10.1 (1999). TVUs were permissible only in the Resort and A-2 zoning districts.<sup>7</sup> Significantly, the City protected the rights of those property owners, operators, or proprietors who had been renting dwelling units for less than 30 days prior to the passage of the ordinance by creating a system of nonconforming use certificates for TVUs “which have been in operation since prior to October 22, 1986 as nonconforming uses and to allow them to continue subject to obtaining a nonconforming use certificate...” LUO § 21-4.110.1(a) (1999). Today, there are approximately 800 nonconforming use certificates on Oahu.<sup>8</sup> These nonconforming use certificates are not the subject of this lawsuit, but are evidence of the flaw in Ordinance 22-7 that this lawsuit seeks to remedy.

#### **IV. CITY CONFIRMS 30-DAY RENTALS IN 2016 LAWSUIT**

In 2016, an association of owners and property managers filed a lawsuit against the City over the LUO provisions relating to legal rentals of residential property to transient guests: *Kokua Coalition v. Department of Planning and Permitting*, Civil No. 1:16-cv-00387 DKW-RLP (hereinafter *Kokua I*).

*Kokua I* was settled and the agreement with the City set out in detail how a residential property could be rented for 30-day terms.<sup>9</sup> It provides:

8. As currently worded, the Land Use Ordinance prohibits providing all or a portion of a residential dwelling unit to a transient occupant

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<sup>7</sup> Master Table, Ordinance 99-12 (1999) attached as Exhibit “3”.

<sup>8</sup> See [www.honolulu.gov/dppstr/approved-strs.html](http://www.honolulu.gov/dppstr/approved-strs.html) (last viewed July 5, 2022).

<sup>9</sup> *Kokua I* Settlement Agreement attached as Exhibit “4”.

for less than thirty (30) consecutive calendar days for compensation. Thus, the LUO allows a property owner to rent its property to transient guests in blocks of thirty (30) days or more, up to twelve times per year.

9. The LUO does not require that renters actually occupy all or a portion of a rented dwelling unit during the thirty (30) day rental period; however, a party that is not granted use of the dwelling unit by the thirty (30) day rental agreement may not occupy the rented portions of the dwelling unit during the same thirty (30) day rental block....

Exhibit “4” at ¶¶ 8-10. The *Kokua I* settlement agreement confirmed the thirty year interpretation and understanding of the LUO’s regulation of residential rentals for periods of 30 days or more.

## **V. CITY CONFIRMS 30-DAY RENTALS IN 2019 ORDINANCE AND SETTLEMENT**

In 2019, for the first time in over thirty years, the City enacted further restrictions on TVUs with the passage of Ordinance 19-18.<sup>10</sup> This law retained and reaffirmed the 30-day minimum rental period, but added a broader definition to protect legal 30-day rentals and prohibit illegal short-term rentals attempting to violate the law, defining illegal TVUs as those that:

- (A) Rent, offer, to rent, or enter into a rental agreement to rent an unpermitted bed and breakfast home or unpermitted transient vacation unit for fewer than 30 consecutive days;
- (B) Rent, offer to rent, or enter into a rental agreement to rent an unpermitted bed and breakfast or unpermitted transient vacation unit, where such rental, offer, or rental agreement limits actual

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<sup>10</sup> Ordinance 19-18 (2019) attached as Exhibit “5”.

occupancy of the premises to a period of less than the full stated rental period, or conditions the right to occupy the rented premises for the full stated rental period on the payment of additional consideration;

(C) Set aside or exclusively reserve an unpermitted bed and breakfast home or unpermitted transient vacation unit for rental or occupancy for a period of 30 consecutive days or more, but limit actual occupancy of the premises to a period of less than the full stated rental period, or condition the right to occupy the rented premises for the full stated rental period on the payment of additional consideration; or

(D) Advertise, solicit, offer, or knowingly provide rental of an unpermitted bed and breakfast or unpermitted transient vacation unit to transient occupants for less than 30 consecutive days.

LUO § 21-5.730(d)(2)(A)-(D). Again, an association which consisted of some of Plaintiff's members filed a lawsuit against the City over the new provisions and the impact on 30-day rentals in *Kokua Coalition v. Department of Planning and Permitting*, Civil No. 1:19-cv-00414 DKW-RT, ("*Kokua II*").

*Kokua II* concluded with a stipulated order entered by this Court.

Specifically, the City and Plaintiffs agreed that:

1. Ordinance 19-18 does not require a renter to physically occupy a rental property for any minimum length of time. The Settlement Agreement and Release filed by Plaintiff and the City in *Kokua Coalition v. Department of Planning and Permitting, et. al.*, Case 1:16-cv-000387-DKW-RLP, at paragraphs 8-10, attached as Exhibit "A" and affirmed and incorporated herein, continue to describe a legal long-term rental under Ordinance 19-18. Ordinance 19-18 does not impose new restrictions on legal long-term rentals.

2. The advertising restrictions of Ordinance 19-18 apply to illegal short-term rentals, not legal long-term rentals. Ordinance 19-18 does not prohibit the advertising, soliciting, offering or providing of a legal long-term rental (i.e., a rental of at least 30 consecutive days). Advertising, soliciting, offering or providing a legal long-term rental, including advertisements, solicitations, and offers stating daily rates, and/or less than monthly rates, and/or minimum stay of less than 30 days does not cause a dwelling unit that is rented for thirty days or more to be a “transient vacation unit” or “bed and breakfast home” within the meaning of Ordinance 19-18 if such advertisement, solicitation, or offer states that the minimum rental period for the rental property is thirty days. However, rental agreements, advertisements, solicitations and offers to rent property violate Ordinance 19-18 if the price paid for the rental is determined, in whole or in part, by an anticipated or agreed upon occupancy of the property for less than thirty days.
3. Notwithstanding anything in Ordinance 19-18, there is no violation of Ordinance 19-18, and a dwelling unit or lodging unit will not be classified as a “transient vacation unit” or “bed and breakfast home,” provided that the dwelling unit or lodging unit is actually rented only for 30 days or longer at a time, and provided further that 1) the owner and/or operator has not limited the actual occupancy of the premises to a period less than the full stated rental period, and 2) the owner and/or operator has not conditioned the right to occupy the premises for the full stated rental on the payment of additional consideration.

*Kokua II* Stipulation and Order, attached as Exhibit “6”.

## **VI. The Hotel Industry and Bill 41/Ordinance 22-7**

On August 13, 2021, the Director transmitted proposed TVU legislation, which would become Bill 41, to the Planning Commission.<sup>11</sup> News reports at the

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<sup>11</sup> DPP Director’s Report, dated August 13, 2021, attached as Exhibit “7”.

time indicated that the Director acknowledged that Bill 41 would benefit the hotel industry and that hotel interests were “part of the conversation.”<sup>12</sup>

The Planning Commission held public hearings and on October 6, 2021 transmitted its recommendation to the City Council.<sup>13</sup> On October 19, 2021, the City Council introduced the legislation as Bill 41.<sup>14</sup> After several hearings and revisions, the City Council voted to pass Bill 41 on April 13, 2022.<sup>15</sup> The Mayor signed Bill 41 into law on April 26, 2022, and it takes effect on October 23, 2022.

### **PRELIMINARY INJUNCTION STANDARD**

“A plaintiff seeking a preliminary injunction must show that: (1) that she is likely to succeed on the merits, (2) that she is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in her favor, and (4) an injunction is in the public interest.” *Enyart v. Nat’l. Conference of Bar Exam’rs, Inc.* 630 F.3d 1153, 1159 (9th Cir. 2011) (citing *Winter v. Natural Res. Def. Council*, 555 U.S. 7 (2008)). Even if the moving party can only establish “serious questions going to the merits,” she can still succeed by showing that all three factors weigh towards granting the injunction and the balance of hardships

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<sup>12</sup> <https://www.civilbeat.org/2021/11/honolulu-battle-against-short-term-rentals-begins-again/>.

<sup>13</sup> Planning Commission Recommendation, October 6, 2021, attached as Exhibit “8”.

<sup>14</sup> <https://hnl doc.ehawaii.gov/hnl doc/measure/2007>.

<sup>15</sup> Ordinance 22-7 (2022) attached as Exhibit “1”; *see also* <https://hnl doc.ehawaii.gov/hnl doc/measure/2007>.

“tips sharply” in that direction. *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)).

## **ARGUMENT**

Ordinance 22-7 changes the minimum rental period for dwelling or lodging units on Oahu that are not in the Resort or nearby Apartment zoning districts, from 30 days to 90 days.<sup>16</sup> If Ordinance 22-7 takes effect on October 23, 2022 without any provision for protecting the preexisting lawful use of residential rentals of 30 to 89 days, it will immediately and adversely impact Plaintiff’s members and those similarly situated on Oahu who have been engaged in lawful rental of residential dwelling/lodging units for 30 days or more.

### **I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS**

#### **A. Ordinance 22-7 Violates the Zoning Enabling Act by Prohibiting the Continued Lawful Residential Use of 30-Day Rentals**

##### **i. Zoning Power is Both Derived From and Limited by the Act**

The Hawaii Constitution authorizes the legislature to grant powers to the counties under general laws. Haw. Const. Art. VIII, § 1.<sup>17</sup> The Hawaii Supreme Court has often recognized that “it is fundamental that authority to zone is conferred by the legislature on the counties.” *Save Sunset Beach Coal. v. City &*

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<sup>16</sup> See, e.g., Ordinance 22-7 at Section 12 (replacing “30” with “90 consecutive” days).

<sup>17</sup> “Each political subdivision shall have and exercise such powers as shall be conferred under general laws.”

*Cty. of Honolulu*, 102 Hawaii 465, 480, 78 P.3d 1, 16 (2003) (citations omitted).

The State has conferred the power to enact zoning ordinances through the Zoning Enabling Act. “The counties of our state derive their zoning powers from HRS § 46-4(a) (Supp. 1988), referred to as the Zoning Enabling Act.” *Kaiser Hawaii Kai Dev. Co. v. City & County of Honolulu*, 70 Haw. 480, 483, 777 P.2d 244, 246 (1989). “[C]ounties are authorized to zone only according to the dictates of HRS § 46-4....” *Save Sunset Beach*, at 480-81, 78 P.3d at 16-17.

The Hawaii Supreme Court has reasoned that under article VIII, section 6 of the Hawaii Constitution – the State supremacy clause<sup>18</sup> – “the state legislature . . . expressly retained the power to enact all laws of general application throughout the state on matters of concern and interest, ..., and subordinated to such laws all ‘ordinances adopted under a [county] charter . . . in conflict therewith.’” *Richardson v. City & County of Honolulu*, 76 Haw. 46, 66, 868 P.2d 1193, 1213 (1994) (citations omitted).

The statute implementing the State supremacy clause states that “Notwithstanding the provisions of this chapter, there is expressly reserved to the state legislature the power to enact all laws of general application throughout the State on matters of concern and interest and laws relating to the fiscal powers of the counties, and neither a charter nor ordinances adopted under a charter shall be

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<sup>18</sup> “This article shall not limit the power of the legislature to enact laws of statewide concern.” Haw. Const. Art. VIII, § 6.

in conflict therewith.” Haw. Rev. Stat. § 50-15. As such, “any conflict between the State provisions [in HRS § 46-4] and the county zoning ordinances is resolved in favor of the State statutes, by virtue of the supremacy provisions in article VIII, section 6 of the Hawaii Constitution and HRS § 50-15.” *Save Sunset Beach* at 481, 78 P.3d at 17. “Thus, if an ordinance truly conflicts with Hawaii statutory law that is of statewide concern, then it is necessarily invalid because it violates article VIII, section 6 of the Hawaii Constitution and HRS §§ 50-15 -- the state’s supremacy provisions.” *Id.* (quoting *Richardson v. City & County of Honolulu*, 76 Haw. 46, 66, 868 P.2d 1193, 1213 (1994)).

**ii. The Act Prohibits Elimination of Residential Uses**

“When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is obtained primarily from the language contained in the statute itself.” *Iddings v. Mee-Lee*, 82 Haw. 1, 6, 919 P.2d 263, 268 (Haw. 1996). “Where the language of a statute is plain and unambiguous, our only duty is to give effect to the statute’s plain and obvious meaning.” *Id.* at 7, 919 P.2d at 269. A plain reading of the Zoning Enabling Act prohibits a county from passing a law that discontinues a lawful residential use and does not permit a county to amortize or phase-out residential uses.

The Zoning Enabling Act provides in pertinent part:

**Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or**

**premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect;** provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. **In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses.**

Haw. Rev. Stat. § 46-4(a) (emphasis added).

Hawaii's appellate courts have applied Haw. Rev. Stat. § 46-4(a) to prevent zoning changes from eliminating previously lawful uses of property. In *Waikiki Marketplace Inv. Co. v. Chair of Zoning Bd. of Appeals of City & Cty. of Honolulu*, 86 Haw. 347, 949 P.2d 183 (Haw. App. 1997), a business constructed a structure prior to the adoption of the LUO. After the LUO was enacted, the business was issued a fine and notice to remove the structure because it was located within the newly adopted setback. *Id.* at 346, 949 P.2d at 186. The business argued “that the continued existence of the addition [could not] be prohibited pursuant to HRS § 46–4(a) and that the addition must be grandfathered in as a ‘previously lawful’ nonconforming use.” *Id.* at 353, 949 P.2d at 193.

In analyzing nonconforming use, the Court started with the premise that “HRS § 46-4 (1993) sets forth the general parameters for the exercise of a county's zoning powers.” *Id.* at 352, 949 P.2d at 192. The Court then recognized that the LUO contained a grandfather provision that is consistent with HRS § 46-4. *Id.* at

353, 949 P.2d at 193. The Court concluded “that for purposes of determining whether a structure was grandfathered as a ‘previously lawful’ nonconforming structure under the LUO, the lawfulness of the structure should be measured by reference to the zoning code or ordinance in existence at the time the structure was built.” *Id.* The Court ruled against the City because “the grandfather protections afforded to a property owner under HRS § 46–4(a) ... are intended to prohibit new zoning ordinances from interfering with an owner’s lawful uses of a building or premises under an existing zoning ordinance.” *Id.* at 354, 949 P.2d at 194.

In 2016, the Intermediate Court of Appeals analyzed the same provision of HRS § 46-4(a) in *Ferris Trust v. Planning Comm’n of Kaua’i*, 138 Haw. 307, 378 P.3d 1023 (Haw. App. 2016). In *Ferris Trust*, the property owner began legally renting its Kauai condominium unit to transients in 2003. *Id.* at 309, 378 P.3d at 1025. In 2008, the County of Kauai passed an ordinance prohibiting new transient rentals outside of limited geographic areas, but allowed owners or operators outside of the permitted areas to apply for and obtain a nonconforming use certificate if they had been doing so previously. *Id.* The County maintained the Trust was not eligible for a nonconforming use certificate and the Trust appealed. *Id.* The Court began its analysis by recognizing that “The counties of the state of Hawai’i ‘derive their zoning powers from HRS § 46-4(a) [(2015 Supp.)], referred to as the Zoning Enabling Act.’” *Id.* at 312, 378 P.3d at 1028 (citation omitted). Then in looking at

HRS § 46-4(a) and its prohibition on enacting an ordinance that discontinues nonconforming uses, the Court recognized that “[t]he statutory protection of lawfully existing uses and structures ‘prior to the effective date of a zoning restriction is grounded in constitutional law.’” *Id.* The Court concluded that the stated purpose of the nonconforming use certificate provisions of the Kauai County Code was “consistent with the requirements of HRS § 46-4(a) as well as the constitutional protection provided to property owners with vested rights to pre-existing lawful uses of their property.” *Id.* at 313, 378 P.3d at 1029. In order to avoid a conflict with § 46-4(a) and the constitutional protections inherent in the vested rights of property ownership, the Court interpreted the zoning ordinance to permit the Trust to apply for a nonconforming use certificate. *Id.*

**iii. Ordinance 22-7 Is Preempted By HRS 46-4**

“The Hawaii Supreme Court has ruled that a county ordinance issued pursuant to section 46-1.5(13) is invalid if it conflicts with state law or legislates in a field that the legislature reserved for uniform and exclusive state regulation.” *Syngenta Seeds, Inc. v. County of Kauai*, 842 F.3d 669, 674 (9<sup>th</sup> Cir. 2016) (affirming field preemption of Kauai pesticide ordinance) (citing *Richardson v. City and County of Honolulu*, 76 Haw. 46, 868 P.2d 1193, 1208 (Haw. 1994); *Ruggles v. Yagong*, 135 Hawaii 411, 412, 353 P.2d 953, 954 (2016). The Hawaii Supreme

Court has repeatedly held that “a municipal ordinance may be preempted pursuant to HRS § 46-1.5(13) ... [if it] conflicts with state law.”<sup>19</sup>

“HRS § 46-1.5(13) (Supp.1992), ‘was intended [by the legislature] to be a provision mandating the preemption of any ordinance that either conflicts with the intent of a state statute or legislates in an area already staked out by the legislature for exclusive and statewide statutory treatment.’” *Pacific Int’l Servs. Corp. v. Hurip* at 214-15, 873 P.2d at 93-94 (quoting *Richardson v. City & County of Honolulu*, 76 Haw. 46, 868 P.2d 1193). This preemption provision provides:

Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State;

Haw Rev. Stat. § 46-1.5(13). The Hawaii Supreme Court has held that the *Richardson* preemption test is disjunctive: if a county ordinance *conflicts* with state law, then the ordinance is invalid without regard to whether it is field-preempted under the state law. *Ruggles v. Yagong*, 135 Hawaii 411, 419, 353 P.2d 953, 961 (2016) (affirming conflict-preemption of marijuana ordinance).

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<sup>19</sup> *Pacific Int’l Servs. Corp. v. Hurip*, 76 Haw. 209, 215, 873 P.2d 88, 94 (Haw. 1994) (citing *Richardson v. City & County of Honolulu*, 76 Haw. 46, 868 P.2d 1193 (Haw. 1994); *In re Application of Anamizu*, 52 Haw. 550, 481 P.2d 116 (Haw. 1971); *Citizens Utilities Co. v. County of Kauai*, 72 Haw. 285, 814 P.2d 398 (Haw. 1991)).

Here, the question is whether Ordinance 22-7, which eliminates preexisting lawful residential rental use of between 30 and 89 days, is conflict-preempted by Haw. Rev. Stat. § 46-4(a), which prohibits a new zoning law from eliminating a preexisting lawful residential use. There is no question that it is.

“A test to determine whether an ordinance conflicts with a statute is whether it prohibits what the statute permits or permits what the statute prohibits.” *Kauai Springs v. Planning Comm’n of Kauai*, 130 Haw. 407, 419, 312 P.3d 283, 295 (Haw. App. 2013) (citing *Waikiki Resort Hotel, Inc. v. City & Cnty. of Honolulu*, 63 Haw. 222, 241, 624 P.2d 1353, 1366 (Haw. 1981)). Before the passage of Ordinance 22-7, it was legal to rent an Oahu property to a transient occupant for periods of 30-89 days. Ordinance 22-7 prohibits 30 to 89 day rentals of residential dwelling units outside of limited areas, and does not create a process to allow those properties previously lawfully used for that purpose to continue to rent as nonconforming uses. This is in direct conflict with Haw. Rev. Stat. § 46-4(a): **“Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any ... residential ... purpose for which the building or premises is used at the time this section or the ordinance takes effect.”** Ordinance 22-7 does not allow what the state statute says that it must allow: the continuation of lawful residential use

established under the prior zoning code. As such, Ordinance 22-7 directly conflicts with Haw. Rev. Stat. § 46-4(a)'s prohibition on eliminating residential uses.

**iv. DPP Admits § 46-4(a) Prohibits Restrictions Like 22-7**

As recently as the 2022 legislative session with House Bill 76 (2022),<sup>20</sup> the DPP has unsuccessfully advocated for an amendment of Haw. Rev. Stat. § 46-4(a) to “to make explicit the counties’ authority to enact ordinances to amortize or phase out permitted, nonconforming, or otherwise allowed short-term rentals in any zoning classification.”<sup>21</sup> In testimony, the DPP explained that § 46-4(a) **“disallows the amortization or phasing out of nonconforming uses.”**<sup>22</sup> DPP testified that “[t]ransient accommodation uses, or short-term rentals, could be interpreted as ‘residential uses’ for purposes of this part, and therefore not subject to amortization or phasing out.” *Id.* DPP supported the amendment because “[t]he Bill specifies that the counties may amortize or phase out nonconforming transient vacation accommodations, which may assist the counties in better controlling short-term rentals...”. *Id.* Maui County likewise concluded § 46-4(a) also prevented the elimination of nonconforming short-term rental use.<sup>23</sup> The Legislature did not pass

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<sup>20</sup> House Bill 76 attached as Exhibit “9”.

<sup>21</sup>

[https://www.capitol.hawaii.gov/measure\\_indiv.aspx?billtype=HB&billnumber=76&year=2022](https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=76&year=2022) .

<sup>22</sup> DPP Testimony on H.B. 76 attached as Exhibit “10” (emphasis added).

<sup>23</sup> Maui County Planning Department Testimony on H.B. 76 is attached as Exhibit “11”.

Bill 76, leaving intact the prohibition on eliminating nonconforming residential rental properties.

Thus, Plaintiff is likely to prevail on the merits of its claim that Ordinance 22-7 is preempted by Haw. Rev. Stat. § 46-4(a) to the extent it purports to eliminate lawful preexisting rental properties between 30 and 89 days.

**B. 30-89 Day Rentals Are a Vested Right Protected by Due Process**

“Under the United States and Hawai‘i Constitutions, ‘preexisting lawful uses of property are generally considered to be vested rights that zoning ordinances may not abrogate.’” *Ferris Trust v. Planning Comm’n of Kaua‘i*, 138 Haw. 307, 312, 378 P.3d 1023, 1028 (Haw. App. 2016) (internal citations omitted). The “zoning law concept of ‘non-conforming use’ protects landowners who have vested rights to use their land in a fashion later prohibited by restrictive zoning regulations.” *Young v. Planning Comm’n*, 89 Haw. 400, 410, 974 P.2d 40, 50 (1999) (internal citations omitted) (emphasis omitted). “The statutory protection of lawfully existing uses and structures ‘prior to the effective date of a zoning restriction is grounded in constitutional law.’” *Ferris Trust*, 138 Haw. at 312, 378 P.3d at 1028 (App. 2016) (internal citations omitted); *Waikiki Marketplace v. Zoning Bd. Of Appeals*, 86 Haw. 343, 353, 949 P.2d 183, 193 (App. 1997) (citing the due process clauses of the United States and Hawaii Constitutions).

The Ninth Circuit has recognized the right to continue a preexisting lawful use is constitutional in nature. “A provision permitting continuance of a nonconforming use is ordinarily included in zoning ordinances because of the hardship and **doubtful constitutionality** of compelling the immediate discontinuance of nonconforming uses.” *League to Save Lake Tahoe v. Crystal Enterprises*, 685 F.2d 1142, 1145 (9th Cir. 1982) (emphasis added); *id.* at 1146 (noting a nonconforming use can terminate through “amortization, abandonment, nonuse or discontinuance for a prescribed period, and voluntary or involuntary destruction.”). In that case, the Ninth Circuit noted that if the developer of a hotel rendered impermissible by a change in the land use law was denied permission to complete construction, it may have a ripe claim regarding its vested rights. *Id.* at 1146 (citing *United States v. Byrd*, 609 F.2d 1204, 1211 (7<sup>th</sup> Cir. 1979).

Here, Plaintiff’s members and others similarly situated, who were lawfully engaged in the rental of properties for 30 to 89 days before the passage of Ordinance 22-7, have a vested right to continue that use after the effective date. Plaintiff is likely to prevail on the merits of its vested right claim.

## **II. HILSTRA MEMBERS WILL SUSTAIN IRREPARABLE HARM**

When “an alleged deprivation of a constitutional right is involved... no further showing of injury is necessary to obtain a preliminary injunction.” *Airbnb, Inc. v City of New York*, 373 F. Supp. 3d 467, 498 (S.D.N.Y. 2019) (internal

quotations omitted) (*citing Mitchell v. Cuomo*, 748 F.2d 804, 806 (2nd Cir. 1984)); *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 296 (5<sup>th</sup> Cir. 2012) (finding zoning ordinance interference with Church's use of property constituted irreparable harm for injunctive relief purposes); *see also Church at Jackson v. Hinds County*, 2021 U.S. Dist. LEXIS 181894 (S.D. Miss. September 23, 2021) (granting injunction against enforcement of zoning ordinance that prohibited Church from using its property).

Here, if Ordinance 22-7 takes effect on October 23, 2022 without the protections for preexisting lawful use required under Haw. Rev. Stat. § 46-4(a) and the constitutional due process requirements of the U.S. and Hawaii Constitutions, Plaintiff, its members, and others similarly situated, will be immediately deprived of their rights and irreparably harmed. These Oahu property owners, managers and operators will no longer be allowed to rent their properties for 30-89 days, as they have been able to do since 1986, in some cases losing their biggest investment or retirement plan. Likewise, the users of legal 30 day residential rentals – doctors and nurses, military families, and local residents – will lose will an important accommodation option while temporarily on Oahu. In addition, untold numbers of house cleaners, yard services, and maintenance services will lose jobs. There is no way to remedy that harm retrospectively.

