

(March 9, 2007)⁽⁴⁾

FLOOR AMENDMENT

BILL NO. 2204, Relating to Transient Vacation Rentals and Bed and Breakfast operations

Introduced by: JoAnn A. Yukimura

Amend Bill No. 2204 in its entirety as follows:

“[SECTION 1. The advent of Transient Vacation Rentals (TVR) and Bed and Breakfast (B&B) operations in Residential Districts has led to concerns relating to the reduction in the long-term rental inventory and loss of communities/neighborhoods, as well as other issues.

Because of the lack of clear regulations for TVRs (including single-family dwelling types) and B&Bs, one of the high priority implementation items in the 2000 General Plan involves the development of standards and regulations for these operations. The General Plan recognizes these types of alternate visitor accommodations, however it also acknowledges the need to develop regulations and standards to ensure that these uses are properly regulated and do not create any adverse impacts.]

SECTION 1. Findings and Purpose.

The Council of the County of Kaua'i finds that there is a compelling need to address the issue of single-family vacation rentals on Kaua'i. Single-family transient vacation rentals are occurring at a greater rate and inflicting a larger impact on the community of Kaua'i than was ever anticipated by the drafters of the County's Comprehensive Zoning Ordinance. While this type of visitor unit could be compatible with the character and nature of Kaua'i and while it has certain positive advantages to the community and is desirable in terms of offering a mix of accommodations to the visitor, the uncontrolled proliferation of vacation rentals in residential areas outside the Visitor Destination Areas (VDAs) and the lack of appropriate regulation are causing significant negative impacts to some residential neighborhoods.

The County General Plan, updated in the year 2000, recognizes this fact by its policy for "Alternative Visitor Accommodations," which reads as follows:

“4.2.8.2 Alternative Visitor Accommodations

(a) The County of Kaua'i shall recognize alternative visitor accommodations, such as B&Bs vacation rentals, inns, cabins, and retreat centers.

(b) The County shall enact clear standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agriculture, Open, and Resort zoning districts.

(c) County development standards and permit processes shall be scaled to the size and potential impact of the use:

[...]

(d) Permitting processes should consider the cumulative impact that a large concentration of alternative visitor units can have on a residential neighborhood.” (pp. 4-16 to 4-17)

Census data shows that seasonal rentals account for 45% of the new housing units built on Kaua'i between 1990 and 2000, a greater percentage than housing built for long-term renters (14%) or for owner-occupied use (36%). Since 2000, out of the 2,050 new residential units, 1,070 have been built for the seasonal homes market and less than half have been for local families to rent (46) or own (936). The potential for vacation rental use increases the value and thus the selling price and investment rating of property on Kaua'i, which increases prices and adds another potential layer of speculation in the real estate market. This also means that the limited available infrastructure and resources on Kaua'i, including roads, water, sewer capacity, building materials, and contractor time are being used primarily for expensive and/or second and third homes rather than the primary home needs of local residents.

In oceanfront or other places of premium real estate value, second and third homes and vacation rentals (which are often one and the same) are displacing traditional neighborhoods where people of low and moderate income have been able to live in the past. Besides contributing to a lack of affordable housing in the community, this is changing the social character of neighborhoods where neighbors used to know each other. This has tended to make these neighborhoods more vulnerable to crime. While regulating single-family vacation rentals will not guarantee more affordable housing, it will dampen speculation and bring a halt to uncontrolled growth and cumulative impacts of vacation rentals which have affected the traditional neighborhoods of 'Anini and Hā'ena, and which could or are beginning to also affect neighborhoods such as Waimea Valley, Kekaha, and the makai side of Kapa'a Town.

The Council also finds that the transient accommodation and general excise taxes on various vacation rentals are sometimes not being paid causing a loss of revenue to state and county governments and a failure to pay for impacts associated with visitors.

The purpose of this bill is to restore a balance between primary residences and single-family vacation rentals by: 1) requiring permits of all

single-family and multi-family vacation rentals no matter where they are located, 2) prohibiting new single-family and multi-family vacation rentals outside of established visitor destination areas, and 3) allowing nonconforming uses where single-family vacation rentals have been operating legally and paying all taxes for a specified time prior to approval of this bill.

Because existing State law requires all dwelling units on "Agricultural" District lands to be "farm dwellings," and because the County is in the process of identifying "Ag Lands of Importance to the State" and revamping its laws with respect to Agriculture-zoned lands, single-family vacation rentals on Agriculture-zoned lands are not eligible for a nonconforming use permit, nor are single-family vacation rentals allowed on "Conservation" district lands since the County has no jurisdiction over "Conservation" district lands.

This bill does not apply to bed and breakfast ("B&B") operations. It is the intention of the Council to address bed and breakfast units as a separate matter after establishing a regulatory framework for single-family vacation rentals. B&Bs are presently regulated through the use permit process.

In order to promote a high quality of life for all people on this island, protect traditional neighborhoods and the diversity of incomes and backgrounds that has made Kaua'i a model community and a place of