### III. THE BALANCE OF EQUITIES TIPS IN PLAINTIFF'S FAVOR

“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’ *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9<sup>th</sup> Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Kalthoff v. Douglas Cty.*, 2021 U.S. Dist. LEXIS 131902 (D. Nev. July 15, 2021) (enjoining portions of a county’s amended zoning law regulating short term rentals). As noted above, Plaintiff’s members, other similarly situated property owners and property managers, and transient occupants, will be irreparably harmed if Ordinance 22-7 is not enjoined.

In contrast, the City, the DPP and the Director, will not be irreparably harmed. This Motion seeks no more than an order enjoining the enforcement of Ordinance 22-7 until and unless the City establishes a process by which preexisting lawful uses can be protected through nonconforming use certificates. The City has done this before when it adopted the 30-day minimum rental requirement decades ago. Other Hawaii counties have done this as well. And the City knew that Haw. Rev. Stat § 46-4(a) was a legal bar to exactly this kind of regulation when it went before the Legislature in 2022 and argued unsuccessfully for a change in the law. The City will not be irreparably harmed by a delay of Ordinance 22-7.

#### **IV. PUBLIC INTEREST FAVORS AN INJUNCTION**

The public interest factor weighs heavily in Plaintiff's favor. To prevent constitutional violations is always in the public's interest. *Kalthoff v. Douglas Cty.*, 2021 U.S. Dist. LEXIS 131902 (D. Nev. July 15, 2021) (enjoining portions of a county's amended zoning law regulating short term rentals) (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9<sup>th</sup> Cir. 2012) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights." (quoting *Sammartano v. First Judicial District Court*, 303 F.3d 959 (9<sup>th</sup> Cir. 2002))).

The City will doubtless argue that enforcement of a duly enacted ordinance is in the public interest. But not when weighed against the clear dictate of Haw. Rev. Stat. § 46-4(a) and the constitutional due process principles underpinning the protection of nonconforming uses. Haw. Rev. Stat. § 46-4(a) is a clear statement of the Legislature's determination that protection of preexisting lawful residential uses is in the State's interest, and therefore in the public's.

#### **CONCLUSION**

For the reasons stated herein and such other matters as the Court may consider, Plaintiff Hawaii Legal Short-Term Rental Alliance, on behalf of itself, its members, and other similarly situated, requests the Court issue a preliminary

injunction against enforcement of Ordinance 22-7 until and unless the City and DPP develop a process to issue nonconforming use certificates.

DATED: Honolulu, Hawaii, July 7, 2022.

DAMON KEY LEONG KUPCHAK HASTERT

*/s/ Gregory W. Kugle*

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GREGORY W. KUGLE  
LOREN A. SEEHASE  
JOANNA C. ZEIGLER  
TOREN K. YAMAMOTO

Attorneys for Plaintiff  
HAWAII LEGAL SHORT-TERM RENTAL  
ALLIANCE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

HAWAII LEGAL SHORT-TERM	)	CIVIL NO. 1:22-cv-00247-DKW-RT
RENTAL ALLIANCE,	)	
	)	
Plaintiff,	)	
	)	<b>DECLARATION OF ANDREEA</b>
vs.	)	<b>GRIGORE</b>
	)	
CITY AND COUNTY OF HONOLULU,	)	
a municipal corporation; DEPARTMENT	)	
OF PLANNING AND PERMITTING OF	)	
THE CITY AND COUNTY OF	)	
HONOLULU; DEAN UCHIDA IN HIS	)	
OFFICIAL CAPACITY AS DIRECTOR	)	
OF THE DEPARTMENT OF	)	
PLANNING AND PERMITTING; JOHN	)	
DOES 1-10; JANE DOES 1-10; DOE	)	
CORPORATIONS 1-10; DOE	)	
PARTNERSHIPS 1-10; and DOE	)	
ENTITIES 1-10,	)	
	)	
Defendants.	)	
	)	

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**DECLARATION OF ANDREEA GRIGORE**

I, ANDREEA GRIGORE, declare under penalty of law that the following is true and correct:

1. I am a Board Member of Plaintiff Hawaii Legal Short-Term Rental Alliance (“HILSTRA”) and the CEO of Elite Pacific Property Management. I am authorized to make this Declaration.

2. Unless otherwise indicated, I make this Declaration on personal knowledge.

3. HILSTRA is a Hawaii not-for-profit 501(c)(4) organization whose purpose is to lobby and educate government officials, property owners, vendors and the general public about the legal rental industry on Oahu and across the State, and to advocate for its members and similarly situated property owners and property managers who do, or desire to, rent their properties to guests for compensation in compliance with the LUO. HILSTRA was organized in 2020 following the passage of Ordinance 19-18 in 2019 and some of its members participated in litigation against the City, *Kokua Coalition v. Department of Planning and Permitting*, Civil No. 1:19-cv-00414 DKW-RT (hereinafter *Kokua II*), to protect the rights of property owners and property managers to conduct legal long-term rentals to transient occupants on Oahu. HILSTRA's members and others similarly situated advocated against the passage of Ordinance 22-7, as did many other Oahu property owners, managers and others interested in maintaining a vibrant rental market on Oahu that is subject to fair regulation. HILSTRA brings this lawsuit on behalf of itself, its members, and other similarly situated owners, managers and operators.

4. Many owners of properties that have been lawfully used for rentals for periods of 30-89 days rely on that rental income to offset the costs of ownership and/or to finance their retirements. Many owners have made decisions to purchase

and/or to finance based on their ability to rent for periods of 30-89 days. If unable to continue to rent their properties for periods of 30-89 days, many will have to sell.

5. There are many types of transient occupants who choose to rent residential dwelling or lodging units on Oahu for periods of 30 to 89 days: (1) Oahu residents who are between the purchase and sale of a primary residence or entering a lease-back after sale; (2) neighbor-island families travelling to Oahu to receive medical care or attend events; (3) travelling healthcare workers temporarily working on Oahu, like the 500 travelling clinicians who came to Hawaii during the Covid pandemic as reported in the news: <https://www.khon2.com/coronavirus/more-than-500-healthcare-workers-travelling-to-Hawaii-to-help-hospitals/?ipid=promo-link-block2>; (4) military families that are transitioning to or from on-base housing; (5) contractors and their employees who are performing work on Oahu; (6) residents of military housing temporarily displaced by the Red Hill fuel leak, or other Oahu residents displaced by fire or flood; (7) others who while temporarily on Oahu who prefer to stay close to work or school than in the Resort zoning districts. Month-to-month leases for tenants who don't have the ability (whether financially or otherwise) to commit to a rental term in excess of 90 days will be deprived of critical and necessary housing sector, further limiting an already tight Oahu housing market. This residential dwelling option will not be available after October 23, 2022, once Ordinance 22-7 takes effect.

6. In addition, the legal rental of properties for periods between 30-89 days has created many spin-off jobs, like property managers, yard care services, house cleaners, pool care, chefs, concierge services, and maintenance and handyman services. These services are often more necessary when a property is rented to a transient occupant than for a property that is owner-occupied or leased for a year at a time. Many of these employment opportunities will vanish if Ordinance 22-7 is permitted to take effect on October 23, 2022 without any provision made for preserving existing uses.

I declare under penalty of law that the foregoing is true and correct.

DATED: Koloa, Hawaii, July 6, 2022.

  
\_\_\_\_\_  
ANDREEA GRIGORE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

HAWAII LEGAL SHORT-TERM	)	CIVIL NO. 1:22-cv-00247-DKW-RT
RENTAL ALLIANCE,	)	
	)	
Plaintiff,	)	<b>DECLARATION OF GREGORY W.</b>
	)	<b>KUGLE</b>
vs.	)	
	)	
CITY AND COUNTY OF HONOLULU,	)	
a municipal corporation; DEPARTMENT	)	
OF PLANNING AND PERMITTING OF	)	
THE CITY AND COUNTY OF	)	
HONOLULU; DEAN UCHIDA IN HIS	)	
OFFICIAL CAPACITY AS DIRECTOR	)	
OF THE DEPARTMENT OF	)	
PLANNING AND PERMITTING; JOHN	)	
DOES 1-10; JANE DOES 1-10; DOE	)	
CORPORATIONS 1-10; DOE	)	
PARTNERSHIPS 1-10; and DOE	)	
ENTITIES 1-10,	)	
	)	
Defendants.	)	
	)	

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**DECLARATION OF GREGORY W. KUGLE**

I, GREGORY W. KUGLE, declare as follows:

1. I am an attorney with the law firm of Damon Key Leong Kupchak Hastert, counsel of record for Plaintiff Hawaii Legal Short-Term Rental Alliance (“HILSTRA”), and am duly licensed to practice in all courts in the State of Hawaii.

2. I make this declaration upon personal knowledge, unless otherwise indicated, and am competent to testify to the matters stated herein.

3. Attached hereto as Exhibit “1” is a true and correct copy of Ordinance 22-7, obtained from the City’s website.

4. Attached hereto as Exhibit “2” is a true and correct copy of Ordinance 86-96 (1986), obtained from the City’s website.

5. Attached hereto as Exhibit “3” is a true and correct copy of the Master Table, Ordinance 99-12 (1999) of the City’s Land Use Ordinance.

6. Attached hereto as Exhibit “4” is a true and correct copy of the Settlement Agreement in *Kokua Coalition v. Department of Planning and Permitting*, Civil No. 1:16-cv-00387 DKW-RLP.

7. Attached hereto as Exhibit “5” is a true and correct copy of Ordinance 19-18 (2019), obtained from the City’s website.

8. Attached hereto as Exhibit “6” is a true and correct copy of the Stipulated and Order filed in *Kokua Coalition v. Department of Planning and Permitting*, Civil No. 1:19-cv-00414 DKW-RT.

9. Attached hereto as Exhibit “7” is a true and correct copy of the Department of Planning and Permitting Director’s Report dated August 13, 2021, obtained from the City’s website.

10. Attached hereto as Exhibit “8” is a true and correct copy of the Planning Commission Recommendation of October 6, 2021, obtained from the City’s website.

11. Attached hereto as Exhibit “9” is a true and correct copy of House Bill 76, obtained from the State’s website.

12. Attached hereto as Exhibit “10” is a true and correct copy of Department of Planning and Permitting’s Testimony on House Bill 76, obtained from the State’s website.

13. Attached hereto as Exhibit “11” is a true and correct copy of Maui County Planning Department’s Testimony on House Bill 76, obtained from the State’s website.

I declare under penalty of perjury under the laws of the State of Hawaii that the foregoing is true and correct.

Executed this 7<sup>th</sup> day of July 2022, at Honolulu, Hawaii.

*/s/ Gregory W. Kugle*

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GREGORY W. KUGLE



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE **22-7**

BILL **41 (2021), CD2**

**A BILL FOR AN ORDINANCE**

RELATING TO TRANSIENT ACCOMMODATIONS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose. Short-term rentals are disruptive to the character and fabric of our residential neighborhoods; they are inconsistent with the land uses that are intended for our residential zoned areas and increase the price of housing for Oahu's resident population by removing housing stock from the for-sale and long-term rental markets. The City Council finds that any economic benefits of opening-up our residential areas to tourism are far outweighed by the negative impacts to our neighborhoods and local residents.

In 2019, the City passed Ordinance 19-18, allowing a limited number of new bed and breakfast homes and requiring certain short-term rentals to comply with registration requirements, development standards, and other regulations.

The purpose of this ordinance is to better protect the City's residential neighborhoods and housing stock from the negative impacts of short-term rentals by providing a more comprehensive approach to the regulation of transient accommodations within the City.

SECTION 2. Section 6-41.1, Revised Ordinances of Honolulu 1990 ("Fee schedule"), as amended by Ordinance 20-18, is amended by amending subsection (a) to read as follows:

"(a) The fees set forth in the following schedule for applications under Chapter 21 and for variances therefrom must be paid upon application:

Type of Application	Fee
(1) Zone change	<del>[\$700.00,]</del> <u>\$700</u> , plus <del>[\$300.00]</del> <u>\$300</u> per acre or major fraction, up to a maximum of <del>[\$15,000.00]</del> <u>\$15,000</u>
(2) Cluster housing	<del>[\$1,200.00,]</del> <u>\$1,200</u> , plus <del>[\$300.00]</del> <u>\$300</u> per acre or major fraction, up to a maximum of <del>[\$15,000.00]</del> <u>\$15,000</u>



## CITY COUNCIL

CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE 22-7

BILL 41 (2021), CD2

### A BILL FOR AN ORDINANCE

- |   |   |
|---|---|
| (3) Conditional use permit (major), and conditional use permit (minor) for a meeting facility, day-care facility, or school (elementary, intermediate, or high) | <del>[\$1,200.00.]</del> <u>\$1,200</u> , plus<br><del>[\$300.00]</del> <u>\$300</u> per acre or major fraction, up to a maximum of<br><del>[\$15,000.00]</del> <u>\$15,000</u> |
| (4) Major project in special districts and downtown building heights in excess of 350 feet  | <del>[\$1,200.00.]</del> <u>\$1,200</u> , plus<br><del>[\$300.00]</del> <u>\$300</u> per acre or major fraction, up to a maximum of<br><del>[\$15,000.00]</del> <u>\$15,000</u> |
| (5) Plan review use   | <del>[\$1,200.00.]</del> <u>\$1,200</u> , plus<br><del>[\$300.00]</del> <u>\$300</u> per acre or major fraction, up to a maximum of<br><del>[\$15,000.00]</del> <u>\$15,000</u> |
| (6) Planned development-housing   | <del>[\$1,200.00.]</del> <u>\$1,200</u> , plus<br><del>[\$300.00]</del> <u>\$300</u> per acre or major fraction, up to a maximum of<br><del>[\$15,000.00]</del> <u>\$15,000</u> |
| (7) Special districts: establishment of, or amendment to  | <del>[\$1,200.00.]</del> <u>\$1,200</u> , plus<br><del>[\$300.00]</del> <u>\$300</u> per acre or major fraction, up to a maximum of<br><del>[\$15,000.00]</del> <u>\$15,000</u> |
| (8) Conditional use permit (minor), other than for a meeting facility, day-care facility, or school (elementary, intermediate or high)                          | <del>[\$600.00]</del> <u>\$600</u>  |
| (9) Existing use  | <del>[\$600.00.]</del> <u>\$600</u> , plus<br><del>[\$150.00]</del> <u>\$150</u> per acre or major fraction, up to a maximum of <del>[\$15,000.00]</del><br><u>\$15,000</u>     |
| (10) Exempt project in special districts  | No permit fee required  |
| (11) Minor project in special districts   |   |
| (A) Tree removal  | <del>[\$100.00]</del> <u>\$100</u> per tree   |
| (B) Other than tree removal   | <del>[\$600.00]</del> <u>\$600</u>  |



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| (12) | Waiver  | <del>[\$600.00]</del> <u>\$600</u>           |
| (13) | Zoning adjustment   |  |
|      | (A) Sign master plan  | <del>[\$1,200.00]</del> <u>\$1,200</u>       |
|      | (B) Other than for sign master plan   | <del>[\$600.00]</del> <u>\$600</u>           |
| (14) | Signs estimated value of work   |  |
|      | (A) \$.01 to \$500.00   | <del>[\$18.00]</del> <u>\$18</u>             |
|      | (B) \$500.01 to \$1,000.00  | <del>[\$35.00]</del> <u>\$35</u>             |
|      | (C) \$1,000.01 and above  | <del>[\$70.00]</del> <u>\$70</u>             |
| (15) | Zoning variance   | <del>[\$2,400.00]</del> <u>\$2,400</u>       |
| (16) | Nonconforming use certificate renewal   | <del>[\$600.00 (2-years)]</del> <u>\$500</u> |
| (17) | Minor modifications   |  |
|      | (A) To approved cluster housing permit; conditional use permit (major); conditional use permit (minor) for a meeting facility, day-care facility, or school (elementary, intermediate, or high); plan review use; planned development-housing permit, planned development-apartment, and planned development-resort; major projects in special districts, and downtown building heights in excess of 350 feet; and zoning adjustment for a sign master plan | <del>[\$600.00]</del> <u>\$600</u>           |



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| (B)  | To conditional use permit (minor) other than for a meeting facility, day-care facility, or school (elementary, intermediate, or high); existing use; exclusive agriculture site approval; minor projects in special districts other than tree removal; agricultural site development plan; waiver; and zoning adjustment for other than for a sign master plan | [ <del>\$300.00</del> ] <u>\$300</u>   |
| (C)  | To temporary use approval  | [ <del>\$50.00</del> ] <u>\$50</u>   |
| (18) | Agricultural site development plan   | [ <del>\$600.00</del> ] <u>\$600</u>   |
| (19) | Planned Development-Apartment and Planned Development-Resort   | [ <del>\$15,000.00</del> ] <u>\$15,000</u>   |
| (20) | Written zoning clearance or confirmation, and flood hazard district interpretation   | [ <del>\$150.00</del> ] <u>\$150</u> per request or for each tax map key when multiple parcels are involved; or [ <del>\$300.00</del> ] <u>\$300</u> per tax map key for requests involving confirmation of nonconforming status |
| (21) | Temporary use approval   |  |
|      | (A) For a sales office   | [ <del>\$100.00</del> ] <u>\$100</u>   |
|      | (B) For other than a sales office  | [ <del>\$200.00</del> ] <u>\$200</u>   |
| (22) | Exclusive agriculture site approval  | [ <del>\$600.00</del> ] <u>\$600</u>   |
| (23) | Flood variance   | [ <del>\$600.00</del> ] <u>\$600</u>   |
| (24) | Zoning district boundary adjustment  | [ <del>\$500.00</del> ] <u>\$500</u>   |
| (25) | Appeals to zoning board of appeals   | [ <del>\$400.00</del> ] <u>\$400</u>   |



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- (26) Environmental document processing, when the department of planning and permitting is the accepting agency
- (A) Environmental assessment ~~[\$600.00]~~ \$600
- (B) Environmental impact statement ~~[\$1,200.00]~~ \$1,200
- (27) Reconsideration ~~[\$2,400.00]~~ \$2,400
- (28) Declaratory Ruling ~~[\$2,400.00]~~ \$2,400
- (29) ~~[Short term rental]~~ Bed and breakfast home or transient vacation unit advertisement registration ~~[\$50.00]~~ \$50"

SECTION 3. Section 21-1.40, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-1.40 Appeals.**

Appeals from the actions of the director in the administration of the provisions of the LUO shall be to the zoning board of appeals as provided by Section 6-1516 of the charter. Appeals ~~[shall]~~ must be filed within 30 days ~~[of]~~ after the mailing or service of the director's decision. For the purposes of this section:

- (a) For actions of the director that are not required to be served by registered or certified mail, the date of mailing or service is the date on which the director's action is placed into the United States Postal Service mail.
- (b) For actions of the director that are served by registered or certified mail, the date of mailing or service is the date on which the registered or certified mail is received, as indicated by the return receipt for the mailing or other records of the United States Postal Service.
- (c) For actions of the director that are served by physical delivery to a person or a person's residence, place of employment, or usual place of business, the date of service is the date of delivery, as established by an acknowledgment of service signed by the person taking delivery of the director's action or a sworn declaration made by the person responsible for effecting the service of the director's action by physical delivery.



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- (d) For actions of the director that are served by physical posting of a copy of the action on the property where the violation has occurred, the date of the service is the date of posting, as established by a sworn declaration made by the person responsible for effecting the service of the director's action by physical posting.
- (e) For actions of the director that are served by publication, the date of service is the date on which the last required publication is made.
- (f) For actions of the director that are delivered by facsimile, email, or other means of electronic transmission, the date of service is the date on which the action is transmitted to the correct email address, facsimile number, or other electronic address for the person served, as established by a facsimile receipt, email receipt, email response that acknowledges receipt of the email, or other reasonable proof of the successful transmission of electronic delivery to the addressee.
- (g) For persons who submit a written request to receive notice of a director's action concerning a particular project, property, or applicant prior to the director's action being issued, the date of service will be determined in accordance with subsections (a) through (f).
- (h) For persons who submit a written request to receive notice of a director's action concerning a particular project, property, or applicant after the director's action has been issued, the date of service is the earlier of date on which the director's action was served in accordance with subsections (a) through (f), or the date on which the director's action was served on the person requesting notice of the director's action in accordance with subsections (a) through (f)."

SECTION 4. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-2.150-2 Administrative enforcement.**

- (a) Enforcement authority. In lieu of or in addition to seeking criminal enforcement pursuant to Section 21-2.150-1, [if the director determines that any person is violating any provision of] the director may seek enforcement against any person violating this chapter, [any rule] rules adopted [thereunder or any permit issued pursuant thereto, the director may have the person served, by registered or certified mail, restricted delivery, return receipt requested, or by hand delivery with] by the director to administer this chapter, and the conditions of any permits



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or approvals granted under this chapter by issuing a written notice of violation and notice of order pursuant to this section. [However, if the whereabouts of such person is unknown and cannot be ascertained by the director in the exercise of reasonable diligence and the director provides an affidavit to that effect, then a notice of violation and order may be served by publication once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.]

- (b) Liability. If the director determines that more than one person is liable for a violation, the director may issue one enforcement notice to all responsible persons or separate enforcement notices to persons or groups of persons that are responsible for the violation. Each person will be independently liable for the full extent of the violation and responsible for complying with the enforcement notice.
- (c) Service of enforcement notices issued by the director.
- (1) The director may serve an enforcement notice issued pursuant to this section by registered or certified mail, with return receipt requested, addressed to the last known address of each violator identified in the enforcement action, or by delivering a copy of the enforcement notice to the violator in person.
- (2) The director also may serve an enforcement notice issued pursuant to this section by leaving a copy of the enforcement notice at the violator's residence, place of employment, or usual place of business, or by physically posting a copy of the enforcement notice in a prominent location on the property in a conspicuous manner that is likely to be discovered; provided that due diligence was used in attempting to serve the person personally or by registered or certified mail.
- (3) If the director is not able to serve the enforcement notice by any of the methods described in subdivisions (1) and (2), the director may serve the enforcement notice on one or more violators by publishing a copy of the order once each week for two consecutive weeks in a daily or weekly publication that is in general circulation within the City.

Where one or more violators identified in an enforcement notice have the same mailing address, place of residence, place of employment, or usual place of business, the delivery of one copy of the enforcement notice to that place shall



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be effective service upon all violators named in the enforcement notice that may be served at the place the enforcement notice has been delivered.

~~[(b)](d)~~ Contents of the ~~[Notice of Violation. The]~~ notice of violation. In addition to any other information or requirements deemed appropriate by the director, the notice of violation must include ~~[at least]~~ the following information:

- (1) Date of the notice of violation;
- (2) The name [and address] of the person noticed;
- (3) The address or location of the violation;
- ~~[(3)](4)~~ The ~~[section number of the provision or rule, or the number of the permit]~~ specific ordinance, rule, or condition that has been violated;
- ~~[(4)](5)~~ ~~[The nature]~~ A concise description of the violation; [and
- (5) ~~—The location and time of the violation.]~~
- (6) A statement of the actions that are necessary to correct the violation;
- (7) A requirement that the violator correct the violation by a specified date;
- (8) A statement of the penalties that will be imposed if the violation is not corrected by the deadline for correction established pursuant to subdivision (7); and
- (9) A requirement that the violator send a written notice to the director reporting the correction of the violation when the violator believes the violation has been corrected.

~~[(e)](e)~~ Contents of ~~[Order.]~~ the notice of order. If the violation is not corrected by the date specified in the notice of violation, the director may issue a notice of order imposing penalties for failure to correct a violation.

- (1) In addition to any other information or requirements deemed appropriate by the director, the notice of order must include a copy of the applicable notice of violation issued by the director for the violation.



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~~[(1)]~~(2) The notice of order may require the person to do any or all of the following:

- (A) Cease and desist from the violation;
- (B) Correct the violation at the person's own expense before a date specified in the order;
- (C) Pay a civil fine not to exceed ~~[\$1,000]~~ \$5,000 in the manner, at the place, and before the date specified in the order; and
- (D) Pay a civil fine not to exceed \$5,000 per day for each day in which the violation persists beyond the date specified in paragraph (C), in the manner and at the time and place specified in the order.

~~[(2)]~~(3) Notwithstanding the civil fines specified in subdivision ~~[(1)(C) and (D)]~~, (2)(C) and (D), if the violation is a violation of any provision of this chapter relating to the requirements for transient vacation units or bed and breakfast homes, then, in addition to the requirements in subdivision ~~[(1)(A) and (B)]~~ (2)(A) and (B), the order may require a person to do any or all of the following:

(A) ~~[For the initial violation: (i)]~~ Pay a civil fine ~~[of \$1,000,]~~ not to exceed \$10,000 in the manner, at the place, and before the date specified in the order; and

~~[(ii)]~~(B) Pay a civil fine ~~[of \$5,000]~~ not to exceed \$10,000 per day for each day in which the violation persists beyond the date specified in ~~[subparagraph (i),]~~ paragraph (A) in the manner and at the time and place specified in the order.

~~[(B)]~~ For a recurring violation:

~~(i) Pay a civil fine of \$10,000 in the manner, at the place, and before the date specified in the order; and~~

~~(ii) Pay a civil fine of \$10,000 for each day in which the violation persists beyond the date specified in subparagraph (i), in the manner and at the time and place specified in the order.]~~



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~~[(3)]~~(4) The order must advise the person that the order will become final 30 days after the date of its mailing or delivery. The order must also advise that the director's action may be appealed to the zoning board of appeals.

~~[(d)]~~(f) Effect of ~~[Order—Right to Appeal.]~~ the notice of order—right to appeal. The provisions of the notice of order issued by the director under this section will become final 30 days after the date of the mailing or delivery of the order. The person may appeal the notice of order to the zoning board of appeals as provided in Charter Section 6-1516~~[-However,]~~ and Section 21-1.40; provided that an appeal to the zoning board of appeals will not stay any provision of the notice of order.

~~[(e)]~~(g) Judicial ~~[Enforcement of Order.]~~ enforcement of the notice of order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.

~~[(f)]~~(h) Notwithstanding any other provision to the contrary, in addition to daily civil fines, the director may impose a fine in an amount equal to the total sum received by the owner, operator, or proprietor of a bed and breakfast home or transient vacation unit from any impermissible rental activity during the period in which the owner, operator, or proprietor was subject to daily fines.

~~[(g)]~~(i) Nothing in this section shall preclude the director from seeking any other remedy available by law."

SECTION 5. Section 21-2A.10, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-2A.10 Booking Services.**

- (a) It is unlawful for a person acting as, or on behalf of, a hosting platform to provide and collect, or receive a fee for, booking services in connection with any bed and breakfast home or transient vacation unit located within the city if such bed and breakfast home or transient vacation unit is not lawfully registered, permitted, or otherwise allowed as a bed and breakfast home or transient vacation unit pursuant to this chapter at the time the bed and breakfast home or transient vacation unit is booked. A hosting platform shall exercise reasonable care to



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confirm that a bed and breakfast home or transient vacation unit located within the city is lawfully registered, permitted, or otherwise allowed as a bed and breakfast home or transient vacation unit prior to providing, and collecting or receiving a fee for, booking services.

- (b) Hosting platforms shall not collect or receive a fee, directly or indirectly through an agent or intermediary, for facilitating or providing services ancillary to a bed and breakfast home or transient vacation unit in the city that is not lawfully registered, permitted, or otherwise allowed pursuant to this chapter, including, but not limited to, insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit.
- (c) Booking services provided by hosting platforms for hotel units or timeshare units must include an identifying tax map key number for the property on which the hotel unit or timeshare unit is located."

SECTION 6. Section 21-2A.40, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-2A.40 Penalties.**

If the director determines that a hosting platform is violating any provision of this article, notwithstanding the civil fines specified in Section ~~[21-2.150-2(e)(1)(C) and 21-2.150-2(e)(1)(D)]~~ 21-2.150-2(e)(2)(C) and (D), the violator is subject to a civil fine of not less than \$1,000 and not more than \$10,000 for each day that the violation continues.

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SECTION 7. Table 21-3, Revised Ordinances of Honolulu 1990 ("Master Use Table"), as amended by Ordinance 20-41, is amended by:

- A. Amending the "Dwellings and Lodgings" category to revise the "bed and breakfast homes" and "transient vacation units" entries to read as follows:

**"TABLE 21-3  
MASTER USE TABLE**

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District, please refer to Table 21-9 6(A).

**KEY:** Ac = Special accessory use subject to standards in Article 5  
Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)  
C = Conditional Use Permit-major subject to standards in Article 5; public hearing required  
P = Permitted use  
P/c = Permitted use subject to standards in Article 5  
PRU= Plan Review Use

ZONING DISTRICTS																						
USES (Note: Certain uses are defined in Article 10.)	P-2		AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1
DWELLINGS AND LODGINGS																						
Bed and breakfast homes				[P/e <sup>3</sup> ]	[P/e <sup>3</sup> ]	[P/e <sup>3</sup> ]	[P/e <sup>3</sup> ]	P/c <sup>3</sup>	P/c <sup>3</sup>	[P/e <sup>3</sup> ]	[P/e <sup>3</sup> ]	[P/e <sup>3</sup> ]	[P/e <sup>3</sup> ]	P/c <sup>3</sup>				[P/e <sup>3</sup> ]	[P/e <sup>3</sup> ]			
Transient vacation units								[P/e] P/c <sup>3</sup>	P/c <sup>3</sup>					P/c <sup>3</sup>								



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B. Amending the footnotes to read as follows:

**"Notes:**

Where a proposed use is not specifically listed above, the director shall review the proposed use and, based on its characteristics and its similarity to the uses listed above, shall determine the regulatory requirements for that use.

<sup>1</sup> Commercial use subject to special density controls (see Table 21-3.3 and Section 21-3.90-1(c)(4)).

<sup>2</sup> Commercial use subject to special density controls (see Table 21-3.5 and Section 21-3.140-1(c))

<sup>3</sup> Notwithstanding any contrary provisions in this chapter, bed and breakfast homes and transient vacation units ~~[are prohibited and may not operate without a]~~ that do not have a valid nonconforming use certificate or registration certificate are not permitted in areas where the applicable development plan or sustainable communities plan prohibits [or does not permit] the establishment of new bed and breakfast homes or transient vacation units[-]; provided that bed and breakfast homes or transient vacation units may renew valid registration certificates that were initially issued prior to an amendment to the applicable development plan or sustainable communities plan that prohibits bed and breakfast homes or transient vacation units in the plan area.

SECTION 8. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-4.110-1 ~~[Nonconforming use certificates for transient vacation units.]~~  
Transient vacation units—Nonconforming use certificates.**

- (a) The purpose of this section is to permit certain transient vacation units that have been in operation since prior to October 22, 1986, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a transient vacation unit who ~~[holds]~~ held a valid nonconforming use certificate issued pursuant to this section on August 1, 2019.
- (b) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:
- (1) ~~[between]~~ Between September 1, 2000 and October 15, 2000; then
  - (2) ~~[between]~~ Between September 1 and October 15 of every ~~[even-numbered]~~ year thereafter.



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Each application to renew ~~[shall]~~ must include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during ~~[each]~~ the calendar year covered by the nonconforming use certificate being renewed and ~~[that]~~ (ii) there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during [each] such year [and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy]. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 35 days of transient occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

- (c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.
- (d) The following additional provisions [of Section 21-5.730(c) shall] apply to ~~[advertisements for]~~ transient vacation units operating under a nonconforming use certificate pursuant to this section[-]:
  - (1) Section 21-5.730(b)(3) relating to restrictions and standards; and
  - (2) Section 21-5.730(c) relating to advertisements.
- (e) In addition to the requirements in subsection (d), for transient vacation units operating under a nonconforming use certificate pursuant to this section that are located within the country, residential, or apartment zoning districts, transient occupants are prohibited from parking their vehicles on the public streets in the vicinity of the transient vacation unit.
- (f) A nonconforming use certificate for a transient vacation unit that has been issued and renewed pursuant to this section may be renewed by a new owner, operator, or proprietor of the transient vacation unit, so long as the new owner, operator, or proprietor renews the nonconforming use certificate prior to its expiration."



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SECTION 9. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-4.110-2 Bed and breakfast homes—Nonconforming use certificates.**

- (a) The purpose of this section is to permit certain bed and breakfast homes that have been in operation since prior to December 28, 1989, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a bed and breakfast home who holds a valid nonconforming use certificate issued pursuant to this section on August 1, 2019.
- (b) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:
  - (1) ~~[between]~~ Between September 1, 2000 and October 15, 2000; then
  - (2) ~~[between]~~ Between September 1 and October 15 of every ~~[even-numbered]~~ year thereafter.

Each application to renew ~~[shall]~~ must include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for ~~[each]~~ the calendar year covered by the nonconforming use certificate being renewed and ~~[that]~~ (ii) there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during ~~[each]~~ such year ~~[and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy]~~. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 28 days of bed and breakfast occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

- (c) Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.
- ~~[(d) Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:~~



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- ~~(1) Detached dwellings used as bed and breakfast homes shall be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.~~
- ~~(2) No more than two guest rooms shall be rented to guests, and the maximum number of guests permitted within the bed and breakfast home at any one time shall be four.~~
- ~~(3) There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.~~
- ~~(4) One off street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.~~
- ~~(5) The provisions of Section 21-5.730(c) shall apply to advertisements for the bed and breakfast home.]~~

[(e)](d) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises.

(e) The following additional provisions apply to bed and breakfast homes operating under a nonconforming use certificate pursuant to this section:

- (1) Section 21-5.730(b)(3) relating to restrictions and standards; and
- (2) Section 21-5.730(c) relating to advertisements.

(f) In addition to the requirements in subsection (e), bed and breakfast homes operating under a nonconforming use certificate pursuant to this section that are located within the residential zoning districts are subject to the following:

- (1) A maximum of two rooms may be provided to transient occupants for sleeping accommodations, and a maximum of four adult transient occupants may be accommodated at any one time; and
- (2) One off-street parking space must be provided for each room used for transient occupant sleeping accommodations, in addition to the number of off-street parking spaces required for the dwelling unit.



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- (3) Transient occupants are prohibited from parking their vehicles on the public streets in the vicinity of the bed and breakfast home.
- (g) In addition to the requirements in subsections (e) and (f), bed and breakfast homes operating under a nonconforming use certificate pursuant to this section that are located within the country or apartment zoning districts are subject to the following:
- (1) One off-street parking space must be provided for each room used for transient occupant sleeping accommodations, in addition to the number of off-street parking spaces required for the dwelling unit; and
- (2) Transient occupants are prohibited from parking their vehicles on the public streets in the vicinity of the bed and breakfast home.
- (h) A nonconforming use certificate for a bed and breakfast home that has been issued and renewed pursuant to this section may be renewed by a new owner, operator, or proprietor of the bed and breakfast home, so long as the new owner, operator, or proprietor renews the nonconforming use certificate prior to its expiration."

SECTION 10. Section 21-5.730, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-5.730 Bed and breakfast homes and transient vacation units.**

- (a) Bed and breakfast homes and transient vacation units are permitted in the ~~[A-1 low-density apartment zoning district and A-2 medium-density apartment zoning district provided:~~
- (1) ~~They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and~~
- (2) ~~The resort district and the A-1 or A-2 district, as applicable, were rezoned pursuant to the same zone change application as part of a master-planned resort community.]~~ following areas:
- (1) The areas located within the Apartment Precinct of the Waikiki Special District mauka of Kuhio Avenue, as designated in Figure 21-5.1;



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- (2) The areas located within the A-1 low-density apartment zoning district and the A-2 medium-density apartment zoning district situated in close proximity to the Ko Olina Resort, as designated in Figure 21-5.2; and
- (3) The area located within the A-1 low-density apartment zoning district situated in close proximity to the Turtle Bay Resort, as designated in Figure 21-5.3.

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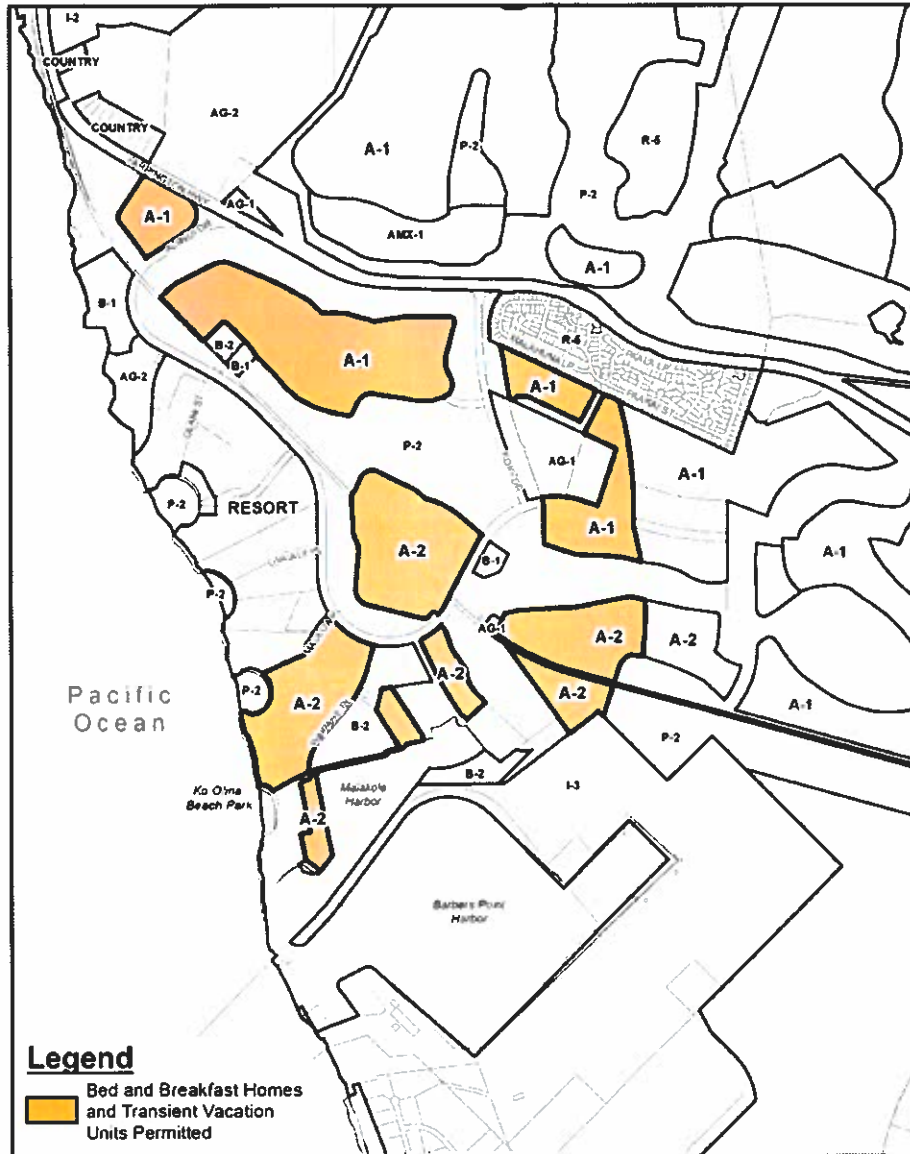
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**Figure 21-5.2**  
**Bed and Breakfast Homes and Transient Vacation Units**  
**Permitted Areas – Close Proximity to the Ko Olina Resort**





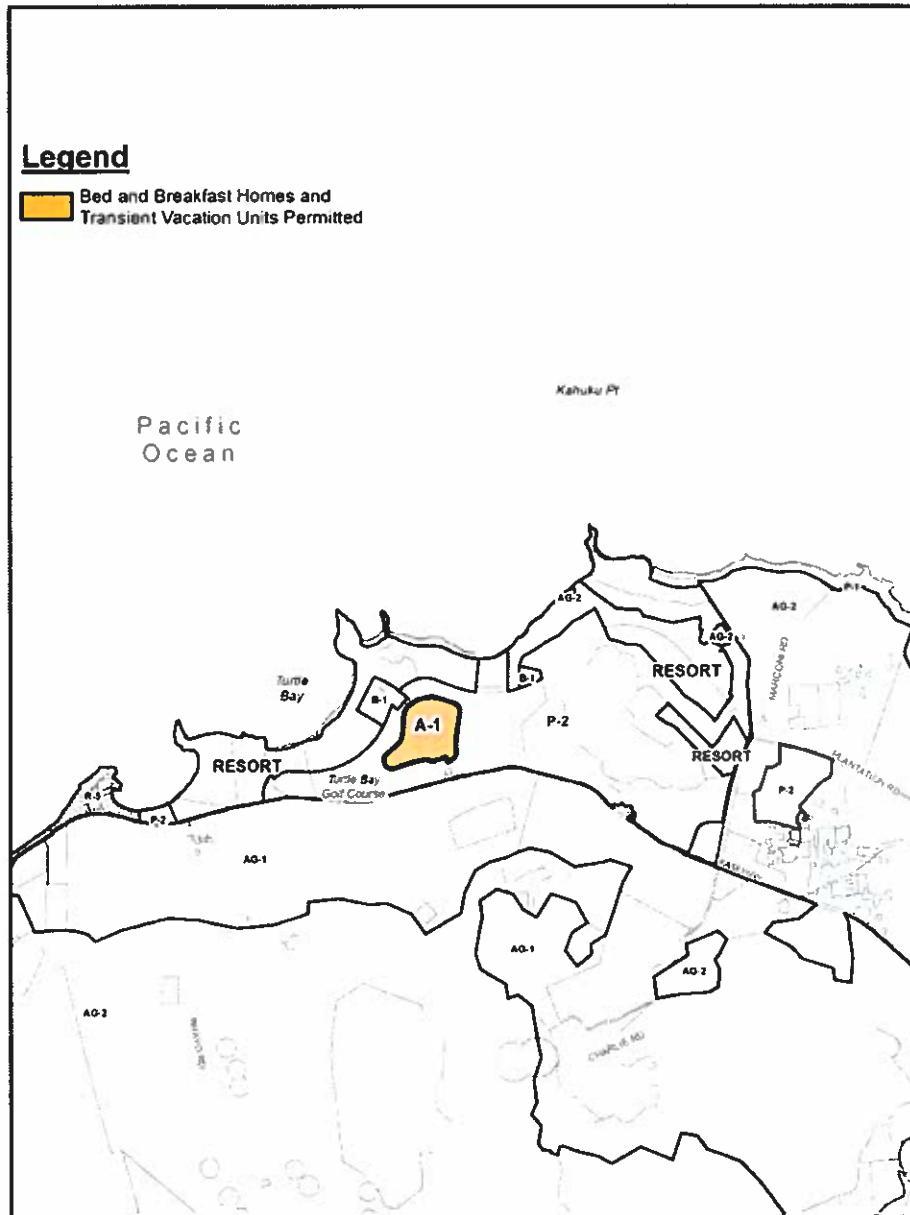
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**Figure 21-5.3**  
**Bed and Breakfast Homes and Transient Vacation Units**  
**Permitted Areas – Close Proximity to the Turtle Bay Resort**





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(b) ~~[In all zoning districts where bed and breakfast homes are permitted, except for the resort district, resort mixed use precinct of the Waikiki special district, and the A-1 low density apartment district and A-2 medium density apartment district pursuant to subsection (a), and except as otherwise provided in subdivision (6), the]~~ The following standards and requirements apply to bed and breakfast homes and transient vacation units; provided that bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2, or transient vacation units operating under a valid nonconforming use certificate pursuant to Section 21-4.110-1 need only comply with subdivision (3):

(1) Registration requirements. The owner or operator of a bed and breakfast home~~[, including for purposes of this subdivision the trustee of a revocable trust that owns the subject property;]~~ or transient vacation unit shall register the bed and breakfast home or transient vacation unit with the department on a form prescribed by the department, and ~~[shall]~~ submit the following in the initial application for registration:

~~[(A)]~~ Affirmation that the applicant of the bed and breakfast home is a natural person;

~~[(B)]~~ Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;]

[(A)] A title report for the subject property that has been issued or updated within 30 days prior to its submission, and identifies all persons owning an interest in the property;

~~[(C)]~~[(B)] A valid current State of Hawaii general excise tax license and transient accommodations tax license, and city transient accommodations tax license for the subject property;

~~[(D)]~~[(C)] [Evidence] For a bed and breakfast home, evidence of a real property tax home exemption for the subject property, and evidence that the applicant has a minimum 50 percent ownership interest in the subject property;

~~[(E)]~~[(D)] An initial registration fee of \$1,000 for the bed and breakfast home~~[:]~~ or transient vacation unit;



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~~[(F)]~~(E) Evidence that the use as a bed and breakfast home or transient vacation unit is covered by an insurance carrier for the subject property[;] pursuant to subdivision (3)(D);

~~[(G)]~~(F) Confirmation that the bed and breakfast home or transient vacation unit is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules;

~~[(H)]~~ An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city;

~~[(I)]~~ A floor plan showing the location of guest rooms for a bed and breakfast home;

~~[(J)]~~ For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, is currently dedicated for a specific agricultural use pursuant to Section 8-7.3; and]

~~[(G)]~~ The informational binder required under subdivision (3)(F); provided that a copy of a registration certificate need not be included;

~~[(K)]~~(H) Evidence that a dwelling unit proposed for use as a bed and breakfast home[;] or transient vacation unit:

- (i) Is not an affordable unit subject to income restrictions;
- (ii) Did not receive housing or rental assistance subsidies; and
- (iii) Was not subject to an eviction within the last 12 months.

Registration will be effective for a period of one year beginning on the date a certificate of registration is issued by the department, and must be renewed annually prior to expiration.

- (2) Registration renewal requirements. Annually, ~~[by August 30,]~~ no earlier than three months prior to the expiration of the registration certificate, the owner or operator of a bed and breakfast home~~[, including for purposes of~~



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~~this subdivision the trustee of a revocable trust that owns the subject property;~~ or transient vacation unit shall renew the registration certificate for a bed and breakfast home or transient vacation unit with the department on a form prescribed by the department, and submit to the department[;] the following in the registration renewal application:

- ~~[(A) Affirmation that the applicant for the bed and breakfast home is a natural person;~~
- ~~(B) Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;]~~
- ~~(C) Evidence of having paid State of Hawaii general excise taxes and transient accommodations taxes for the subject property;]~~
- ~~(D) Evidence]~~ (A) For a bed and breakfast home, evidence of a real property tax home exemption for the subject property;
- (B) A tax clearance certificate issued by the department of budget and fiscal services certifying that real property taxes were assessed at the rates required by Section 8-7.1 and paid in full during the preceding tax year;
- (C) A tax clearance certificate issued by the State Department of Taxation certifying the payment of State of Hawaii general excise taxes and transient accommodations taxes, and a tax clearance certificate issued by the department of budget and fiscal services certifying the payment of city transient accommodations taxes, for the subject property during the previous tax year;
- (D) If there has been any change in ownership of the subject property, an updated title report that has been issued within 30 days prior to the submission of the renewal application to the department;
- (E) A renewal fee of [~~\$2,000~~] **\$500** for the bed and breakfast home[;] or transient vacation unit;
- (F) Evidence that the use as a bed and breakfast home or transient vacation unit is covered by an insurance carrier for the property[;] pursuant to subdivision (3)(D); and



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(G) Confirmation that the bed and breakfast home or transient vacation unit is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules[;].

~~[(H) An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city; and~~

~~[(I) For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, is currently dedicated for a specific agricultural use pursuant to Section 8-7.3.~~

~~[The renewal of a registration for a bed and breakfast home will be granted upon receipt of an application meeting all requirements set forth in this section; provided that if] The director may deny renewal of a registration if: (i) the owner or operator receives one or more notices of order for violation of this subsection within a one year period; (ii) the owner or operator demonstrates an inability to operate a bed and breakfast home or transient vacation unit without causing significant negative impacts to the surrounding community, including but not limited to instances where complaints from the public indicate that noise or other nuisances created by guests disturbs residents of the neighborhood in which the bed and breakfast home or transient vacation unit is located[;]; or (iii) where other good cause exists[; the director may deny] for denial of the renewal application.~~

(3) Restrictions and Standards. Bed and breakfast homes and transient vacation units must operate in accordance with the following restrictions and standards:

~~[(A) Dwelling units in detached dwellings used as bed and breakfast homes must be occupied by a family, and renters of any room in the detached dwelling other than the bed and breakfast home guests are not permitted;~~



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- ~~(B)~~ ~~No more than two guest rooms in a bed and breakfast home may be rented to guests, and a maximum of four guests are permitted within the bed and breakfast home at any one time;~~
- ~~(G)~~(A) Functioning smoke and carbon monoxide detectors must be installed in each transient occupant bedroom[;] and each hallway connected to a transient occupant bedroom;
- ~~[(D)]~~ ~~House rules, including quiet hours between 10:00 p.m. and 8:00 a.m., and emergency contact information for the owner or operator must be provided to all guests and posted in conspicuous locations;~~
- ~~(E)~~ ~~When any guest room in a bed and breakfast home is being rented to guests, the owner or operator shall remain on the premises during quiet hours;]~~
- ~~[(F)]~~(B) Occupancy limits and sleeping arrangements are as follows:
- (i) All overnight transient occupants must be registered with the owner or operator of the bed and breakfast home or transient vacation unit;
  - (ii) Except for studio units, sleeping accommodations for all transient occupants must be provided in bedrooms or other rooms that are suitable for sleeping accommodations (such as a living room with a sofa bed). No more than two adults may sleep in each allowable room in which sleeping accommodations are provided;
  - (iii) The total number of adult overnight transient occupants may not exceed two times the number of rooms provided to transient occupants for sleeping accommodations; and
  - (iv) The owner or operator shall maintain a current two-year registry setting forth the names and telephone numbers of all [guests] transient occupants and the dates of their respective stays;
- ~~[(G)]~~(C) ~~[No exterior]~~ Exterior signage indicating that [shows the] a dwelling unit is used as a bed and breakfast home or transient vacation unit is [allowed;] prohibited;



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- ~~[(H)] Registration as a bed and breakfast home is not transferable, and shall not run with the land;~~
- ~~[(I)] Development Plan Area Density Limit. Excluding bed and breakfast homes and transient vacation units in the resort district, resort mixed use precinct of the Waikiki special district, and the A-1 low density apartment district and A-2 medium density apartment district pursuant to subsection (a), where there is no limit on the number of bed and breakfast homes and transient vacation units allowed, the number of bed and breakfast homes and transient vacation units permitted in each development plan area is limited to no more than one half of one percent of the total number of dwelling units in that development plan area. The total number of dwelling units in a development plan area will be based on the latest figures from the U.S. Census data. Where the initial number of bed and breakfast home applications for a development plan area exceeds the one half of one percent limitation, acceptance of applications will be selected on a lottery basis. When renewal applications fall below the one half of one percent limitation, new applications will be accepted on a lottery basis. The director shall adopt rules pursuant to HRS Chapter 91 to implement and administer the lottery;~~
- ~~[(J)] Multifamily Dwelling Density Limit. Excluding multifamily dwellings in the resort district, resort mixed use precinct of the Waikiki special district, and the A-1 low density apartment district and A-2 medium density apartment district pursuant to subsection (a), unless otherwise specified in apartment bylaws, covenants, or correspondence from a homeowners association, apartment owners association, or condominium property regime, the total number of bed and breakfast homes and transient vacation units must not exceed 50 percent of the total dwelling units in a multifamily dwelling;~~
- ~~[(K)] If a bed and breakfast home is located in the AG-2 general agricultural district, the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, must be currently dedicated for a specific agricultural use pursuant to Section 8-7.3;~~



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- ~~(L) A bed and breakfast home must not be located within a 1,000-foot radius of another bed and breakfast home or a transient vacation unit; provided that this spacing requirement:~~
- ~~(i) Does not apply as between (1) bed and breakfast homes and transient vacation units in the resort district, resort mixed use precinct of the Waikiki special district, or the A-1 low-density apartment district or A-2 medium-density apartment district pursuant to subsection (a), and (2) bed and breakfast homes located outside of those zoning districts and precincts; and~~
  - ~~(ii) Does not preclude the continued operation of bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2; and~~
- ~~(M) The owner or operator shall provide occupants of dwelling units within 250 feet of the dwelling unit used as a bed and breakfast home with a phone number that must be answered 24 hours a day, to call in complaints regarding the bed and breakfast home. The owner or operator shall keep a log of all complaints received during the applicable registration period, and submit the log with each registration renewal application, and at any other time upon the request of the director. The log must include the name, phone number, and address of the complainant, date of the complaint, date the complaint was resolved, and how the complaint was resolved.~~
- ~~(N)~~(D) Insurance coverage required. The owner or operator must maintain a minimum of \$1,000,000 per occurrence in commercial general liability insurance at all times. Owners or operators may fulfill insurance requirements through coverage offered by a hosting platform; provided the insurance coverage satisfies the minimum requirements of this paragraph;
- (E) Gatherings restricted. The property on which a bed and breakfast home or transient vacation unit is located may not be used for gatherings of ten or more individuals who are not registered as overnight transient occupants at the bed and breakfast home or transient vacation unit; and



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(F) Informational binder required. The owner or operator shall create a binder that must be placed and maintained in a conspicuous location within the bed and breakfast home or transient vacation unit at all times. The binder must provide guidance to transient occupants on being respectful of neighbors and responding to emergencies. The binder must be made available for inspection by the department upon request. At a minimum, the binder must include the following documents and information:

(i) A floor plan of the dwelling unit used as a bed and breakfast home or transient vacation, identifying the location of all transient occupant bedrooms, the maximum occupancy of each bedroom, and the location of all fire exits;

(ii) Parking plan:

(aa) For bed and breakfast homes and transient vacation units that are not located in a multifamily dwelling, a parking plan identifying the location and number of parking stalls available to persons associated with the bed and breakfast home or transient vacation unit (such as owners, transient occupants, visitors, or service providers); the parking plan must include illustrations, drawn to scale, showing the size of designated parking spaces, their location on the zoning lot, and which spaces may be occupied by vehicles of the transient occupants; or

(bb) For bed and breakfast homes or transient vacation units located in a multifamily dwelling, a parking plan identifying the location and number of parking stalls within the multifamily dwelling that may be used by persons associated with the bed and breakfast home or transient vacation unit; the parking plan may be provided in narrative form without illustrations or graphics;

(iii) Instructions for trash collection and disposal, including the dates and times of scheduled trash collections;



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- (iv) A copy of the house rules for the bed and breakfast home or transient vacation unit, which must impose quiet hours between 10:00 p.m. and 7:00 a.m., and for bed and breakfast homes and transient vacation units operating pursuant to nonconforming use certificates and located within the country, residential, or apartment zoning districts, the house rules must prohibit transient occupants from parking vehicles on the public streets in the vicinity of the bed and breakfast home or transient vacation unit;
  - (v) A list of emergency contacts, which must include a 24-hour telephone number for the owner or operator of the bed and breakfast home or transient vacation unit, the 911 emergency telephone number, and the website address for the Hawaii Emergency Management Agency;
  - (vi) A copy of the certificate of insurance for the bed and breakfast home or transient vacation unit;
  - (vii) Copies of the general excise and transient accommodations tax licenses for the bed and breakfast home or transient vacation unit; and
  - (viii) A copy of the registration certificate or nonconforming use certificate for the bed and breakfast home or transient vacation unit.
- (4) Upon reasonable notice, any bed and breakfast home or transient vacation unit must be made available for inspection by the department.
- (5) The violation of any provision of this subsection will be grounds for administrative fines and nonrenewal unless corrected before the renewal deadline. Recurring or multiple violations will result in denial of renewal requests.
- ~~[(6) This subsection does not apply to bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2.]~~
- ~~[(7)](6)~~ The director may revoke a registration at any time by issuing a notice of revocation under the following circumstances:



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- (A) ~~[Recurring violations of the standards and requirements for bed and breakfast homes in Section 21-5.730(b);]~~ The owner or operator receives more than two notices of order within a one year period for violation of this subsection;
- (B) ~~[Complaints]~~ The owner or operator demonstrates an inability to operate a bed and breakfast home or transient vacation unit without causing significant negative impacts to the surrounding community; including but not limited to instances where complaints from the public indicate that noise or other nuisances created by [guests] transient occupants disturbs residents of the neighborhood in which the bed and breakfast home or transient vacation unit is located; or
- (C) The director determines that good cause exists for revocation of the registration.
- (7) Registration as a bed and breakfast home or transient vacation unit is not transferable, and shall not run with the land.
- (c) Advertisements.
- (1) Definitions. As used in this subsection[:], unless the context otherwise requires:
- "Advertisement" means ~~[any form of communication, promotion, or solicitation, including but not limited to electronic media, direct mail, newspapers, magazines, flyers, handbills, television commercials, radio commercials, signage, e-mail, internet websites, text messages, verbal communications, or similar displays, intended or used to induce, encourage, or persuade the public to enter into a contract for the use or occupancy of a bed and breakfast home or transient vacation unit.]~~ the display or transmission of any communication that may cause a reasonable person to understand that a dwelling unit or portion thereof is available for rent. Advertisements include but are not limited to written and spoken words, emails, text messages, electronic and hard copy publications, flyers, handbills, signs, websites, and expressive images.
- "Person" means a ~~[judicial]~~ legal person or a natural person, ~~[and includes businesses, companies,]~~ consisting of individuals and all types of business and legal entities, including but not limited to associations, nonprofit



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organizations, ~~[firms,]~~ trusts, estates, partnerships, corporations, and limited liability companies~~[-and individuals]~~.

- (2) Prohibition. Advertisements for ~~[all]~~ specifically identified bed and breakfast homes and transient vacation units, or for the lease or rental of other specifically identified dwelling units where the advertisement may reasonably be read as being an advertisement for the lease or rental of a bed and breakfast home or transient vacation unit, are subject to this subsection.
- (A) It is unlawful for any person to advertise or cause the advertisement of a bed and breakfast home or transient vacation unit without including in the advertisement~~[-~~:
- (i) ~~A]~~ a current registration certificate number obtained pursuant to this section, or a nonconforming use certificate number obtained pursuant to Section 21-4.110-1 or Section 21-4.110-2~~[-or]~~, and a tax map key number for the property on which the bed and breakfast home or transient vacation unit is located.
- (ii) ~~For bed and breakfast homes or transient vacation units located in the resort district, apartment precinct or resort mixed use precinct of the Waikiki special district, or in the A-1 low density apartment district or A-2 medium density apartment district pursuant to subsection (a), the street address, including, if applicable, any apartment unit number, for that bed and breakfast home or transient vacation unit.]~~
- (B) It is unlawful for any person to advertise or cause the advertisement of a dwelling unit that is not a registered bed and breakfast home or transient vacation unit pursuant to this section or is not operating under a nonconforming use certificate pursuant to Section 21-4.110-1 or Section 21-4.110-2, for a term of less than 90 consecutive days. Any advertisement for the rental of a dwelling unit that is not a registered bed and breakfast home or transient vacation unit or is not operating pursuant to a nonconforming use certificate as aforesaid may not include daily or less than three-month rental rates, and must include the following statement: "This property may not be rented for less than 90 consecutive days."



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Rental prices will not be reduced or adjusted based on the number of days the rental is actually used or occupied."

~~[(B)]~~(C) Within seven days after receipt of a notice of violation~~[-]~~ of paragraph (A) or (B), the owner or operator of a ~~[bed and breakfast home or a transient vacation unit]~~ dwelling unit shall remove, or cause the removal of, the advertisement identified in the notice, including~~[-, without limitation,]~~ but not limited to any advertisement made through a hosting platform. If the advertisement is not removed within seven days after receipt of the notice of violation, ~~[a fine of not less than \$1,000 and not more than \$10,000 per day will be levied against the owner or operator associated with the bed and breakfast home or transient vacation unit,]~~ the following civil fines will be levied against the owner or operator of the dwelling unit:

- (i) An initial fine not to exceed \$5,000; and
- (ii) A fine not to exceed \$10,000 for each day thereafter that the advertisement is on public display [beyond seven days from the date the notice of violation is received].

~~[(C)]~~(D) The existence of an advertisement that is unlawful under paragraph (A) or (B) will be prima facie evidence that a bed and breakfast home or a transient vacation unit is being operated at the listed address. The burden of proof is on the owner of the subject real property to establish that the property is not being used as a bed and breakfast home or transient vacation unit, or that the advertisement was placed without the property owner's knowledge or consent.

- (3) Exemptions. The following are exempt from the provisions of this subsection.
- (A) Legally established hotels, whether owned by one person, or owned individually as unit owners but operating as a hotel as defined in ~~[Chapter 21, Article 10.]~~ Section 21-10.1; and
  - (B) Legally established time-sharing units, as provided in Section 21-5.640.



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~~[(C) Legally established dwelling units that are rented for periods of 30 consecutive days or more at any one time.]~~

(d) Unpermitted bed and breakfast homes or unpermitted transient vacation units.

(1) Definitions. As used in this subsection~~[:]~~, unless the context otherwise requires:

"Unpermitted bed and breakfast home" means a bed and breakfast home that is not:

~~[(A) Located in the resort district, resort mixed use precinct of the Waikiki special district, or A-1 low density apartment district or A-2 medium density apartment district pursuant to subsection (a);~~

~~(B)]~~(A) Operating under a valid nonconforming use certificate pursuant to Section 21-4.110-2; or

~~[(C)]~~(B) Validly registered under this section.

"Unpermitted transient vacation unit" means a transient vacation unit that is not:

~~[(A) Located in the resort district, resort mixed use precinct of the Waikiki special district, or A-1 low density apartment district or A-2 medium density apartment district pursuant to subsection (a); or~~

~~(B)]~~(A) Operating under a valid nonconforming use certificate pursuant to Section 21-4.110-1~~[:]~~; or

(B) Validly registered under this section.

(2) It is unlawful for any owner or operator of an unpermitted bed and breakfast home or unpermitted transient vacation unit, or the owner or operator's agent or representative to:

(A) Rent, offer to rent, or enter into a rental agreement to rent an unpermitted bed and breakfast home or unpermitted transient vacation unit for fewer than ~~[30]~~ 90 consecutive days;



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE **22-7**

BILL **41 (2021), CD2**

---

**A BILL FOR AN ORDINANCE**

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- (B) Rent, offer to rent, or enter into a rental agreement to rent an unpermitted bed and breakfast home or unpermitted transient vacation unit, where such rental, offer, or rental agreement limits actual occupancy of the premises to a period of less than the full stated rental period, or conditions the right to occupy the rented premises for the full stated rental period on the payment of additional consideration;
  - (C) Set aside or exclusively reserve an unpermitted bed and breakfast home or unpermitted transient vacation unit for rental or occupancy for a period of ~~[30]~~ 90 consecutive days or more, but limit actual occupancy of the premises to a period of less than the full stated rental period, or condition the right to occupy the rented premises for the full stated rental period on the payment of additional consideration; or
  - (D) Advertise, solicit, offer, or knowingly provide rental of an unpermitted bed and breakfast home or unpermitted transient vacation unit to transient occupants for less than ~~[30]~~ 90 consecutive days. An advertisement for an unpermitted bed and breakfast home or unpermitted transient vacation unit that includes daily or less than three-month rental rates will be deemed to be in violation of this paragraph.
- (e) Any person may submit a written complaint to the director reporting a violation of the provisions of this section regarding bed and breakfast homes and transient vacation units.
- (1) A complaint reporting a suspected violation of the provisions of this section must:
    - (A) Identify the address of the bed and breakfast home or transient vacation unit that is the subject of the suspected violation~~;~~, including the apartment or unit number of the dwelling unit if it is located in a multifamily dwelling;
    - (B) State all of the facts that cause the complainant to believe that a violation has occurred;
    - (C) Identify the provisions of this section that the complainant believes are being violated; and



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- (D) Provide the complainant's name and a mailing address where the director may ~~[mail a response]~~ respond to the complaint.
- (2) Within 30 days after receiving a written complaint reporting a violation of the provisions of this section, the director ~~[must]~~ shall provide a written response to the complainant either:
- (A) Declining jurisdiction over the complaint, in which case the complainant may pursue judicial relief pursuant to HRS Section 46-4(b);
- (B) Entering a finding of no violation, which ~~[will be appealable]~~ may be appealed to the zoning board of appeals pursuant to Charter Section 6-1516; or
- (C) Advising the complainant that the director has initiated an investigation of the complaint.
- (f) The provisions of this section do not terminate or supersede private restrictive covenants or other restrictions that prohibit the use of real property as a bed and breakfast home or transient vacation unit."

SECTION 11. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended by amending the "transient vacation units" entry to read as follows:

Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures			
Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
Bed and breakfast homes	P/c	P/c	
Transient vacation units	<u>P/c</u>	P/c	



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SECTION 12. Section 21-10.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definitions of "bed and breakfast home," "rooming," and "transient vacation unit," and adding new definitions of "transient accommodation" and "transient occupant" to read as follows:

""Bed and breakfast home" means a use in which overnight accommodations are advertised, solicited, offered, or provided, or a combination of any of the foregoing, to [guests] transient occupants, for compensation, for periods of less than [30] 90 consecutive days, in the same [detached] dwelling [as that] unit occupied by an owner, lessee, operator, or proprietor of the [detached] dwelling[-] unit. For purposes of this definition~~[-, compensation]~~:

- (1) Compensation includes~~[-]~~ but is not limited to~~[-]~~ monetary payment, services, or labor of [guests-] transient occupants; and
- (2) Month-to-month holdover tenancies resulting from the expiration of long-term leases of 90 consecutive days or more are excluded."

""Rooming" means a use accessory to the principal use of a dwelling unit in which overnight accommodations are provided to persons ("roomers") for compensation for periods of [30] 90 consecutive days or more in the same dwelling unit as that occupied by an owner, lessee, operator, or proprietor of the dwelling unit."

""Transient vacation unit" means a dwelling unit or lodging unit that is advertised, solicited, offered, or provided, or a combination of any of the foregoing, for compensation to transient occupants for less than [30] 90 consecutive days, other than a bed and breakfast home~~[-]~~, timeshare unit, or hotel unit. For purposes of this definition~~[-, compensation]~~:

- (1) Compensation includes~~[-]~~ but is not limited to~~[-]~~ monetary payment, services, or labor of transient occupants~~[-]~~; and
- (2) Month-to-month holdover tenancies resulting from the expiration of long-term leases of 90 consecutive days or more are excluded."

""Transient accommodation" means living accommodations that are offered or made available to transient occupants for less than 90 consecutive days."

""Transient occupant" means any person who rents a lodging or dwelling unit, or portion thereof, for less than 90 consecutive days, and whose permanent address for legal purposes is not the lodging or dwelling unit being rented."



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SECTION 13. Administrative Rules. Within 180 days after the effective date of this SECTION, the Director of Planning and Permitting shall adopt administrative rules in accordance with HRS Chapter 91 for the implementation, administration, and enforcement of this ordinance.

SECTION 14. Owners or operators of dwelling units (or portions thereof) that, prior to the effective date of this ordinance, were being rented for periods of 30 consecutive days up to 89 consecutive days may continue to rent the dwelling units for such periods (without first having to register as a bed and breakfast home or transient vacation unit) for 180 days after the effective date of this ordinance. After the 180-day period has expired, all owners or operators of dwelling units (or portions thereof) that were being rented for periods of 30 consecutive days up to 89 consecutive days shall either register the dwelling unit as a bed and breakfast home or transient vacation unit, or thereafter rent the dwelling unit (or portion thereof) only for periods of 90 consecutive days or more.

SECTION 15. Ordinance material to be repealed is bracketed and stricken. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.

SECTION 16. Severability. If any provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that may be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 17. This ordinance takes effect 180 days after its approval; provided that:

1. In SECTION 8 of this ordinance, the annual renewal requirement for nonconforming use certificates for transient vacation units in ROH Section 21-4.110-1 applies to all renewals after the effective date of this ordinance; provided that nonconforming use certificates that have been renewed prior to the effective date of this ordinance will continue to be effective for the applicable two-year period; and
2. In SECTION 9 of this ordinance, the annual renewal requirement for nonconforming use certificates for bed and breakfast homes in ROH



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ORDINANCE **22-7**

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**A BILL FOR AN ORDINANCE**

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Section 21-4.110-2 applies to all renewals after the effective date of this ordinance; provided that nonconforming use certificates that have been renewed prior to the effective date of this ordinance will continue to be effective for the applicable two-year period; and



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ORDINANCE 22-7  
BILL 41 (2021), CD2

**A BILL FOR AN ORDINANCE**

3. SECTION 13 of this ordinance takes effect upon its approval.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

October 19, 2021  
Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

*Duane Pang*  
Deputy Corporation Counsel  
**DUANE W.H. PANG**

APPROVED this 26th day of April, 2022.

*Rick Blangiardi*

RICK BLANGIARDI, Mayor  
City and County of Honolulu

22-7  
CITY COUNCILCITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

BILL 41 (2021), CD2

Introduced: 10/19/21 By: TOMMY WATERS - BY REQUEST Committee: ZONING AND PLANNING (ZP)

Title: RELATING TO TRANSIENT ACCOMMODATIONS

Voting Legend: \* = Aye w/Reservations

10/19/21	INTRO	Introduced.
11/10/21	CCL	Passed first reading.  7 AYES: ELEFANTE, FUKUNAGA, KIA'ĀINA, SAY, TSUNEYOSHI*, TULBA*, WATERS  2 NOES: CORDERO, TUPOLA
11/18/21	ZP	Extension of time reported out for adoption.  CR-330  4 AYES: CORDERO, ELEFANTE, KIA'ĀINA, SAY
12/01/21	CCL	Committee report adopted.  9 AYES: CORDERO, ELEFANTE, FUKUNAGA, KIA'ĀINA, SAY, TSUNEYOSHI, TULBA, TUPOLA, WATERS
01/14/22	PUBLISH	Public hearing notice published in the Honolulu Star-Advertiser.
01/20/22	ZP	Amended to CD1.  4 AYES: CORDERO, ELEFANTE, KIA'ĀINA, SAY
01/20/22	ZP	Reported out for passage on second reading and scheduling of a public hearing as amended in CD1 form.  CR-008 (22)  4 AYES: CORDERO*, ELEFANTE, KIA'ĀINA, SAY
01/26/22	CCL/PH	Committee report adopted. Bill passed second reading as amended, public hearing closed and referred to committee.  7 AYES: ELEFANTE, FUKUNAGA, KIA'ĀINA, SAY, TSUNEYOSHI*, TULBA*, WATERS  2 NOES: CORDERO, TUPOLA
02/02/22	PUBLISH	Second reading notice published in the Honolulu Star-Advertiser.
03/23/22	ZP	Amended to CD2.  4 AYES: CORDERO, ELEFANTE, KIA'ĀINA, SAY
03/23/22	ZP	Reported out for passage on third reading as amended in CD2 form.  CR-76(22)  4 AYES: CORDERO*, ELEFANTE, KIA'ĀINA, SAY*

04/13/22 CCL

Posted FD1 (OCS2022-0293/4/7/2022 3:42 PM) withdrawn by Councilmember Fukunaga.

Hand-carried FD1 (OCS2022-0308/4/12/2022 1:15 PM) withdrawn by Councilmember Fukunaga.

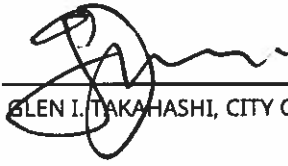
Hand-carried FD1 (OCS2022-0305/4/12/2022 3:10 PM) withdrawn by Councilmember Say.

Committee report adopted and Resolution passed third reading as amended.

8 AYES: CORDERO, ELEFANTE, FUKUNAGA\*, KIA'ĀINA, SAY, TSUNEYOSHI\*, TULBA, WATERS

1 NO: TUPOLA

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.



GLEN I. TAKAHASHI, CITY CLERK



TOMMY WATERS, CHAIR AND PRESIDING OFFICER

RECEIVED

86 JUL 29 10 04  
ORDINANCE NO. 86-36  
OFFICE OF COMMUNITY SERVICES  
CITY COUNCIL  
HONOLULU, HAWAII

BILL NO. 127 (1985)  
(Draft No. 3)  
AS AMENDED

A BILL FOR AN ORDINANCE TO ADOPT THE LAND USE ORDINANCE, WHICH IS TO SUPERSEDE THE COMPREHENSIVE ZONING CODE, AS AMENDED, AND ORDINANCE NOS. 3947, 4507, 78-89, 78-18, 4643, 4573 and 84-41, AS AMENDED.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION I. The "Land Use Ordinance," attached hereto, is incorporated herein and is hereby adopted as Chapter 21, Revised Ordinances of Honolulu 1978, as amended.

SECTION II. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of conditions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION III. Direction to Corporation Counsel. When revising, compiling, and printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Corporation Counsel is directed to renumber the entire Land Use Ordinance as Chapter 21 and make all sections of the Land Use Ordinance and references to sections consistent therewith.

SECTION IV. This ordinance shall take effect 90 days after the approval of Bill No. 126 (1985).

DATE OF INTRODUCTION:

SEPTEMBER 11, 1985  
Honolulu, Hawaii

APPROVED AS TO FORM AND  
LEGALITY:

Sam H. Howell  
Deputy Corporation Counsel

APPROVED this 24<sup>th</sup> day of  
July, 1986.

Frank F. Fasi  
FRANK F. FASI, Mayor  
City and County of Honolulu

INTRODUCED BY:

Highland  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
Councilmembers

86-36

EXHIBIT "2"

LAND USE ORDINANCE (LUO)  
ADOPTED BY ORDINANCE NO. 86-96

COPIES OF THE NEW LAND USE ORDINANCE (LUO) WILL  
GO ON PUBLIC SALE AT PURCHASING DIVISION, DEPARTMENT  
OF FINANCE, GROUND FLOOR, HONOLULU HALE, 530 SOUTH  
KING STREET.

PLEASE CALL PURCHASING DIVISION, TELEPHONE  
NO. 523-4780, AT THE END OF AUGUST, AS TO THE EXACT  
DATE OF PUBLIC SALE AND THE COST OF THE LUO.

CITY CLERK'S OFFICE  
TELEPHONE NO. 523-4480

**TABLE 21-3  
MASTER USE TABLE**

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

**KEY:**

- Ac = Special accessory use subject to standards in Article 5
- Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
- C = Conditional Use Permit-major subject to standards in Article 5; public hearing required
- P = Permitted use
- P/c = Permitted use subject to standards in Article 5
- PRU = Plan Review Use

USES (Note: Certain uses are defined in Article 10.)	ZONING DISTRICTS																	
	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1
																		I-2
																		I-3
																		IMX-1

**AGRICULTURE**

Agricultural products processing, minor		P/c	P/c															P/c
Agricultural products processing, major		C	C															P/c
Animal products processing																		P
Aquaculture	P	P	P	P														P
Centralized bulk collection, storage and distribution of agricultural products to wholesale and retail markets		P/c	P/c															P/c
Composting, major	C	C	C															P/c
Composting, minor	P/c	P/c	P/c															P/c
Crop production	P	P	P	P														
Forestry	P	P	P															
Roadside stands, accessory		Ac	Ac	Ac														
Sale and service of machinery used in agricultural production		P/c	P/c															P
Sawmills		P/c	P/c															P
Storage and sale of seed, feed, fertilizer and other products essential to agricultural production		P/c	P/c															P

**ANIMALS**

Game preserves	P		P															
Kennels, commercial			P/c	P/c										P/c	P/c	P/c	P/c	P
Livestock grazing	P	P	P	P														
Livestock production, minor		P	P	P														
Livestock production, major		P/c	P/c															
Livestock veterinary services		P	P	P														
Zoos	C		C															

EXHIBIT "3"

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99 - 12

		ZONING DISTRICTS
USES (Note: Certain uses are defined in Article 10.)		
	P-2	
	AG-1	
	AG-2	
	Country	
	R-20, R-10	
	R-7.5, R-5, R-3.5	
	A-1	
	A-2	
	A-3	
	AMX-1	
	AMX-2	
	AMX-3	
	Resort	
	B-1	
	B-2	
	BMX-3	
	BMX-4	
	I-1	
	I-2	
	I-3	
	IMX-1	

COMMERCE AND BUSINESS																					
Amusement and recreation facilities, indoor	P/c												P	P	P	P	P	P	P	P <sup>2</sup>	
Automobile sales and rentals, including sales and distribution of automobile parts and supplies															P	P	P	P	P	P	
Bars, nightclubs, taverns													P		P/c	P/c	P/c	P/c	P	P/c	
Business services													P	P	P	P	P	P	P	P	
Cabarets													P		P/c		P/c			P	
Catering establishments													P		P	P	P	P	P	P	
Convenience stores											P/c <sup>1</sup>	P/c <sup>1</sup>	P/c <sup>1</sup>	P	Cm P/c	P	P	P	P/c	P/c	P
Dance or music schools											P/c <sup>1</sup>	P/c <sup>1</sup>	P/c <sup>1</sup>	P/c	P	P	P	P		P <sup>2</sup>	
Data processing facilities																		P	P	P	
Drive-thru facilities															P/c	P/c	P/c	P/c	P/c	P/c	
Eating establishments											P/c <sup>1</sup>	P/c <sup>1</sup>	P/c <sup>1</sup>	P	P	P	P	P	P	P	
Financial institutions											P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P	P	P	P	P	P	
Home improvement centers																P/c	P/c		P	P	
Home occupations		Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac			Ac	Ac			
Laboratories, medical															P	P	P	P	P	P	
Laboratories, research																P	P	P	P	P	
Medical clinics											P/c <sup>1</sup>	P/c <sup>1</sup>	P/c <sup>1</sup>	P	P	P	P	P		P <sup>2</sup>	
Neighborhood grocery stores		Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm					Cm	Cm	Cm	
Office buildings															P	P	P	P		P <sup>2</sup>	
Offices, accessory																		Ac	Ac	Ac	
Off-site joint development																	C	C			
Personal services											P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P	P	P	P		P <sup>2</sup>	
Photographic processing															P	P	P	P	P	P	
Photography studios														P	P	P	P	P		P <sup>2</sup>	
Plant nurseries																		P	P	P	
Retail, accessory																		Ac	Ac	Ac	

**TABLE 21-3  
MASTER USE TABLE**

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**KEY:**

- Ac = Special accessory use subject to standards in Article 5
- Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
- C = Conditional Use Permit-major subject to standards in Article 5; public hearing required
- P = Permitted use
- P/c = Permitted use subject to standards in Article 5
- PRU = Plan Review Use

ZONING DISTRICTS																						
USES (Note: Certain uses are defined in Article 10.)	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1	

Retail establishments													P	P	P	P	P				P
Self-storage facilities															P/c	P/c	P/c	P	P		P
Trade or convention centers	PRU	PRU	PRU	PRU			PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU
Veterinary establishments														P/c	P/c	P/c	P/c	P	P		P/c

**DWELLINGS AND LODGINGS**

Boarding facilities							P	P	P	P	P	P				P	P				
Consulates					P/c	P/c	P	P	P	P	P	P	P	P	P	P	P				
Duplex units						P	P	P	P	P	P	P	P								
Dwellings, owner's or caretaker's, accessory														Ac	Ac		Ac	Ac	Ac	Ac	Ac
Dwellings for cemetery caretakers	Ac		Ac																		
Dwellings, detached, one-family				P	P	P	P	P	P	P	P	P	P			P					
Dwellings, detached, two-family					P	P	P	P	P	P	P	P	P			P					
Dwellings, multifamily							P	P	P	P	P	P	P			P/c	P				
Farm dwellings		P/c	P/c																		
Group living facilities		C	C	C	C	C	C	C	C	C	C	C	C			C	Cm				
Guest houses (R-20 only)					Ac																
Hotels													P				P		Cm		Cm
Roomers/Rooming				Ac	Ac	Ac															
Time sharing								P/c					P								
Transient vacation units								P/c					P								
Vacation cabins	Cm																				

**INDUSTRIAL**

Base yards																	P/c	P/c	P/c	P/c
Building or similar contracting and home improvement and furnishing services, and materials and equipment sales or distribution; provided incidental storage of materials or equipment is within fully enclosed buildings																	P	P		P
Centralized mail and package handling facilities																	P/c		P	P/c

**TABLE 21-3  
MASTER USE TABLE**

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PRU	=	Plan Review Use

ZONING DISTRICTS																			
USES (Note: Certain uses are defined in Article 10.)	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2

Explosive and toxic chemical manufacturing, storage and distribution																		C	
Food manufacturing and processing														P/c	P/c	P/c	P	P	P
Freight movers																	P/c	P	
Heavy equipment sales and rentals																	P/c	P	
Linen suppliers																	P	P	
Manufacturing, processing and packaging, light																	P	P	P
Manufacturing, processing and packaging, general																	P/c	P	P
Maritime-related vocational training, sales, construction, maintenance and repairing																		P	P
Motion picture and television production studios														P/c	P/c		P	P	P
Petroleum processing																		C	Cm
Port facilities																			P
Publishing plants for newspapers, books and magazines														P		P	P	P	P
Repair establishments, major																		P	P
Repair establishments, minor													P	P	P	P	P	P	P
Resource extraction	C	C	C															P	
Salvage, scrap and junk storage and processing																		Cm	Cm
Storage yards																	P/c	P/c	P/c
Warehousing																	P	P	P
Waste disposal and processing	C		C															Cm	Cm
Wholesale and retail establishments dealing primarily in bulk materials delivered by or to ship, or by ship and truck in combination																			P
Wholesaling and distribution														P/c	P/c	P	P	P	P

**TABLE 21-3  
MASTER USE TABLE**

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ZONING DISTRICTS																					
USES (Note: Certain uses are defined in Article 10.)	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1

**OUTDOOR RECREATION**

Amusement facilities, outdoor, not motorized													C	C	C		C	C	C		Cm
Amusement facilities, outdoor, motorized													C	C	C		C	C	C		Cm
Golf courses	PRU P/c												P								
Marina accessories	Cm												Cm		Cm	Cm	Cm		P	P	P/c
Recreation facilities, outdoor	Cm		Cm	Cm									P	Cm	Cm	Cm	Cm				

**SOCIAL AND CIVIC SERVICE**

Art galleries and museums														P	P	P	P	P			P
Cemeteries and columbaria	P		Cm											P	P	P	P	P			
Colleges, business			C	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	P	P	P	P	P			P
Day-care facilities														P	P	P	P	P	P		P
Hospitals	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU
Meeting facilities			Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	P	P	P	P	P	P/c	P/c	P
Prisons	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU
Public uses and structures	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Schools, business													P	P	P	P	P	P			
Schools: Elementary, intermediate and high			Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm		P	P	P	P				
Schools, language			P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P	P	P	P				
Schools, vocational, technical, industrial, trade																		P	P		P
Schools, vocational, which do not involve the operation of woodwork shops, machine shops or other similar features														P	P	P	P				P
Theaters														P	P	P	P				P
Universities, colleges	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU

**TABLE 21-3  
MASTER USE TABLE**

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

**KEY:**

Ac	=	Special accessory use subject to standards in Article 5
Cm	=	Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
C	=	Conditional Use Permit-major subject to standards in Article 5; public hearing required
P	=	Permitted use
P/c	=	Permitted use subject to standards in Article 5
PRU	=	Plan Review Use

USES (Note: Certain uses are defined in Article 10.)	ZONING DISTRICTS																				
	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1

**TRANSPORTATION AND PARKING**

Airports	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU	PRU
Automobile service stations														Cm	P	P	P	P	P	P
Car washing, mechanized														P/c	P/c	P/c	P/c	P/c	P/c	P/c
Commercial parking lots and garages										P/c <sup>1</sup>	P/c <sup>1</sup>	P/c <sup>1</sup>	P	P	P	P	P	P	P	P
Heliports																				
Helistops		C	C										C		C	C	C	C	P	P
Joint use of parking facilities				Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm
Off-site parking facilities				Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm
Truck terminals																		P	P	

**UTILITIES AND COMMUNICATIONS**

Antennas, broadcasting	Cm	Cm	Cm															C	C	C	C
Antennas, receive-only	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac
Broadcasting stations													P		P	P	P	P	P	P	P
Utility installations, Type A	P/c	P/c	P/c	P	P	P	P	P/c	P/c	P	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c
Utility installations, Type B	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm
Wind machines		Cm Ac	Cm Ac	Cm Ac	Cm	Cm								Cm	Cm			Cm	Cm		Cm

**MISCELLANEOUS**

Historic structures, use of	Cm	Cm	Cm	C	C	C	C	C	C	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm
Joint development	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm	Cm

Where a proposed use is not specifically listed above, the director shall review the proposed use and, based on its characteristics and its similarity to the uses listed above, shall determine the regulatory requirements for that use.

<sup>1</sup> Commercial use subject to special density controls (see Table 21-3.3 and Section 21-3.90-1(c)(4)).

<sup>2</sup> Commercial use subject to special density controls (see Table 21-3.5 and Section 21-3.140-1(c)).

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

KOKUA COALITION, a Hawaii non-	)	CIVIL NO. 1:16-cv-00387 DKW-RLP
profit corporation, dba HAWAII	)	
VACATION RENTAL OWNERS	)	
ASSOCIATION,	)	STIPULATION FOR DISMISSAL
	)	WITH PREJUDICE OF ALL
Plaintiff,	)	CLAIMS AND PARTIES; EXHIBIT
	)	"A"
vs.	)	
	)	
DEPARTMENT OF PLANNING AND	)	
PERMITTING OF THE CITY AND	)	
COUNTY OF HONOLULU; CITY	)	
AND COUNTY OF HONOLULU;	)	
GEORGE ATTA; HONOLULU	)	Trial Date: October 15, 2018
ZONING BOARD OF APPEAL,	)	Judge: Honorable Derrick K. Watson
	)	
Defendants.	)	
_____	)	

**STIPULATION FOR DISMISSAL WITH  
PREJUDICE OF ALL CLAIMS AND PARTIES**

WHEREAS, Plaintiff KOKUA COALITION, a Hawaii non-profit corporation, dba HAWAII VACATION RENTAL OWNERS ASSOCIATION filed a Civil Complaint on July 11, 2016, asserting two claims:

1. Count I for Violation of Rights Secured by the U.S. Constitution,
2. Count II for Declaratory Relief, and
3. Count III for Injunctive Relief;

WHEREAS, the parties have reached a settlement of all the claims underlying and asserted in the Complaint, Settlement Agreement attached as Exhibit “A”;

NOW, THEREFORE, IT IS HEREBY STIPULATED by and among Plaintiff KOKUA COALITION, a Hawaii non-profit corporation, dba HAWAII VACATION RENTAL OWNERS ASSOCIATION and Defendants DEPARTMENT OF PLANNING AND PERMITTING OF THE CITY AND COUNTY OF HONOLULU; CITY AND COUNTY OF HONOLULU; KATHY SOKUGAWA as successor to GEORGE ATTA; HONOLULU ZONING BOARD OF APPEAL, by and through their respective undersigned counsel, that pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, that any

and all claims stated in Plaintiff's Complaint, filed herein on July 11, 2016, shall be and is hereby dismissed with prejudice.

Each party is to bear its own costs and attorneys' fees associated with this matter. There are no remaining parties, claims, and/or issues.

DATED: Honolulu, Hawaii, June 5, 2018.

DAMON KEY LEONG KUPCHAK HASTERT

/s/ Loren A. Seehase

GREGORY W. KUGLE

LOREN A. SEEHASE

Attorneys for Plaintiffs

/s/ Brad T. Saito

BRAD T. SAITO

Deputy Corporation Counsel

Attorney for Defendants

DEPARTMENT OF PLANNING AND  
PERMITTING OF THE CITY AND COUNTY  
OF HONOLULU CITY AND COUNTY OF  
HONOLULU and KATHY SOKUGAWA as  
successor to GEORGE ATTA, DIRECTOR OF  
THE DEPARTMENT OF PLANNING AND  
PERMITTING OF THE CITY AND COUNTY  
OF HONOLULU

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*Kokua Coalition, et al. v. Department of Planning and Permitting of the City and County of Honolulu, et al.*, United States District Court, Civil No. 1:16-cv-00387 DKW-RLP; STIPULATION FOR DISMISSAL WITH PREJUDICE OF ALL CLAIMS AND PARTIES

/s/ Dawn D.M. Spurlin

DAWN D. M. SPURLIN

Deputy Corporation Counsel

Attorney for Defendant

ZONING BOARD OF APPEALS

APPROVED AND SO ORDERED:



  
Derrick K. Watson  
United States District Judge

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*Kokua Coalition, et al. v. Department of Planning and Permitting of the City and County of Honolulu, et al.*, United States District Court, Civil No. 1:16-cv-00387 DKW-RLP;  
STIPULATION FOR DISMISSAL WITH PREJUDICE OF ALL CLAIMS AND PARTIES

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF HAWAII

KOKUA COALITION, a Hawaii non-	)	CIVIL NO. 1:16-cv-00387 DKW-RLP
profit corporation, dba HAWAII	)	
VACATION RENTAL OWNERS	)	SETTLEMENT AGREEMENT AND
ASSOCIATION,	)	RELEASE
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
DEPARTMENT OF PLANNING AND	)	
PERMITTING OF THE CITY AND	)	
COUNTY OF HONOLULU; CITY	)	
AND COUNTY OF HONOLULU;	)	
GEORGE ATTA; HONOLULU	)	
ZONING BOARD OF APPEAL,	)	
	)	
Defendants.	)	

---

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made as of May 23, 2018, by and between Plaintiff, KOKUA COALITION, a Hawaii non-profit corporation, d.b.a. HAWAII VACATION RENTAL OWNERS ASSOCIATION (“Plaintiff”) and Defendants DEPARTMENT OF PLANNING AND PERMITTING OF THE CITY AND COUNTY OF HONOLULU (“DPP”); KATHY SOKUGAWA, in her official capacity as the Director of the DPP and the successor to GEORGE ATTA as the DPP Director; HONOLULU ZONING BOARD OF APPEAL, and the CITY AND COUNTY OF HONOLULU (collectively, “Defendants”). Plaintiff and Defendants are collectively referred to herein as the “Settling Parties” and do hereby promise and agree to resolve all of claims in the above-entitled action (hereinafter, “Litigation”) as set fully set forth herein.

The Settling Parties are apprised of the facts and circumstances pertaining to the claims in Plaintiff’s Complaint, filed in the Litigation on July 7, 2016 (i.e., Doc. No. 1). And, having considered these facts and circumstances together with the cost and uncertainty of further litigation, the Settling Parties desire to terminate, settle and compromise now all claims and controversies existing between them in this Litigation. Accordingly, this Agreement is made to resolve all

of the issues in the Litigation and preclude further dispute and controversy between the Settling Parties.

NOW, THEREFORE, for the foregoing reasons and in consideration of the mutual promises below, the Settling Parties hereby mutually agree as follows:

1. This document is a settlement agreement and release of all claims in the Litigation.
2. The Settling Parties are knowingly entering into this Agreement of their own free will, by and through their duly authorized, undersigned legal counsel.
3. Each party to this Agreement and the Litigation shall bear its own attorneys' fees and costs.
4. Section 21 of the Revised Ordinances of Honolulu 1990, also known as the Land Use Ordinance (hereinafter "LUO") prohibits transient vacation units and bed and breakfast homes in the residential zoning district unless the property owner has obtained nonconforming use certificate for such a use. The Department of Planning and Permitting ("Department") no longer issues new nonconforming use certificates for such uses.
5. "Transient vacation unit" means "a dwelling unit or lodging unit which is provided for compensation to a transient occupant for less than thirty (30) days, other than a bed and breakfast home."

6. For purposes of a “transient vacation unit,” “compensation” includes, but is not limited to, “monetary payment, services or labor of employees.”

7. “Bed and breakfast home” means “a use in which overnight accommodations are provided to guests for compensation, for periods of less than thirty (30) days, in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling.”

8. As currently worded, the Land Use Ordinance prohibits providing all or a portion of a residential dwelling unit to a transient occupant for less than thirty (30) consecutive calendar days for compensation. Thus, the LUO allows a property owner to rent its property to transient guests in blocks of thirty (30) days or more, up to twelve times per year.

9. The LUO does not require that renters actually occupy all or a portion of a rented dwelling unit during the thirty (30) day rental period; however, a party that is not granted use of the dwelling unit by the thirty (30) day rental agreement may not occupy the rented portions of the dwelling unit during the same thirty (30) day rental block. The owner, lessee, operator or proprietor of a dwelling unit that is rented in a block of thirty (30) days or more has re-entry rights, as provided by law. In addition, the owner, lessee, operator or proprietor of the rented dwelling unit is allowed to occupy any portion of the dwelling unit that is expressly excluded from the rental agreement during the thirty (30) day rental block. However,

the owner, lessee, operator or proprietor may not occupy any portion of the dwelling unit that is rented to the transient guests during their thirty (30) day rental block.

10. Thus, an owner, lessee, operator, or proprietor shall be deemed to have established a meritorious defense to a notice of violation or notice of order for illegal transient vacation unit or bed and breakfast use by demonstrating, by contract or other evidence, that the rented portions of a dwelling unit were only used by one party within a thirty (30) day rental block. DPP can, however, negate this defense by demonstrating that two or more parties used the same dwelling unit within the same thirty (30) day rental block.

11. A notice of order for operating an illegal transient vacation unit or illegal bed and breakfast home may be appealed to the Honolulu Zoning Board of Appeals (“Board”), as provided in the LUO and Rules of Practice and Procedure of the Zoning Board of Appeals (“RPP”).

12. With respect to the adjudication of an appeal of a notice of order for transient vacation unit or illegal bed and breakfast home use before the Board, the following procedures shall apply to Plaintiff’s members who provide evidence of their membership in Plaintiff’s organization, effective at least sixty (60) days prior to the date of issuance of the notice of order that is subject to the appeal.

- a. Prior to the hearing, the submission of position statements, witness lists, exhibit lists and exhibits will be established

in a schedule set by the Board; however, the Department's submissions shall be filed first and shall be followed by the submissions of the party appealing the notice of order. Intervenor, if any, shall file in such order as the Board directs.

- b. The hearing shall be conducted in conformity with the applicable provisions of §§ 91-9, 91-10, and 91-11, Hawaii Revised Statutes. At the hearing, Department's evidence shall be presented first, and shall be followed by the presentation of evidence by the party appealing the notice of order. Intervenor, if any, shall be heard in such order as the Board directs.
- c. Except as provided herein, the Rules of the Zoning Board of Appeals shall apply.

13. Within fifteen (15) days of executing this Agreement, the parties shall execute and file a stipulation to dismiss the Complaint filed in the Litigation, with prejudice.

14. This Stipulation and Order shall not limit the authority of the City and County of Honolulu to enact, amend or repeal any ordinance.

DATED: Honolulu, Hawaii, May 23, 2018.

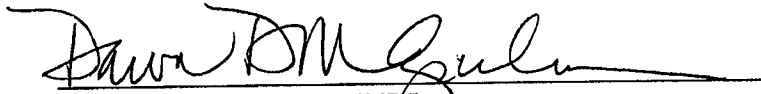
DAMON KEY LEONG KUPCHAK HASTERT



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LOREN A. SEEHASE  
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Deputy Corporation Counsel  
Attorney for Defendants  
DEPARTMENT OF PLANNING  
AND PERMITTING OF THE CITY AND  
COUNTY OF HONOLULU; CITY AND  
COUNTY OF HONOLULU; and KATHY  
SOKUGAWA in her official capacity as Director  
of DPP and successor to GEORGE ATTA as  
DIRECTOR OF THE DEPARTMENT OF  
PLANNING AND PERMITTING OF THE CITY  
AND COUNTY OF HONOLULU



DAWN D. M. SPURLIN  
Deputy Corporation Counsel  
Attorney for Defendant  
ZONING BOARD OF APPEALS

*Kokua Coalition, et al. v. Department of Planning and Permitting of the City and County of Honolulu, et al.*, United States District Court, Civil No. 1:16-cv-00387 DKW-RLP; Settlement and Release



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE 19 - 18

BILL 89 (2018), CD2

## **A BILL FOR AN ORDINANCE**

RELATING TO SHORT-TERM RENTALS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose. The purpose of this ordinance is to better regulate short-term rentals. Short-term rentals, which are the use of residential dwellings for stays of less than 30 days, have grown significantly since being first regulated by the City in 1989. The use of social media has increased opportunities for visitors to consider short-term rentals during their stay on Oahu. Based on on-line advertising, there are an estimated 8,000 to 10,000 short-term rentals available at any given time on Oahu, far exceeding the number of permitted units as currently provided under the Land Use Ordinance. Current Land Use Ordinance enforcement tools are outdated and not effective in regulating the expanding short-term rental industry, particularly with respect to social media advertising and online booking services. In addition, the hotel industry, while not opposed to short-term rentals, takes the position that requirements imposed on hotels should equally apply to short-term rentals. Short-term rentals are currently classified as "residential" for real property tax purposes. The high rents that may be charged for short-term rentals, which may be as much as \$8,000 per night, result in an imbalance in real property tax policy.

Short-term rentals represent economic benefits to the City and State in terms of jobs, tax revenues, and diversification of the visitor accommodations industry. For some residents, short-term rentals are viewed as important supplemental income, serving as sources of revenue, and enabling homeowners to qualify for mortgages. Some residents pride themselves on being sensitive landlords or hosts, serving as "ambassadors of aloha." Many residents desire to use the dwelling for their own use for portions of the year, so they are not able to offer the dwelling for rental on a long-term basis.

However, neighborhoods may be negatively impacted by the presence of short-term rentals, including escalating real property values, increased noise, illegal parking, and increased traffic. There is a concern that homes are being purchased as income-producing investments rather than for domiciliary purposes. Residents are generally comfortable with bed and breakfast homes because an on-site resident manager or owner is responsible for the bed and breakfast home, and can respond to any problems associated with short-term guests. In contrast, residents generally voice strong concerns about "unhosted" transient vacation units, particularly when a significant number of transient vacation units are located in the same neighborhood. Significant numbers of absentee owners and constant change in occupancy may change the social



**CITY COUNCIL**  
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HONOLULU, HAWAII

ORDINANCE 19 - 18

BILL 89 (2018), CD2

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**A BILL FOR AN ORDINANCE**

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patterns of neighborhoods and reduce interactions among neighbors, resulting in a decline in the quality of life for residents.

This ordinance is intended to balance competing views associated with short-term rentals. It continues to differentiate between bed and breakfast homes and transient vacation units, and provides a registration system to allow bed and breakfast homes to operate under express regulatory standards and requirements, which will be monitored through an annual registration renewal process. This ordinance also includes significant penalties for illegally operating a short-term rental, and for advertising an illegal short-term rental. In addition, this ordinance regulates hosting platforms to increase transparency and accountability for hosting platforms providing booking services for bed and breakfast homes and transient vacation units located within the City.

SECTION 2. Section 8-10.5, Revised Ordinances of Honolulu 1990 ("Home, lease, lessees defined"), is amended by amending subsection (b) to read as follows:

"(b) The subletting by the taxpayer of not more than ~~[one room]~~ two rooms to a tenant shall not affect the exemption provided for by Section 8-10.4."

SECTION 3. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-2.150-2 Administrative enforcement.**

(a) In lieu of or in addition to enforcement pursuant to Section 21-2.150-1, if the director determines that any person is violating any provision of this chapter, any rule adopted thereunder or any permit issued pursuant thereto, the director may have the person served, by registered or certified mail, restricted delivery, return receipt requested, or by hand delivery with a written notice of violation and order pursuant to this section. However, if the whereabouts of such person is unknown and cannot be ascertained by the director in the exercise of reasonable diligence and the director provides an affidavit to that effect, then a notice of violation and order may be served by publication once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.

~~[(a)]~~(b) Contents of the Notice of Violation. The notice must include at least the following information:

(1) Date of the notice;



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE 19 - 18

BILL 89 (2018), CD2

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**A BILL FOR AN ORDINANCE**

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- (2) The name and address of the person noticed;
- (3) The section number of the provision or rule, or the number of the permit that has been violated;
- (4) The nature of the violation; and
- (5) The location and time of the violation.

**[(b)](c) Contents of Order.**

- (1) The order may require the person to do any or all of the following:
  - (A) Cease and desist from the violation;
  - (B) Correct the violation at the person's own expense before a date specified in the order;
  - (C) Pay a civil fine not to exceed ~~[\$1,000.00]~~ \$1,000 in the manner, at the place and before the date specified in the order; and
  - (D) Pay a civil fine not to exceed ~~[\$1,000]~~ \$5,000 per day for each day in which the violation persists beyond the date specified in paragraph (C), in the manner and at the time and place specified in the order.
- (2) Notwithstanding the civil fines specified in subdivision (1)(C) and (D), if the violation is a violation of any provision of this chapter relating to the requirements for transient vacation units or bed and breakfast homes, then, in addition to requirements in subdivision (1)(A) and (B), the order may require a person to do any or all of the following:
  - (A) For the initial violation:
    - (i) Pay a civil fine of \$1,000, in the manner, at the place and before the date specified in the order; and
    - (ii) Pay a civil fine of \$5,000 per day for each day in which the violation persists beyond the date specified in subparagraph (i), in the manner and at the time and place specified in the order.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE 19-18

BILL 89 (2018), CD2

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**A BILL FOR AN ORDINANCE**

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**(B) For a recurring violation:**

- (i) Pay a civil fine of \$10,000 in the manner, at the place, and before the date specified in the order; and**
- (ii) Pay a civil fine of \$10,000 for each day in which the violation persists beyond the date specified in subparagraph (i), in the manner and at the time and place specified in the order.**

**[(2)](3)** The order must advise the person that the order will become final 30 days after the date of its mailing or delivery. The order must also advise that the director's action may be appealed to the zoning board of appeals.

**[(e)](d)** Effect of Order--Right to Appeal. The provisions of the order issued by the director under this section will become final 30 days after the date of the mailing or delivery of the order. The person may appeal the order to the zoning board of appeals as provided in Charter Section 6-1516 ~~[of the city charter]~~. However, an appeal to the zoning board of appeals will not stay any provision of the order.

**[(e)](e)** Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.

**(f) Notwithstanding any other provision to the contrary, in addition to daily civil fines, the director may impose a fine in an amount equal to the total sum received by the owner, operator, or proprietor of a bed and breakfast home or transient vacation unit from any impermissible rental activity during the period in which the owner, operator, or proprietor was subject to daily fines.**

**(g) Nothing in this section shall preclude the director from seeking any other remedy available by law."**



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE 19 - 18

BILL 89 (2018), CD2

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**A BILL FOR AN ORDINANCE**

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SECTION 4. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-3 to read as follows:

**"Sec. 21-2.150-3     Depository of fees and civil penalties relating to bed and breakfast homes or transient vacation units.**

Notwithstanding any other ordinance to the contrary, payments of fees and civil penalties relating to bed and breakfast homes or transient vacation units shall be deposited into a special account of the general fund, to be appropriately named by the department of budget and fiscal services, and used by the department of planning and permitting for expenses related to the enforcement of the provisions of this chapter relating to bed and breakfast homes and transient vacation units."

SECTION 5. Chapter 21, Revised Ordinances of Honolulu 1990 ("Land Use Ordinance"), is amended by adding a new Article 2A to read as follows:

**"Article 2A. Hosting Platforms**

**Sec. 21-2A.10     Booking Services.**

- (a) It is unlawful for a person acting as, or on behalf of, a hosting platform to provide and collect, or receive a fee for, booking services in connection with any bed and breakfast home or transient vacation unit located within the city if such bed and breakfast home or transient vacation unit is not lawfully registered, permitted, or otherwise allowed as a bed and breakfast home or transient vacation unit pursuant to this chapter at the time the bed and breakfast home or transient vacation unit is booked.
- (b) Hosting platforms shall not collect or receive a fee, directly or indirectly through an agent or intermediary, for facilitating or providing services ancillary to a bed and breakfast home or transient vacation unit in the city that is not lawfully registered, permitted, or otherwise allowed pursuant to this chapter, including, but not limited to, insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit.



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**Sec. 21-2A.20 Registration.**

- (a) It is unlawful for any hosting platform to provide booking services to owners or operators of bed and breakfast homes or transient vacation units located within the city without first registering with the department. In order to register, a hosting platform shall provide a hosting platform registration statement to the director, in a form prescribed by the director, pay a registration fee of \$100, and agree in writing:
- (1) To obtain written consent from all owners or operators of bed and breakfast homes or transient vacation units located within the city for the disclosure of the information required under Section 21-2A.30; and
  - (2) To furnish such information to the city in accordance with Section 21-2A.30.
- (b) A hosting platform may cancel its registration under this section by delivering written notice of cancellation to the director. The director may cancel a hosting platform's registration under this section for cause, including any violation of this article, by delivering written notice of cancellation to the hosting platform no later than 90 days prior to the effective date of cancellation. Nothing in this section relieves the owner or operator of a bed and breakfast home or transient vacation unit located within the city from the requirements set forth in Section 21-5.\_\_\_\_.

**Sec. 21-2A.30 Reporting.**

- (a) Subject to applicable laws, all hosting platforms registered pursuant to Section 21-2A.20 shall report to the director on a monthly basis, on the date and in the electronic format specified by the director, for each bed and breakfast home and transient vacation unit located within the city for which the hosting platform provided booking services in the preceding month. The report must include:
- (1) The names of the persons responsible for each listing;
  - (2) The address of each listing;
  - (3) The transient accommodations tax identification number of the owner or operator of the bed and breakfast home or transient vacation unit;
  - (4) The length of stay for each listing; and



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- (5) The price paid for each stay.
- (b) The director may disclose such information to the appropriate state or city officials to ensure compliance with this article, state tax laws, and county tax ordinances, and any applicable land use laws and ordinances.

**Sec. 21-2A.40 Penalties.**

If the director determines that a hosting platform is violating any provision of this article, notwithstanding the civil fines specified in Section 21-2.150-2(c)(1)(C) and 21-2.150-2(c)(1)(D), a violator is subject to a civil fine of not less than \$1,000 and not more than \$10,000 for each day that the violation continues."



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SECTION 6. Table 21-3, Revised Ordinances of Honolulu 1990 ("Master Use Table"), is amended by:

- A. Amending the "Dwellings and Lodgings" category to add a "bed and breakfast homes" entry and revise the "transient vacation units" entry to read as follows:

**"TABLE 21-3  
MASTER USE TABLE"**

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

**KEY:** Ac = Special accessory use subject to standards in Article 5  
Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)  
C = Conditional Use Permit-major subject to standards in Article 5; public hearing required  
P = Permitted use  
P/c = Permitted use subject to standards in Article 5  
PRU = Plan Review Use

ZONING DISTRICTS																					
USES (Note: Certain uses are defined in Article 10.)	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1
<u>Bed and breakfast homes</u>			<u>P/c</u> <sup>3</sup>	<u>P/c</u> <sup>3</sup>	<u>P/c</u> <sup>3</sup>	<u>P/c</u> <sup>3</sup>	<u>P/c</u> <sup>3</sup>	<u>P/c</u> <sup>3</sup>	<u>P/c</u> <sup>3</sup>	<u>P/c</u> <sup>3</sup>	<u>P/c</u> <sup>3</sup>	<u>P/c</u> <sup>3</sup>	<u>P/c</u> <sup>3</sup>			<u>P/c</u> <sup>3</sup>	<u>P/c</u> <sup>3</sup>				
Transient vacation units							<u>P/c</u>	<u>P/c</u> <sup>2</sup>					<u>[P] P/c</u> <sup>3</sup>								



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B. Amending the footnotes to read as follows:

**"Notes:**

Where a proposed use is not specifically listed above, the director shall review the proposed use and, based on its characteristics and its similarity to the uses listed above, shall determine the regulatory requirements for that use.

<sup>1</sup> Commercial use subject to special density controls (see Table 21-3.3 and Section 21-3.90-1(c)(4)).

<sup>2</sup> Commercial use subject to special density controls (see Table 21-3.5 and Section 21-3.140-1(c))

<sup>3</sup> Notwithstanding any contrary provisions in this chapter, bed and breakfast homes and transient vacation units are prohibited and may not operate without a valid nonconforming use certificate in areas where the applicable development plan or sustainable communities plan prohibits or does not permit new bed and breakfast homes or transient vacation units."

SECTION 7. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-4.110-1 Nonconforming use certificates for transient vacation units.**

(a) The purpose of this section is to ~~[treat]~~ permit certain transient vacation units ~~[which] that~~ have been in operation since prior to October 22, 1986, ~~[as nonconforming uses and to allow them]~~ to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a transient vacation unit who holds a valid nonconforming use certificate issued pursuant to this section on the effective date of this ordinance.

~~[(b) The owner, operator, or proprietor of any transient vacation unit which is operating in an area where such use is not expressly permitted by this chapter shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.]~~



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~~(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.]~~

~~[(d)](b)~~ The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:

- (1) between September 1, 2000 and October 15, 2000; then
- (2) between September 1 and October 15 of every even-numbered year thereafter.

Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 35 days of transient occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

~~[(e)](c)~~ The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.

(d) The provisions of Section 21-5. (c) shall apply to advertisements for transient vacation units operating under a nonconforming use certificate pursuant to this section."



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SECTION 8. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-4.110-2 Bed and breakfast homes--Nonconforming use certificates.**

(a) The purpose of this section is to ~~[prohibit bed and breakfast homes, while permitting]~~ permit certain bed and breakfast homes ~~[which]~~ that have been in operation since prior to December 28, 1989, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a bed and breakfast home who holds a valid nonconforming use certificate issued pursuant to this section on the effective date of this ordinance.

~~[(b) The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence of a bed and breakfast home as of December 28, 1989 may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.]~~

~~[(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use, but shall be treated as an illegal use.]~~

~~[(d)]~~(b) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:

- (1) between September 1, 2000 and October 15, 2000; then
- (2) between September 1 and October 15 of every even-numbered year thereafter.



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Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 28 days of bed and breakfast occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

~~[(e)](c) [Except those bed and breakfast homes which are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts.]~~ Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.

~~[(f)](d)~~ Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:

- (1) Detached dwellings used as bed and breakfast homes shall be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.
- (2) No more than two guest rooms shall be rented to guests, and the maximum number of guests permitted within the bed and breakfast home at any one time shall be four.
- (3) There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.
- (4) One off-street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.
- (5) The provisions of Section 21-5. (c) shall apply to advertisements for the bed and breakfast home.



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~~[(g)]~~(e) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises."

SECTION 9. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990 ("Specific Use Development Standards"), is amended by adding a new section to be appropriately designated by the Revisor of Ordinances and to read as follows:

**"Sec. 21-5. Bed and breakfast homes and transient vacation units.**

- (a) Bed and breakfast homes and transient vacation units are permitted in the A-1 low-density apartment zoning district and A-2 medium-density apartment zoning district provided:
- (1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
  - (2) The resort district and the A-1 or A-2 district, as applicable, were rezoned pursuant to the same zone change application as part of a master-planned resort community.
- (b) In all zoning districts where bed and breakfast homes are permitted, except for the resort district, resort mixed use precinct of the Waikiki special district, and the A-1 low-density apartment district and A-2 medium-density apartment district pursuant to subsection (a), and except as otherwise provided in subdivision (6), the following standards and requirements apply:
- (1) The owner or operator of a bed and breakfast home, including for purposes of this subdivision the trustee of a revocable trust that owns the subject property, shall register the bed and breakfast home with the department and shall submit the following in the initial application for registration:
    - (A) Affirmation that the applicant of the bed and breakfast home is a natural person;
    - (B) Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;



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- (C) A valid current State of Hawaii general excise tax license and transient accommodations tax license for the subject property;
- (D) Evidence of a real property tax home exemption for the subject property, and evidence that the applicant has a minimum 50 percent ownership interest in the subject property;
- (E) An initial fee of \$1,000 for the bed and breakfast home;
- (F) Evidence that the use as a bed and breakfast home is covered by an insurance carrier for the subject property;
- (G) Confirmation that the bed and breakfast home is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules;
- (H) An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city;
- (I) A floor plan showing the location of guest rooms for a bed and breakfast home;
- (J) For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, is currently dedicated for a specific agricultural use pursuant to Section 8-7.3; and
- (K) Evidence that a dwelling unit proposed for use as a bed and breakfast home:
  - (i) Is not an affordable unit subject to income restrictions;
  - (ii) Did not receive housing or rental assistance subsidies; and
  - (iii) Was not subject to an eviction within the last 12 months.



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- (2) Registration renewal requirements. Annually, by August 30, the owner or operator of a bed and breakfast home, including for purposes of this subdivision the trustee of a revocable trust that owns the subject property, shall submit to the department:
- (A) Affirmation that the applicant for the bed and breakfast home is a natural person;
  - (B) Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;
  - (C) Evidence of having paid State of Hawaii general excise taxes and transient accommodations taxes for the subject property;
  - (D) Evidence of a real property tax home exemption for the subject property;
  - (E) A renewal fee of \$2,000 for the bed and breakfast home;
  - (F) Evidence that the use as a bed and breakfast home is covered by an insurance carrier for the property;
  - (G) Confirmation that the bed and breakfast home is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules;
  - (H) An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city; and
  - (I) For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, is currently dedicated for a specific agricultural use pursuant to Section 8-7.3.



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The renewal of a registration for a bed and breakfast home will be granted upon receipt of an application meeting all requirements set forth in this section; provided that if complaints from the public indicate that noise or other nuisances created by guests disturbs residents of the neighborhood in which the bed and breakfast home is located, or where other good cause exists, the director may deny the renewal application.

- (3) Restrictions and Standards. Bed and breakfast homes must operate in accordance with the following restrictions and standards:
- (A) Dwelling units in detached dwellings used as bed and breakfast homes must be occupied by a family, and renters of any room in the detached dwelling other than the bed and breakfast home guests are not permitted;
  - (B) No more than two guest rooms in a bed and breakfast home may be rented to guests, and a maximum of four guests are permitted within the bed and breakfast home at any one time;
  - (C) Functioning smoke and carbon monoxide detectors must be installed in each bedroom;
  - (D) House rules, including quiet hours between 10:00 p.m. and 8:00 a.m., and emergency contact information for the owner or operator must be provided to all guests and posted in conspicuous locations;
  - (E) When any guest room in a bed and breakfast home is being rented to guests, the owner or operator shall remain on the premises during quiet hours;
  - (F) The owner or operator shall maintain a current two-year registry setting forth the names and telephone numbers of all guests and the dates of their respective stays;
  - (G) No exterior signage that shows the dwelling unit is used as a bed and breakfast home is allowed;
  - (H) Registration as a bed and breakfast home is not transferable, and shall not run with the land;



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- (I) Development Plan Area Density Limit. Excluding bed and breakfast homes and transient vacation units in the resort district, resort mixed use precinct of the Waikiki special district, and the A-1 low-density apartment district and A-2 medium-density apartment district pursuant to subsection (a), where there is no limit on the number of bed and breakfast homes and transient vacation units allowed, the number of bed and breakfast homes and transient vacation units permitted in each development plan area is limited to no more than one half of one percent of the total number of dwelling units in that development plan area. The total number of dwelling units in a development plan area will be based on the latest figures from the U.S. Census data. Where the initial number of bed and breakfast home applications for a development plan area exceeds the one half of one percent limitation, acceptance of applications will be selected on a lottery basis. When renewal applications fall below the one half of one percent limitation, new applications will be accepted on a lottery basis. The director shall adopt rules pursuant to HRS Chapter 91 to implement and administer the lottery;
- (J) Multifamily Dwelling Density Limit. Excluding multifamily dwellings in the resort district, resort mixed use precinct of the Waikiki special district, and the A-1 low-density apartment district and A-2 medium-density apartment district pursuant to subsection (a), unless otherwise specified in apartment bylaws, covenants, or correspondence from a homeowners association, apartment owners association, or condominium property regime, the total number of bed and breakfast homes and transient vacation units must not exceed 50 percent of the total dwelling units in a multifamily dwelling;
- (K) If a bed and breakfast home is located in the AG-2 general agricultural district, the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, must be currently dedicated for a specific agricultural use pursuant to Section 8-7.3;



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- (L) A bed and breakfast home must not be located within a 1,000-foot radius of another bed and breakfast home or a transient vacation unit; provided that this spacing requirement:
- (i) Does not apply as between (1) bed and breakfast homes and transient vacation units in the resort district, resort mixed use precinct of the Waikiki special district, or the A-1 low-density apartment district or A-2 medium-density apartment district pursuant to subsection (a), and (2) bed and breakfast homes located outside of those zoning districts and precincts; and
  - (ii) Does not preclude the continued operation of bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2; and
- (M) The owner or operator shall provide occupants of dwelling units within 250 feet of the dwelling unit used as a bed and breakfast home with a phone number that must be answered 24 hours a day, to call in complaints regarding the bed and breakfast home. The owner or operator shall keep a log of all complaints received during the applicable registration period, and submit the log with each registration renewal application, and at any other time upon the request of the director. The log must include the name, phone number, and address of the complainant, date of the complaint, date the complaint was resolved, and how the complaint was resolved.
- (4) Upon reasonable notice, any bed and breakfast home must be made available for inspection by the department.
- (5) The violation of any provision of this subsection will be grounds for administrative fines and nonrenewal unless corrected before the renewal deadline. Recurring or multiple violations will result in denial of renewal requests.
- (6) This subsection does not apply to bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2.



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- (7) The director may revoke a registration at any time under the following circumstances:
- (A) Recurring violations of the standards and requirements for bed and breakfast homes in Section 21-5. (b);
  - (B) Complaints from the public indicate that noise or other nuisances created by guests disturbs residents of the neighborhood in which the bed and breakfast home is located; or
  - (C) The director determines that good cause exists for revocation of the registration.

(c) Advertisements.

- (1) Definitions. As used in this subsection:

"Advertisement" means any form of communication, promotion, or solicitation, including but not limited to electronic media, direct mail, newspapers, magazines, flyers, handbills, television commercials, radio commercials, signage, e-mail, internet websites, text messages, verbal communications, or similar displays, intended or used to induce, encourage, or persuade the public to enter into a contract for the use or occupancy of a bed and breakfast home or transient vacation unit.

"Person" means a judicial person or a natural person, and includes businesses, companies, associations, non-profit organizations, firms, partnerships, corporations, limited liability companies, and individuals.

- (2) Prohibition. Advertisements for all bed and breakfast homes and transient vacation units are subject to this subsection.

- (A) It is unlawful for any person to advertise or cause the advertisement of a bed and breakfast home or transient vacation unit without including in the advertisement:

- (i) A current registration number obtained pursuant to this section, or nonconforming use certificate number obtained pursuant to Section 21-4.110-1 or Section 21-4.110-2; or



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- (ii) For bed and breakfast homes or transient vacation units located in the resort district, apartment precinct or resort mixed use precinct of the Waikiki special district, or in the A-1 low-density apartment district or A-2 medium-density apartment district pursuant to subsection (a), the street address, including, if applicable, any apartment unit number, for that bed and breakfast home or transient vacation unit.
- (B) Within seven days after receipt of a notice of violation, the owner or operator of a bed and breakfast home or a transient vacation unit shall remove, or cause the removal of, the advertisement identified in the notice, including, without limitation, any advertisement made through a hosting platform. If the advertisement is not removed within seven days after receipt of the notice of violation, a fine of not less than \$1,000 and not more than \$10,000 per day will be levied against the owner or operator associated with the bed and breakfast home or transient vacation unit, for each day the advertisement is on public display beyond seven days from the date the notice of violation is received.
- (C) The existence of an advertisement will be prima facie evidence that a bed and breakfast home or a transient vacation unit is being operated at the listed address. The burden of proof is on the owner of the subject real property to establish that the property is not being used as a bed and breakfast home or transient vacation unit, or that the advertisement was placed without the property owner's knowledge or consent.
- (3) Exemptions. The following are exempt from the provisions of this subsection.

  - (A) Legally established hotels, whether owned by one person, or owned individually as unit owners but operating as a hotel as defined in Chapter 21, Article 10.
  - (B) Legally established time-sharing units, as provided in Section 21-5.640.
  - (C) Legally established dwelling units that are rented for periods of 30 consecutive days or more at any one time.



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(d) Unpermitted bed and breakfast homes or unpermitted transient vacation units.

(1) Definitions. As used in this subsection:

"Unpermitted bed and breakfast home" means a bed and breakfast home that is not:

- (A) Located in the resort district, resort mixed use precinct of the Waikiki special district, or A-1 low-density apartment district or A-2 medium-density apartment district pursuant to subsection (a);
- (B) Operating under a valid nonconforming use certificate pursuant to Section 21-4.110-2; or
- (C) Validly registered under this section.

"Unpermitted transient vacation unit" means a transient vacation unit that is not:

- (A) Located in the resort district, resort mixed use precinct of the Waikiki special district, or A-1 low-density apartment district or A-2 medium-density apartment district pursuant to subsection (a); or
- (B) Operating under a valid nonconforming use certificate pursuant to Section 21-4.110-1.

(2) It is unlawful for any owner or operator of an unpermitted bed and breakfast home or unpermitted transient vacation unit, or the owner or operator's agent or representative to:

- (A) Rent, offer to rent, or enter into a rental agreement to rent an unpermitted bed and breakfast home or unpermitted transient vacation unit for fewer than 30 consecutive days;
- (B) Rent, offer to rent, or enter into a rental agreement to rent an unpermitted bed and breakfast home or unpermitted transient vacation unit, where such rental, offer, or rental agreement limits actual occupancy of the premises to a period of less than the full stated rental period, or conditions the right to occupy the rented premises for the full stated rental period on the payment of additional consideration;



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- (C) Set aside or exclusively reserve an unpermitted bed and breakfast home or unpermitted transient vacation unit for rental or occupancy for a period of 30 consecutive days or more, but limit actual occupancy of the premises to a period of less than the full stated rental period, or condition the right to occupy the rented premises for the full stated rental period on the payment of additional consideration; or
- (D) Advertise, solicit, offer, or knowingly provide rental of an unpermitted bed and breakfast home or unpermitted transient vacation unit to transient occupants for less than 30 consecutive days.
- (e) Any person may submit a written complaint to the director reporting a violation of the provisions of this section regarding bed and breakfast homes and transient vacation units.

  - (1) A complaint reporting a suspected violation of the provisions of this section must:

    - (A) Identify the address of the bed and breakfast home or transient vacation unit that is the subject of the suspected violation;
    - (B) State all of the facts that cause the complainant to believe that a violation has occurred;
    - (C) Identify the provisions of this section that the complainant believes are being violated; and
    - (D) Provide the complainant's address where the director may mail a response to the complaint.
  - (2) Within 30 days after receiving a written complaint reporting a violation of the provisions of this section, the director must provide a written response to the complainant either:

    - (A) Declining jurisdiction over the complaint, in which case the complainant may pursue judicial relief pursuant to HRS Section 46-4(b);



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- (B) Entering a finding of no violation, which will be appealable to the zoning board of appeals pursuant to Charter Section 6-1516; or
- (C) Advising the complainant that the director has initiated an investigation of the complaint."

SECTION 10. Section 21-5.640, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-5.640 Time sharing [~~and transient vacation~~] units.**

Time sharing [~~and transient vacation~~] units [~~shall be~~] are permitted in the A-2 medium density apartment zoning district provided:

- (a) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
- (b) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community."

SECTION 11. Table 21-6.1, Revised Ordinances of Honolulu 1990 ("Off-street Parking Requirements"), is amended by amending the "Commerce and Business" category to add an entry for "bed and breakfast homes" to read as follows:

"

Table 21-6.1 Off-street Parking Requirements	
Use <sup>1</sup>	Requirement <sup>2</sup>
COMMERCE AND BUSINESS	
<u>Bed and breakfast homes<sup>7</sup></u>	<u>1 per guest bedroom<sup>8</sup></u>

"



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SECTION 12. The footnotes for Tables 21-6.1 ("Off-street Parking Requirements"), 21-6.2 ("Off-street Parking Requirements BMX 4 Central Business Mixed Use"), and 21-6.3 ("Off-street Parking Requirements Waikiki Special District"), Revised Ordinances of Honolulu 1990, are amended to read as follows:

**"Notes:**

1. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements.
2. All references to square feet refer to floor area.
3. Parking standards for individual uses shall prevail if they are not part of a commercial use that meets the definition of "shopping center."
4. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements for the BMX-4 district.
5. All references to square feet refer to floor area.
6. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements for the Waikiki special district.
7. Excluding bed and breakfast homes in the resort district, resort mixed use precinct of the Waikiki special district, the A-1 low-density apartment district and A-2 medium-density apartment district pursuant to Section 21-5. (a), and bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2.
8. This requirement is in addition to the off-street parking requirement applicable to the dwelling unit being used as a bed and breakfast home."



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SECTION 13. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended:

- a. By adding a "bed and breakfast homes" entry and revising the "transient vacation units" entry to read as follows:

"

Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures			
Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
<u>Bed and breakfast homes</u>	<u>P/c</u>	<u>P/c</u>	
Transient vacation units		[P] <u>P/c</u>	

"

- b. By amending the "Ministerial uses" note to the table to read as follows:

**"Ministerial uses:**

- Ac = Special accessory use. Also see: Article 10, Accessory use; and Section 21-5.330, Home occupations  
P = Permitted principal use  
P/c = Permitted use subject to standards in Article 5  
P9 = Permitted principal use subject to standards enumerated in Article 9; see Section 21-9.80-5(d), 21-9.80-6(d), or 21-9.80-8(d)  
P-AMX = Within the apartment precinct, a permitted principal use only within the apartment mixed use subprecinct"

SECTION 14. Chapter 21, Article 10, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definitions of "bed and breakfast home" and "transient vacation unit," and adding new definitions of "booking service" and "hosting platform" to read as follows:

""Bed and breakfast home" means a use in which overnight accommodations are advertised, solicited, offered, or provided, or a combination of any of the foregoing, to guests for compensation, for periods of less than 30 days, in the same detached dwelling as that occupied by an owner, lessee, operator, or proprietor of the detached dwelling. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services, or labor of guests.



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"Booking service" means any reservation or payment service provided by a person that facilitates a transaction between an owner, operator, or proprietor of a bed and breakfast home or transient vacation unit, and a prospective user of that bed and breakfast home or transient vacation unit, and for which the person collects or receives, directly or indirectly through an agent or intermediary, a fee from any person in connection with the reservation or payment services provided for by the transaction.

"Hosting platform" means a person that collects or receives a fee from any person for booking services through which an owner, operator, or proprietor of a bed and breakfast home or transient vacation unit may offer use of the bed and breakfast home or transient vacation unit. Hosting platforms typically, but not necessarily, provide booking services through an online platform that allows the owner, operator, or proprietor to advertise the bed and breakfast home or transient vacation unit through a website provided by the hosting platform, and the hosting platform conducts a transaction by which potential users arrange the use of and payment for the bed and breakfast home or transient vacation unit, whether the payment is made directly to the owner, operator, or proprietor, or to the hosting platform.

"Transient vacation unit" means a dwelling unit or lodging unit [which] that is advertised, solicited, offered, or provided, or a combination of any of the foregoing, for compensation to transient occupants for less than 30 days, other than a bed and breakfast home. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services, or labor of [employees] transient occupants."

SECTION 15. An owner, operator, or proprietor of a transient vacation unit or a bed and breakfast home who holds a valid nonconforming use certificate issued pursuant to Sections 21-4.110-1 or 21-4.110-2 on the effective date of this ordinance shall be allowed to continue to operate the transient vacation unit or bed and breakfast home and renew the nonconforming use certificate pursuant to those respective sections. The owner, operator, or proprietor of the transient vacation unit or the bed and breakfast home shall cease its operation upon the expiration and nonrenewal of the nonconforming use certificate, provided that the owner, operator, or proprietor of a bed and breakfast home may thereafter apply to register the bed and breakfast home pursuant to the provisions of this ordinance.



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SECTION 16. No later than six months after the effective date of this ordinance, the Department of Planning and Permitting shall:

- (1) Establish and implement specific procedures by which the public may submit written or verbal complaints and investigation requests to the Department regarding potential violations of applicable laws regarding bed and breakfast homes and transient vacation units. The procedures must include the establishment and staffing of a telephone hotline for verbal complaints and investigation requests from the public;
- (2) Establish and implement specific procedures by which the Department investigates public complaints in a timely manner, efficiently obtains evidence pursuant to the investigations, and notifies the complaining parties of the status and results of the investigation; and
- (3) Conduct community outreach to educate the public regarding the complaint and investigative process, and publicize the availability of the hotline.

SECTION 17. No later than 10 days after the Department of Planning and Permitting receives the monthly reports from hosting platforms pursuant to Section 21-2A.30, the Department of Planning and Permitting shall prepare and submit a report to the Council showing, by Council district, for the month covered by the corresponding hosting platform reports:

- (1) The total number of bed and breakfast home listings in each district; and
- (2) The total number of transient vacation unit listings in each district.

SECTION 18. In SECTIONS 2 through 4 and 6 through 14 of this ordinance, material to be repealed is bracketed and stricken. New ordinance material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.



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SECTION 19. Severability. If any provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.



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SECTION 20. This ordinance takes effect on August 1, 2019; provided that SECTIONS 5, 6, 10, 11, 12, and 17, and the following amendments to the Revised Ordinances of Honolulu in SECTIONS 9 and 13 of this ordinance, take effect on October 1, 2020:

SECTION 9 – Section 21-5.\_\_(a) and Section 21-5.\_\_(b); and

SECTION 13 – Table 21-9.6(A) – addition of a "bed and breakfast homes" entry.

INTRODUCED BY:

Ernest Martin (br)

DATE OF INTRODUCTION:

November 15, 2018  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

  
Deputy Corporation Counsel

APPROVED this 25 day of June, 20 18.

  
KIRK CALDWELL, Mayor  
City and County of Honolulu

OCS2019-0647/6/10/2019 3:35 PM

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CITY COUNCIL  
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HONOLULU, HAWAII  
CERTIFICATE

ORDINANCE **19 - 18**

BILL 89 (2018), CD2

Introduced: 11/15/18 By: ERNEST MARTIN – BY REQUEST Committee: ZONING, PLANNING AND HOUSING

Title: A BILL FOR AN ORDINANCE RELATING TO SHORT-TERM RENTALS.

Voting Legend: \* = Aye w/Reservations

12/05/18	COUNCIL	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING AND HOUSING. 8 AYES: ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. 1 ABSENT: ANDERSON.
01/14/19	COUNCIL	D-14(19) – EXTENSION OF TIME ADDED TO THE AGENDA. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, PINE, TSUNEYOSHI. D-14(19) WAS ADOPTED. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, PINE, TSUNEYOSHI.
		CC-9(19) KOBAYASHI – RE-REFERRAL OF BILLS, RESOLUTIONS AND COMMUNICATIONS.
01/19/19	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
01/22/19	PLANNING	BILL POSTPONED IN COMMITTEE.
		NOTE: THE TEMPORARY APPOINTMENT OF MICHAEL FORMBY TO FILL A VACANCY IN THE OFFICE OF COUNCILMEMBER FOR COUNCIL DISTRICT IV WAS APPROVED ON TUESDAY, FEBRUARY 5, 2019. (refer to RES19-11)
03/18/19	SPECIAL PLANNING	CR-69(19) – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING AS AMENDED IN CD1 FORM.
04/06/19	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
04/17/19	COUNCIL/PUBLIC HEARING	CR-69(19) ADOPTED. BILL PASSED SECOND READING AS AMENDED, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON PLANNING. 9 AYES: ANDERSON, ELEFANTE, FORMBY, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, PINE, TSUNEYOSHI.
04/23/19	PLANNING	BILL POSTPONED IN COMMITTEE. 6 AYES: ANDERSON, FORMBY, FUKUNAGA, MANAHAN, PINE, TSUNEYOSHI.
04/26/19	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
04/29/19	SPECIAL PLANNING	CR-147(19) – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING AS AMENDED IN CD2 FORM. 5 AYES: ANDERSON, FORMBY, FUKUNAGA, PINE*, TSUNEYOSHI. 1 EXCUSED: MANAHAN.
		NOTE: COUNCILMEMBER WATERS TOOK OFFICE ON MONDAY, MAY 6, 2019.
05/08/19	COUNCIL	NOTE: PROPOSED FD1 POSTED ON THE AGENDA WAS NOT CONSIDERED. CR-147(19) AND BILL 89 (2018), PROPOSED CD2 REFERRED TO COMMITTEE ON ZONING, PLANNING AND HOUSING. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, MANAHAN, MENOR, PINE, TSUNEYOSHI, WATERS. 1 ABSENT: KOBAYASHI.

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19-18CC-173(19) ANDERSON - COUNCIL STANDING COMMITTEE ASSIGNMENTS.CC-181(19) ANDERSON - RE-REFERRAL OF BILLS, RESOLUTIONS AND COMMUNICATIONS.

05/23/19	ZONING, PLANNING AND HOUSING	CR-178(19) - EXTENSION OF TIME REPORTED OUT OF COMMITTEE FOR ADOPTION. 4 AYES: ELEFANTE, KOBAYASHI, MENOR, WATERS. 1 EXCUSED: MANAHAN.
06/05/19	COUNCIL	CR-178(19) ADOPTED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, PINE, TSUNEYOSHI, WATERS.
06/07/19	SPECIAL ZONING, PLANNING AND HOUSING	CR-185(19) - BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING AS AMENDED IN CD2 FORM. 4 AYES: ELEFANTE, KOBAYASHI, MENOR, WATERS. 1 EXCUSED: MANAHAN.
06/17/19	SPECIAL COUNCIL	CR-185(19) ADOPTED AND BILL 89 (2018), CD2 PASSED THIRD READING. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, PINE, TSUNEYOSHI, WATERS.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.



\_\_\_\_\_  
GLEN T. TAKAHASHI, CITY CLERK



\_\_\_\_\_  
IKAIKA ANDERSON, CHAIR AND PRESIDING OFFICER

19-18

Of Counsel:  
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

KOKUA COALITION, a Hawaii non-	)	CIVIL NO. 19-00414-DKW-RT
profit corporation, dba HAWAII	)	
VACATION RENTAL OWNERS	)	STIPULATION AND ORDER RE
ASSOCIATION,	)	THE WITHDRAWAL OF
	)	PLAINTIFF'S MOTION FOR
Plaintiff,	)	TEMPORARY RESTRAINING
	)	ORDER AND DISMISSAL OF
vs.	)	PLAINTIFF'S COMPLAINT FOR
	)	DECLARATORY AND
DEPARTMENT OF PLANNING AND	)	INJUNCTIVE RELIEF WITHOUT
PERMITTING OF THE CITY AND	)	PREJUDICE; EXHIBIT "A"
COUNTY OF HONOLULU; CITY	)	
AND COUNTY OF HONOLULU;	)	
KATHY SOKUGAWA IN HER	)	
OFFICIAL CAPACITY AS ACTING	)	
DIRECTOR OF THE DEPARTMENT	)	
OF PLANNING AND PERMITTING,	)	
	)	
Defendants.	)	

**STIPULATION AND ORDER RE THE WITHDRAWAL OF  
PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER  
AND DISMISSAL OF PLAINTIFF’S COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF WITHOUT PREJUDICE**

WHEREAS, the City and County of Honolulu (“City”) enacted Ordinance 19-18, Relating to Short-Term Vacation Rentals on June 25, 2019; and

WHEREAS, portions of Ordinance 19-18 (i.e., Sections 1-4, 7-8, 14-16 and portions of Sections 9 and 13) take effect on August 1, 2019 and the remaining portions of Ordinance 19-18 (i.e., Sections 5-6, 10-12, 17 and portions of Sections 9 and 13) take effect on October 1, 2020; and

WHEREAS, Plaintiff KOKUA COALITION, a Hawaii non-profit corporation, d.b.a. HAWAII VACATION RENTAL OWNERS ASSOCIATION (“Plaintiff”) filed its *Complaint for Declaratory and Injunctive Relief* in the above-captioned matter on August 1, 2019 [Dkt. 1] (“Complaint”); and

WHEREAS, Plaintiff’s Complaint sought, among other things, a judgment declaring Ordinance 19-18 unlawful and an injunction prohibiting the City from enforcing Ordinance 19-18 against Plaintiffs and those similarly situated; and

WHEREAS, Plaintiff filed its Motion for Temporary Restraining Order [Dkt. 2] (“TRO Motion”) on August 1, 2019; and

WHEREAS, Plaintiff’s TRO Motion sought, among other things, a Temporary Restraining Order enjoining the City, the Department of Planning and

Permitting (“DPP”) and Acting DPP Director Kathy Sokugawa (“Director”) (and collectively “Defendants”) from enforcing Ordinance 19-18; and

WHEREAS, on August 2, 2019, the Court conducted a status conference with counsel for Plaintiff and counsel for Defendants, set a briefing and hearing schedule for the TRO Motion, and directed the parties to schedule a conference with Magistrate Judge Rom Trader to occur after the hearing of the TRO Motion; and

WHEREAS, on August 9, 2019, the Defendants filed their Memorandum in Opposition to the TRO Motion (“Opposition”), which included the Declaration of Director Sokugawa and Exhibit 6 (a document updated on August 8, 2019 entitled “New Ordinance on Short-Term Rentals”) [Dkt. 12]; and

WHEREAS, Director Sokugawa’s Declaration clarified and corrected DPP’s understanding and position on portions of Ordinance 19-18; and

WHEREAS, Plaintiff filed its Reply Memorandum in Support of the TRO Motion (“Reply”) [Dkt. 13] on August 13, 2019; and

WHEREAS, on August 15, 2019, the Court held a hearing regarding the TRO Motion and expressed its belief that the pleadings filed by Plaintiff and Defendant narrowed the disputed issues raised by the TRO Motion and ordered the parties to proceed with the conference with Magistrate Judge Trader; and

WHEREAS, Plaintiff and Defendant conducted a conference with Magistrate Judge Rom Trader on August 20, 2019, for the purpose of formalizing the issues

resolved by the TRO Motion and addressing a procedure to address unresolved issues; and

WHEREAS, Plaintiff and Defendant wish to resolve this matter pursuant to the terms and conditions hereof in order to avoid the uncertainty, cost, and risks of litigation;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff KOKUA COALITION d.b.a. HAWAII VACATION RENTAL OWNER'S ASSOCIATION ("Plaintiff") and Defendants CITY AND COUNTY OF HONOLULU ("City"), the City DEPARTMENT OF PLANNING AND PERMITTING ("DPP"), and KATHY SOKUGAWA in her official capacity Acting Director of DPP ("Director") (collectively "Defendants" or "the City"), by and through their respective counsel, that:

1. Ordinance 19-18 does not require a renter to physically occupy a rental property for any minimum length of time. The Settlement Agreement and Release filed by Plaintiff and the City in *Kokua Coalition v. Department of Planning and Permitting, et. al.*, Case 1:16-cv-000387-DKW-RLP, at paragraphs 8-10, attached as Exhibit "A" and affirmed and incorporated herein, continues to describe a legal long-term rental under Ordinance 19-18. Ordinance 19-18 does not impose new restrictions on legal long-term rentals.

2. The advertising restrictions of Ordinance 19-18 apply to illegal short-term rentals, not legal long-term rentals. Ordinance 19-18 does not prohibit the

advertising, soliciting, offering or providing of a legal long-term rental (i.e., a rental of at least 30 consecutive days). Advertising, soliciting, offering or providing a legal long-term rental, including advertisements, solicitations, and offers stating daily rates, and/or less than monthly rates, and/or a minimum stay of less than 30 days does not cause a dwelling unit that is rented for thirty days or more to be a “transient vacation unit” or “bed and breakfast home” within the meaning of Ordinance 19-18 if such advertisement, solicitation, or offer states that the minimum rental period for the rental property is thirty days. However, rental agreements, advertisements, solicitations and offers to rent property violate Ordinance 19-18 if the price paid for the rental is determined, in whole or in part, by an anticipated or agreed upon occupancy of the property for less than thirty days.

3. Notwithstanding anything in Ordinance 19-18, there is no violation of Ordinance 19-18, and a dwelling unit or lodging unit will not be classified as a “transient vacation unit” or “bed and breakfast home,” provided that the dwelling unit or lodging unit is actually rented only for 30 days or longer at a time, and provided further that 1) the owner and/or operator has not limited the actual occupancy of the premises to a period less than the full stated rental period, and 2) the owner and/or operator has not conditioned the right to occupy the premises for the full stated rental period on the payment of additional consideration.

4. DPP shall not impose a civil fine or penalty on any person for violating Ordinance 19-18 without issuing a “Notice of Violation” and a “Notice of Order” or

a “Notice of Violation and Order” as required by § 21-2.150-2 of the Revised Ordinances of Honolulu, 1990 (*as amended*) (“ROH”).

5. An enforcement order (i.e., a “Notice of Violation,” “Notice of Order” or “Notice of Violation and Order”) issued to a person for violating Ordinance 19-18 may be appealed to the City and County of Honolulu Zoning Board of Appeals in accordance with ROH § 21-1.40, § 6-1516 of the Revised Charter of Honolulu (1973) (2017 Edition) and the Rules of the Zoning Board of Appeals.

6. DPP may post guidance documents on its website to provide the public with information regarding Ordinance 19-18. However, such guidance documents shall not determine or affect the legal rights of individuals under Ordinance 19-18 or the procedures available to individuals under Ordinance 19-18.

7. DPP shall not treat guidance documents on its website as administrative rules, regulations or legal authorities unless they are duly adopted as administrative rules pursuant to the requirements of Haw. Rev. Stat. Ch. 91.

8. DPP shall not enforce guidance documents posted on its website or impose penalties for violations of such guidance documents unless such guidance documents are duly adopted as administrative rules pursuant to the requirements of Haw. Rev. Stat. Ch. 91.

9. DPP construes Ordinance 19-18, Section 9, Subsections (3)(J) and (3)(L) as allowing up to fifty percent (50%) of the units in a multi-family dwelling to be used as bed and breakfast homes, without any required distance between units

used as bed and breakfast homes or other buildings used for bed and breakfast homes (i.e., multifamily dwelling buildings or dwelling units).

10. Ordinance 19-18, Section 5, amends the Land Use Ordinance by, *inter alia*, enacting ROH § 21-2A.30, which requires hosting platforms to “report to the director on a monthly basis [...] (1) [t]he names of persons responsible for [listings]; (2) [t]he address of each listing; (3) [t]he transient accommodations tax identification number of the owner or operator of the bed and breakfast home or transient vacation unit; (4) [t]he length of stay for each listing; and (5) [t]he price paid for each stay” (“reporting requirements”). Plaintiff alleges its members and others similarly situated have constitutionally and statutorily protected interests that would be violated by the reporting requirements of ROH § 21-2A.30. DPP acknowledges that other municipalities have been enjoined from enforcing ordinances with similar requirements and is aware of the opinions and orders issued by federal courts in *Airbnb, Inc. v. City of N.Y.*, 373 F. Supp. 3d 467 (S.D.N.Y. 2019); *Airbnb, Inc. v. City of Bos.*, No. 18-12358-LTS, 2019 U.S. Dist. LEXIS 74823 (D. Mass. May 3, 2019); *Homeaway.com, Inc. v. City of Portland*, No. 17-CV-0091, 2017 U.S. Dist. (D. Or. Mar. 20, 2017) and *Patel v. City of L.A.*, 738 F.3d 1058 (9th Cir. 2013) aff’d by *City of L.A. v. Patel*, 135 S. Ct. 2443, 192 L.Ed.2d 435 (2015). Based on its understanding of the current state of the law and its interests in avoiding unnecessary litigation, DPP does not currently intend to enforce ROH § 21-2A.30 by penalizing hosting platforms that fail to comply with ROH § 21-2A.30.

11. DPP shall not commence the enforcement of ROH § 21-2A.30 nor require hosting platforms to comply with the reporting requirements without providing Plaintiffs' undersigned counsel with at least sixty days prior written notice of its intent to begin enforcing ROH § 21-2A.30, which is deemed sufficient time by the parties for Plaintiff to seek injunctive relief from the Court, and the Court shall retain jurisdiction to adjudicate a dispute concerning ROH § 21-2A.30, should Plaintiff so move, if and when DPP deems such enforcement appropriate.

12. Plaintiff's Complaint challenges the fines available under Ordinance 19-18. Plaintiff reserves all rights to challenge the fines and does not waive any rights with respect to that claim.

13. This Stipulation and Order shall not limit the authority of the City and County of Honolulu to enact, amend, or repeal any ordinance.

14. Plaintiffs' TRO Motion is hereby withdrawn, without prejudice. This Stipulation and Order shall not bar or otherwise preclude Plaintiff from filing a new complaint and/or motion for the same or similar relief.

15. Plaintiffs' Complaint is hereby dismissed without prejudice, provided however this Court shall retain jurisdiction to resolve any disputes by the parties arising under or out of this Stipulation and Order. The dismissal of Plaintiff's Complaint shall not bar or otherwise preclude Plaintiff from renewing and/or reasserting the claims raised by Plaintiff's Complaint and TRO Motion.

16. Each party is to bear its own costs and attorneys' fees associated with this matter.

17. There are no remaining claims and/or parties.

### **ORDER**

Based on the agreement of the parties and good cause appearing therefor, the STIPULATION AND ORDER FOR WITHDRAWAL OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND DISMISSAL OF PLAINTIFF'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF WITHOUT PREJUDICE is hereby APPROVED and incorporated into this Order. NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. The foregoing provisions are incorporated into this Court's Order;
2. Plaintiff's TRO Motion is withdrawn, without prejudice;
3. Plaintiff's Complaint is dismissed, without prejudice, with the Court retaining jurisdiction as provided herein;
4. There are no remaining claims and/or parties;
5. Each side shall bear its own costs and attorneys' fees.

DATED: Honolulu, Hawai'i, October 1, 2019.

DAMON KEY LEONG KUPCHAK HASTERT

/s/ Gregory W. Kugle

Gregory W. Kugle  
Matthew T. Evans  
Loren A. Seehase  
Veronica A. Nordyke  
Attorneys for Plaintiff  
KOKUA COALITION

/s/ Brad T. Saito

Paul S. Aoki

Brad T. Saito

Attorneys for Defendants

DEPARTMENT OF PLANNING AND  
PERMITTING OF THE CITY AND COUNTY OF  
HONOLULU, KATHY SOKUGAWA

APPROVED AND SO ORDERED:

Dated: October 4, 2019 at Honolulu, Hawaii.



  
Derrick K. Watson  
United States District Judge

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*Kokua Coalition, et al. v. Department of Planning and Permitting, et al.*; Civil No. 19-00414 DKW-RT; STIPULATION AND ORDER RE THE WITHDRAWAL OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND DISMISSAL OF PLAINTIFF'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF WITHOUT PREJUDICE; EXHIBIT "A"

Of Counsel:  
DAMON KEY LEONG KUPCHAK HASTERT  
Attorneys at Law  
A Law Corporation

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Telephone: (808) 531-8031  
Facsimile: (808) 533-2242

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

KOKUA COALITION, a Hawaii non-	)	CIVIL NO. 1:16-cv-00387 DKW-RLP
profit corporation, dba HAWAII	)	
VACATION RENTAL OWNERS	)	SETTLEMENT AGREEMENT AND
ASSOCIATION,	)	RELEASE
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
DEPARTMENT OF PLANNING AND	)	
PERMITTING OF THE CITY AND	)	
COUNTY OF HONOLULU; CITY	)	
AND COUNTY OF HONOLULU;	)	
GEORGE ATTA; HONOLULU	)	
ZONING BOARD OF APPEAL,	)	
	)	
Defendants.	)	

**EXHIBIT "A"**

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made as of May 23, 2018, by and between Plaintiff, KOKUA COALITION, a Hawaii non-profit corporation, d.b.a. HAWAII VACATION RENTAL OWNERS ASSOCIATION (“Plaintiff”) and Defendants DEPARTMENT OF PLANNING AND PERMITTING OF THE CITY AND COUNTY OF HONOLULU (“DPP”); KATHY SOKUGAWA, in her official capacity as the Director of the DPP and the successor to GEORGE ATTA as the DPP Director; HONOLULU ZONING BOARD OF APPEAL, and the CITY AND COUNTY OF HONOLULU (collectively, “Defendants”). Plaintiff and Defendants are collectively referred to herein as the “Settling Parties” and do hereby promise and agree to resolve all of claims in the above-entitled action (hereinafter, “Litigation”) as set fully set forth herein.

The Settling Parties are apprised of the facts and circumstances pertaining to the claims in Plaintiff’s Complaint, filed in the Litigation on July 7, 2016 (i.e., Doc. No. 1). And, having considered these facts and circumstances together with the cost and uncertainty of further litigation, the Settling Parties desire to terminate, settle and compromise now all claims and controversies existing between them in this Litigation. Accordingly, this Agreement is made to resolve all

of the issues in the Litigation and preclude further dispute and controversy between the Settling Parties.

NOW, THEREFORE, for the foregoing reasons and in consideration of the mutual promises below, the Settling Parties hereby mutually agree as follows:

1. This document is a settlement agreement and release of all claims in the Litigation.

2. The Settling Parties are knowingly entering into this Agreement of their own free will, by and through their duly authorized, undersigned legal counsel.

3. Each party to this Agreement and the Litigation shall bear its own attorneys' fees and costs.

4. Section 21 of the Revised Ordinances of Honolulu 1990, also known as the Land Use Ordinance (hereinafter "LUO") prohibits transient vacation units and bed and breakfast homes in the residential zoning district unless the property owner has obtained nonconforming use certificate for such a use. The Department of Planning and Permitting ("Department") no longer issues new nonconforming use certificates for such uses.

5. "Transient vacation unit" means "a dwelling unit or lodging unit which is provided for compensation to a transient occupant for less than thirty (30) days, other than a bed and breakfast home."

6. For purposes of a “transient vacation unit,” “compensation” includes, but is not limited to, “monetary payment, services or labor of employees.”

7. “Bed and breakfast home” means “a use in which overnight accommodations are provided to guests for compensation, for periods of less than thirty (30) days, in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling.”

8. As currently worded, the Land Use Ordinance prohibits providing all or a portion of a residential dwelling unit to a transient occupant for less than thirty (30) consecutive calendar days for compensation. Thus, the LUO allows a property owner to rent its property to transient guests in blocks of thirty (30) days or more, up to twelve times per year.

9. The LUO does not require that renters actually occupy all or a portion of a rented dwelling unit during the thirty (30) day rental period; however, a party that is not granted use of the dwelling unit by the thirty (30) day rental agreement may not occupy the rented portions of the dwelling unit during the same thirty (30) day rental block. The owner, lessee, operator or proprietor of a dwelling unit that is rented in a block of thirty (30) days or more has re-entry rights, as provided by law. In addition, the owner, lessee, operator or proprietor of the rented dwelling unit is allowed to occupy any portion of the dwelling unit that is expressly excluded from the rental agreement during the thirty (30) day rental block. However,

the owner, lessee, operator or proprietor may not occupy any portion of the dwelling unit that is rented to the transient guests during their thirty (30) day rental block.

10. Thus, an owner, lessee, operator, or proprietor shall be deemed to have established a meritorious defense to a notice of violation or notice of order for illegal transient vacation unit or bed and breakfast use by demonstrating, by contract or other evidence, that the rented portions of a dwelling unit were only used by one party within a thirty (30) day rental block. DPP can, however, negate this defense by demonstrating that two or more parties used the same dwelling unit within the same thirty (30) day rental block.

11. A notice of order for operating an illegal transient vacation unit or illegal bed and breakfast home may be appealed to the Honolulu Zoning Board of Appeals (“Board”), as provided in the LUO and Rules of Practice and Procedure of the Zoning Board of Appeals (“RPP”).

12. With respect to the adjudication of an appeal of a notice of order for transient vacation unit or illegal bed and breakfast home use before the Board, the following procedures shall apply to Plaintiff’s members who provide evidence of their membership in Plaintiff’s organization, effective at least sixty (60) days prior to the date of issuance of the notice of order that is subject to the appeal.

- a. Prior to the hearing, the submission of position statements, witness lists, exhibit lists and exhibits will be established

in a schedule set by the Board; however, the Department's submissions shall be filed first and shall be followed by the submissions of the party appealing the notice of order. Intervenor, if any, shall file in such order as the Board directs.

- b. The hearing shall be conducted in conformity with the applicable provisions of §§ 91-9, 91-10, and 91-11, Hawaii Revised Statutes. At the hearing, Department's evidence shall be presented first, and shall be followed by the presentation of evidence by the party appealing the notice of order. Intervenor, if any, shall be heard in such order as the Board directs.
- c. Except as provided herein, the Rules of the Zoning Board of Appeals shall apply.

13. Within fifteen (15) days of executing this Agreement, the parties shall execute and file a stipulation to dismiss the Complaint filed in the Litigation, with prejudice.

14. This Stipulation and Order shall not limit the authority of the City and County of Honolulu to enact, amend or repeal any ordinance.

DATED: Honolulu, Hawaii, May 23, 2018.

DAMON KEY LEONG KUPCHAK HASTERT



GREGORY W. KUGLE  
LOREN A. SEEHASE  
Attorneys for Plaintiffs



BRAD T. SAITO  
Deputy Corporation Counsel  
Attorney for Defendants  
DEPARTMENT OF PLANNING  
AND PERMITTING OF THE CITY AND  
COUNTY OF HONOLULU; CITY AND  
COUNTY OF HONOLULU; and KATHY  
SOKUGAWA in her official capacity as Director  
of DPP and successor to GEORGE ATTA as  
DIRECTOR OF THE DEPARTMENT OF  
PLANNING AND PERMITTING OF THE CITY  
AND COUNTY OF HONOLULU



DAWN D. M. SPURLIN  
Deputy Corporation Counsel  
Attorney for Defendant  
ZONING BOARD OF APPEALS

*Kokua Coalition, et al. v. Department of Planning and Permitting of the City and County of Honolulu, et al.*, United States District Court, Civil No. 1:16-cv-00387 DKW-RLP; Settlement and Release

Authorization: Dean Uchida, Director  
Advertisement: August 20, 2021  
Public Hearing: September 1, 2021

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**  
650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honoluluapp.org](http://www.honoluluapp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

RICK BLANGIARDI  
MAYOR



DEAN UCHIDA  
DIRECTOR


DAWN TAKEUCHI APUNA  
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI  
DEPUTY DIRECTOR

August 13, 2021

**MEMORANDUM**

TO: Brian Lee, Chair  
and Members of the Planning Commission

FROM: Dean Uchida, Director  
Department of Planning and Permitting 

SUBJECT: Proposed Amendments to Chapter 21 (Land Use Ordinance [LUO]),  
Revised Ordinances of Honolulu (ROH) 1990, as Amended, Relating to  
Transient Accommodations

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Uchida, Dean  
Date: 2021.08.13  
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The Department of Planning and Permitting (DPP) is pleased to submit for your review and appropriate action the Department's report and draft bill proposing amendments relating to Transient Accommodations.

The proposal would amend specific sections of the ROH (Chapters 8 and 21) relating to transient vacation units (TVU), bed and breakfast (B&B) homes, and hotels as summarized below:

1. Chapter 8, Real Property Tax, ROH
  - B&B properties, including B&Bs with nonconforming use certificates, will be placed in the B&B Home tax category.
  - TVU properties, including TVUs with nonconforming use certificates, will be placed in the Hotel and Resort tax category.
2. Chapter 21, LUO, ROH
  - Administrative enforcement procedures have been updated.
  - Up to \$3,125,000.00 in real property taxes collected relating to TVUs and B&Bs will be deposited into a special account to be used by DPP for the enforcement of TVUs and B&Bs.
  - Application, registration, renewal and revocation processes for B&Bs and TVUs have been updated.

EXHIBIT "7"

Memorandum to Brian Lee, Chair  
and Members  
August 13, 2021  
Page 2

- Amendments to the Master Use Table would eliminate B&Bs and TVUs as a permitted use in every land use category except for certain areas in the A-1 and A-2 apartment districts located in or near existing resorts.
- Amendments to the Master Use Table would allow hotels, condominium hotels and hotel units in the Apartment Precinct and Apartment Mixed Use Precinct of Waikiki.
- Development standards and definition for hotels have been updated.
- Development standards for B&Bs and TVUs have been updated.
- Definition of B&Bs and TVUs have been updated to a minimum duration of less than 180 consecutive days.
- Definition and requirements for advertisement have been updated.

Attached you will find our staff report and draft bill for your consideration. We will be happy to answer any questions that you may have concerning this matter during the Public Hearing.

Attachments

**ADMINISTRATION INITIATED LAND USE ORDINANCE AMENDMENTS  
RELATING TO SHORT-TERM RENTALS AND TRANSIENT ACCOMMODATIONS,  
POST COVID-19**

**Staff Report**

**August 13, 2021**

**I. BACKGROUND**

On June 25, 2019, Mayor Kirk Caldwell signed into law Ordinance 19-18 (Bill No. 89, 2018, CD2) Relating to Short-Term Rentals (STR), which would in part allow more bed and breakfast homes (B&Bs) throughout the Island, including residential neighborhoods. Prior to full implementation of Ordinance 19-18, the City along with the rest of the world was disrupted by the shut-down of normal day-to-day activities due to the worldwide Covid-19 pandemic.

Neighborhoods began to see what life was like before the proliferation of STRs throughout their neighborhoods. Traffic, crowding, tourists invading residential neighborhoods, and noise at all hours of the day that were typical issues created in part by STRs, disappeared during the pandemic lock down.

In addition, residents across the state realized what life was like before millions of visitors started coming to Hawaii. No or very little traffic, wide open beaches and trails, and less people in general were “benefits” of the shut-down. While the visitor industry is a main driver of Hawaii’s economy, discussions have begun on how we might limit the number of visitors to Hawaii. Ten million (10,000,000) visitors annually has become too much.

The pandemic caused us to take a closer look at Ordinance 19-18, which would allow a limited number of new B&Bs and require compliance with registration requirements, development standards, and other regulations. However, some of the provisions in Ordinance 19-18 would be impractical to implement and have resulted in enforcement problems. To address these issues, we believe it is necessary to improve upon Ordinance 19-18 by simplifying the City’s approach to regulating STRs and other transient accommodations.

STRs are disruptive to the character and fabric of our residential neighborhoods. They are inconsistent with the land uses that are intended for our residential zoned areas, they decrease the supply of long-term housing for local residents throughout the City, and increase the prices and rents of housing, making living on Oahu less affordable for its resident population. Any economic benefits of opening-up our residential areas to tourism are far outweighed by the negative impacts on our neighborhoods and local residents.

The purpose of this Ordinance is to better protect the City's residential neighborhoods and housing stock from the negative impacts of STRs by providing a more comprehensive and controlled approach to the regulation of STRs within the City and creating additional sources of funding for the administration and enforcement of the City's B&B and transient vacation unit (TVU) laws.

## II. ANALYSIS

The proposed amendments are essentially a "policy pivot" to redirect the STR Ordinance in a different direction. The two overall goals of this policy pivot are to:

1. Reduce impacts on residential neighborhoods; and
2. Regulate STRs that are permitted only in or adjacent to existing resort areas.

In order to accomplish these goals, the amendments to the ordinance will do the following:

- Provide greater enforcement tools over illegal and non-compliant STRs.
- All existing non-conforming B&Bs and TVUs will continue, provided the units are registered, pursuant to the Ordinance.
- No new B&Bs and TVUs will be allowed or permitted in Residential Zoned areas.
- New B&Bs and TVUs will only be allowed in areas adjacent to and associated with existing Resort zoned property, specifically in the A-2 medium-density apartment zoning district located in the Gold Coast area of the Diamond Head Special district and in the A-1 low-density and A-2 medium density apartment zoning districts located adjacent to the Ko'Oline and Kuilima resort areas.
- All STRs will be required to include their certificate of registration number or their nonconforming use certificate number in all advertisements; any advertisement of a property for use as a B&B or TVU without such registration number is a violation.
- Hotels, condominium hotels and hotel units will be newly defined and added as a permitted use subject to development conditions in the Apartment Precinct and Apartment Mixed Use Precinct of Waikiki.
- All registered existing non-conforming and newly permitted TVUs are to be assessed at the hotel and resort rate for real property tax purposes.

- All registered existing non-conforming and newly permitted B&Bs are to be assessed at the B&B home rate for real property tax purposes; consistent with the requirement that the owner of the B&B must live at the B&B, all B&Bs owners must obtain the home exemption for real property tax.
- All new B&Bs and TVUs must have and keep current general excise and transient accommodations tax licenses, and must maintain a minimum of \$1,000,000.00 in commercial general liability insurance at all times, for their unit.
- The current update of the Primary Urban Center will allow for Resort Zoning for individual properties located along the "Gold Coast of Waikiki,"--the area makai of Kapiolani Park -- so that owners in this area will be able to up-zone their property to the resort district.
- Provide annually to the Department up to \$3,125,000.00 in real property taxes from registered B&Bs for the purposes of funding enforcement of STRs.
- The definitions of "bed and breakfast home" and "transient vacation unit" are amended to increase the rental period for TVUs or B&Bs from less than 30 days to less than 180 days.
- The Department of Planning and Permitting's (DPP) violation enforcement procedures have been overhauled in order to better equip DPP's inspectors to investigate and enforce violations of the Land Use Ordinance, including the provisions related to STRs.

### **III. RECOMMENDATION**

Amendments to the different Chapters of the Revised Ordinances of Honolulu (ROH), based on Ordinance 19-18, will be as follows by Chapter:

#### **A. Amendments to ROH Chapter 8 Real Property Tax**

Changes to the ROH Chapter 8 will place B&Bs and TVUs into the appropriate real property tax category. B&B properties, including B&Bs with nonconforming use certificates, will be placed in the B&B home tax category. TVU properties, including TVUs with nonconforming use certificates, will be placed in the Hotel and Resort real property tax category, as they are operating similar to hotels/resorts.

#### **B. Amendments to ROH Chapter 21 administrative enforcement, depository of fees, civil penalties and real property taxes collected relating to B&B homes or STRs.**

Administrative enforcement tools are created and amended to better enforce land use regulations including: making owners, persons in possession or control of the premises,

and persons who cause, contribute to, or benefit from a violation liable, and potentially joint and severally liable, for such violation; clarifies service of process for violations, orders, and appeals; increase fines up to \$25,000 per violation and \$25,000 per day for each day a violation remains uncorrected; requires the violator to send a written notification to the director reporting the correction of the violation when cured; authorizes the director to enter into consent orders and issue orders to show cause to ensure compliance by violators; and creates additional daily fines in an amount up to the highest daily rate at which a B&B or TVU has been advertised or offered for rent.

Directs up to \$3,125,000.00 collected in real property taxes by the City for the B&B tax classification to be deposited annually into a special account of the general fund to be used by the DPP to fund expenses relating to establishing a new STR Enforcement Branch within DPP.

Amendments to the Master Use Table would eliminate B&Bs and TVUs as a permitted use in every land use category except for certain areas in the A-1 and A-2 apartment districts located in or near existing resorts. Areas where new B&B and TVU operations are permitted are identified as follows:

1. A-1/A-2 apartment zoning district near Kuilima Resort, as shown on Exhibit A to the draft ordinance;
2. A-1/A-2 apartment zoning district near Ko'olina Resort, as shown on Exhibit B to the draft ordinance; and
3. A-2 medium-density apartment zoning district located at the Gold Coast in the Diamond Head special district (provided the individual parcels request rezoning to Resort).

Amendments to the Master Use Table would allow hotels, condominium hotels and hotel units in the Apartment Precinct and Apartment Mixed Use Precinct of Waikiki.

Hotels and hotel unit development standards are defined, including that hotel units may not be used as B&Bs or TVUs and must be booked by guests through a centralized hotel booking system, and rental rates must be determined by the hotel operator or manager of the hotel's centralized booking service. Hotels and hotel units that have existing certificates of occupancy for hotels uses shall comply with the development standards. Units in a condominium-hotel must be part of the hotel's room inventory, available for rent to the general public, and the use of a condominium-hotel unit as a primary residence or usual place of abode is not allowed.

Use and development standards are established for B&Bs and TVUs, including occupancy limits and sleeping arrangements, onsite parking requirements, noise restrictions and quiet hours, current tax licensing, insurance coverage, restrictions on gatherings, and an informational binder to provide guests guidance on being respectful of neighbors and information to help guests respond appropriately to emergencies.

Amendments provide application, registration, renewal and revocation processes for B&Bs and TVUs.

Advertisements must contain the lawful registration number and tax map key number of the TVU or B&B unit. It is unlawful for any person to advertise or cause the advertisement of a dwelling unit that is not a registered B&Bs and TVUs for a term of less than 180 days.

The amendments include a process for the public to submit written complaints regarding any suspected violation of the ordinance along with how the DPP will respond and follow up on the complaint.

#### IV. CONCLUSION

The Department of Planning and Permitting believes that this ordinance responds to the community needs that have shifted significantly under the pandemic. It takes into account the concerns of residential neighborhoods, as well as the visitor industry, and should result in more long-term housing stock being made available for residents by eliminating and prohibiting short-term rentals (STR). Finally, it provides better enforcement tools to address illegal STRs and an independent source of revenue to support the necessary enforcement actions to rein in illegal STRs on Oahu.

[illegible]

PLANNING COMMISSION  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honoluluclpp.org](http://www.honoluluclpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

RICK BLANGIARDI  
MAYOR



BRIAN LEE, Chair  
KEN K. HAYASHIDA, Vice Chair  
ARTHUR B. TOLENTINO  
STEVEN S. C. LIM  
AKI MARCEAU  
RYAN J. K. KAMO  
NATHANIEL KINNEY  
PANE MEATOGA III

October 6, 2021

The Honorable Tommy Waters  
Chair and Presiding Officer  
and Councilmembers  
Honolulu City Council  
530 South King Street, Room 202  
Honolulu, Hawaii 96813

Dear Chair Waters and Councilmembers:

SUBJECT: A Request for Amendments to Chapter 21, (Land Use Ordinance [LUO]), Revised Ordinances of Honolulu (ROH) 1990, as amended, Relating to Transient Accommodations

The Planning Commission held public hearings on September 1, September 8, 2021, and September 29, 2021 on the above subject matter. Written concerns, comments and public testimonies were received. At the September 8, 2021 public hearing, after closing the public testimony portion of the public hearing, the Commission voted to further continue the matter to September 29, 2021 for decision making.

On September 29, 2021, the Planning Commission voted 6:1 [Commissioner Lim dissented] to approve the recommendation of the Director of the Department of Planning and Permitting (DPP) on the revised draft bill to advance stricter enforcement on the residential zoned areas, but recommended the DPP and the City Council have further discussions on the resort zoned areas. The Planning Commission further recommended the following:


- 1) The City Council look at the minimum length of the Short-Term Rental for the ability to enforce;
- 2) The City Council ensure that any amendments for apartment or apartment-mixed zone to resort is in alignment with the Primary Urban Center Plan or any other Plans that are going through the Council process; and
- 3) The DPP perform community engagement with the Neighborhood Boards.

EXHIBIT "8"

The Honorable Tommy Waters  
Chair and Presiding Officer  
and Councilmembers  
October 6, 2021  
Page 2

Attached is the August 13, 2021 report and August 30, 2021 comments and revised draft bill from the Director of the Department of Planning and Permitting, and the written concerns, comments and testimonies of the Planning Commission. Also included are the written concerns, comments and testimonies received after the close of public testimony of the public hearing.

Sincerely,



Brian Lee, Chair  
Planning Commission

Attachments

ACKNOWLEDGED:



Rick Blangiardi  
Mayor

ACKNOWLEDGED:



Digitally signed by Uchida,  
Dean  
Date: 2021.10.05 16:28:27  
-10'00'

Dean Uchida, Director  
Department of Planning and Permitting



Michael D. Formby  
Managing Director

HOUSE OF REPRESENTATIVES  
THIRTY-FIRST LEGISLATURE, 2021  
STATE OF HAWAII

H.B. NO. 76

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## A BILL FOR AN ACT

---

RELATING TO COUNTIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that zoning has  
2       traditionally been a function delegated by the State to the  
3       counties pursuant to section 46-4, Hawaii Revised Statutes.

4       Counties are thereby authorized to establish zoning  
5       classifications and provide for allowable uses and structures  
6       within those classifications.

7       The legislature further finds that, while some short-term  
8       rentals are permitted by zoning and others are granted permits  
9       to operate, still other short-term rentals are allowed to  
10      operate by virtue of their status as legal, nonconforming uses  
11      that have been grandfathered in. The legislature also finds  
12      that the zoning authority granted to counties to promote their  
13      orderly development would be enhanced by explicitly providing  
14      that a county may choose to phase out permitted, nonconforming,  
15      or otherwise allowed short-term rental operations in any zoning  
16      classification over time, where the county determines these  
17      operations are inappropriate.

2021-0539 HB HMSO



1

EXHIBIT "9"

# H.B. NO. 76

1       The purpose of this Act is to make explicit the counties'  
2   authority to enact ordinances allowing for the amortization or  
3   phasing out of permitted, nonconforming, or otherwise allowed  
4   short-term rentals in any zoning classification.

5       SECTION 2. Section 46-4, Hawaii Revised Statutes, is  
6   amended by amending subsection (a) to read as follows:

7       "(a) This section and any ordinance, rule, or regulation  
8   adopted in accordance with this section shall apply to lands not  
9   contained within the forest reserve boundaries as established on  
10   January 31, 1957, or as subsequently amended.

11       Zoning in all counties shall be accomplished within the  
12   framework of a long-range, comprehensive general plan prepared  
13   or being prepared to guide the overall future development of the  
14   county. Zoning shall be one of the tools available to the  
15   county to put the general plan into effect in an orderly manner.  
16   Zoning in the counties of Hawaii, Maui, and Kauai means the  
17   establishment of districts of such number, shape, and area, and  
18   the adoption of regulations for each district to carry out the  
19   purposes of this section. In establishing or regulating the  
20   districts, full consideration shall be given to all available  
21   data as to soil classification and physical use capabilities of



H.B. NO. 76

1 the land to allow and encourage the most beneficial use of the  
2 land consonant with good zoning practices. The zoning power  
3 granted herein shall be exercised by ordinance which may relate  
4 to:

- 5 (1) The areas within which agriculture, forestry,  
6 industry, trade, and business may be conducted;
- 7 (2) The areas in which residential uses may be regulated  
8 or prohibited;
- 9 (3) The areas bordering natural watercourses, channels,  
10 and streams, in which trades or industries, filling or  
11 dumping, erection of structures, and the location of  
12 buildings may be prohibited or restricted;
- 13 (4) The areas in which particular uses may be subjected to  
14 special restrictions;
- 15 (5) The location of buildings and structures designed for  
16 specific uses and designation of uses for which  
17 buildings and structures may not be used or altered;
- 18 (6) The location, height, bulk, number of stories, and  
19 size of buildings and other structures;
- 20 (7) The location of roads, schools, and recreation areas;
- 21 (8) Building setback lines and future street lines;



# H.B. NO. 76

(9) The density and distribution of population;

(10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;

(11) Minimum and maximum lot sizes; and

(12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

Any civil fine or penalty provided by ordinance under this section may be imposed by the district court, or by the zoning agency after an opportunity for a hearing pursuant to chapter 91. The proceeding shall not be a prerequisite for any injunctive relief ordered by the circuit court.



## H.B. NO. 76

1        Nothing in this section shall invalidate any zoning  
2 ordinance or regulation adopted by any county or other agency of  
3 government pursuant to the statutes in effect [~~prior to~~] before  
4 July 1, 1957.

5        The powers granted herein shall be liberally construed in  
6 favor of the county exercising them, and in such a manner as to  
7 promote the orderly development of each county or city and  
8 county in accordance with a long-range, comprehensive general  
9 plan to ensure the greatest benefit for the State as a whole.

10       This section shall not be construed to limit or repeal any  
11 powers of any county to achieve these ends through zoning and  
12 building regulations, except insofar as forest and water reserve  
13 zones are concerned and as provided in subsections (c) and (d).

14       Neither this section nor any ordinance enacted pursuant to  
15 this section shall prohibit the continued lawful use of any  
16 building or premises for any trade, industrial, residential,  
17 agricultural, or other purpose for which the building or  
18 premises is used at the time this section or the ordinance takes  
19 effect; provided that a zoning ordinance may provide for  
20 elimination of nonconforming uses as the uses are discontinued,  
21 or for the amortization or phasing out of nonconforming uses or



# H.B. NO. 76

1 signs over a reasonable period of time in commercial,  
2 industrial, resort, and apartment zoned areas only[-]; provided  
3 further that a zoning ordinance may provide for the amortization  
4 or phasing out of permitted, nonconforming, or otherwise allowed  
5 short-term rentals over a reasonable period of time in an area  
6 of any zoning classification. In no event shall such  
7 amortization or phasing out of nonconforming uses apply to any  
8 existing building or premises used for residential (single-  
9 family or duplex) or agricultural uses[-] other than permitted,  
10 nonconforming, or otherwise allowed short-term rentals as  
11 provided in this subsection.

12 Nothing in this section shall affect or impair the powers  
13 and duties of the director of transportation as set forth in  
14 chapter 262.

15 For purposes of this subsection, "short-term rental" means  
16 the payment for use, or swapping, bartering, or exchange, of a  
17 residential dwelling, or portion thereof, for a stay of less  
18 than one hundred eighty days, or a lesser maximum duration as  
19 determined by a county, by someone other than the owner, and  
20 includes transient vacation rentals as defined in section  
21 514E-1."



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1       SECTION 3. If any provision of this Act, or the  
2 application thereof to any person or circumstance, is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act that can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7       SECTION 4. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9       SECTION 5. This Act shall take effect upon its approval.

10  
INTRODUCED BY:

Nadine K. Nathan

JAN 20 2021



# H.B. NO. 76

**Report Title:**

Short-term Rentals; Nonconforming Use; Amortization; Counties

**Description:**

Makes explicit the counties' authority to enact ordinances to amortize or phase out permitted, nonconforming, or otherwise allowed short-term rentals in any zoning classification. Includes swapping, bartering, or exchange of a residential dwelling, or portion thereof, in definition of "short-term rental" for this purpose.

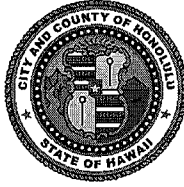
*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



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

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RICK BLANGIARDI  
MAYOR



DEAN UCHIDA  
DIRECTOR DESIGNATE

DAWN TAKEUCHI APUNA  
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI  
DEPUTY DIRECTOR

February 4, 2021

The Honorable Nadine K. Nakamura, Chair  
and Members of the Committee on Housing  
Hawaii House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 9683

Dear Chair Nakamura and Committee Members:

**Subject: House Bill No. 76  
Relating to Counties**

The Department of Planning and Permitting (DPP) **supports** House Bill No. 76, which makes explicit the counties' authority to enact ordinances allowing for the reasonable amortization or phasing out of permitted, nonconforming, or otherwise allowed short-term rentals.

Currently, HRS 46-4(a), states in pertinent part, "In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses." This sentence disallows the amortization or phasing out of nonconforming residential uses.

Transient accommodation uses, or short-term rentals, could be interpreted as "residential uses" for purposes of this part, and therefore not subject to amortization or phasing out. This Bill specifies that the counties may amortize or phase out nonconforming transient vacation accommodations, which may assist the counties in better controlling short-term rentals in particular areas if needed.

Thank you for this opportunity to provide testimony.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dean Uchida".

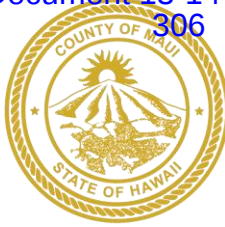
Dean Uchida  
Director Designate

EXHIBIT "10"

MICHAEL P. VICTORINO  
MAYOR

MICHELE CHOUTEAU MCLEAN, AICP  
DIRECTOR

JORDAN E. HART  
DEPUTY DIRECTOR



LATE



DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
ONE MAIN PLAZA, 2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793

February 3, 2021

TESTIMONY OF MICHELE CHOUTEAU MCLEAN, AICP  
PLANNING DIRECTOR  
COUNTY OF MAUI

BEFORE THE HOUSE COMMITTEE ON HOUSING  
Thursday, February 4, 9:00 A.M.  
Conference Room 423

### **HB76 RELATING TO COUNTIES**

Representative Nadine K. Nakamura, Chair  
Representative Troy N. Hashimoto, Vice Chair  
Honorable Members of the House Committee on Housing

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Thank you for this opportunity to testify in **SUPPORT** of HB76.

The counties have long had the authority under HRS 46-6 to eliminate nonconforming uses as they are discontinued, or to amortize nonconforming uses over time in certain zoning districts except for single-family residential use. This is reasonable so that our housing is protected. However, if a county wished to amortize nonconforming (or "grandfathered") short-term rental use in single-family dwellings, the current language of HRS 46-6 would likely not allow it. HB76 remedies this shortcoming.

As you are well aware, Maui County, like the other counties, struggles to regulate and enforce short-term rental uses. These are allowed in Maui County by three means: zoning, including hotels and certain apartments; permits, including Bed and Breakfast Home (B&B) and Short-term Rental Home (STRH) permits; and grandfathering, which applies to many properties but does not comprise a significant number of our vacation rental stock. The current language of HRS 46-6 would already allow the first category of use to be amortized; the second could be amortized through changes to our B&B and STRH ordinances; but the third cannot currently be accomplished without the proposed bill.

It would, therefore, be helpful for the counties to have this tool if it is needed to help in our vacation rental regulation and enforcement efforts. Your support of HB76 would be appreciated.

**EXHIBIT "11"**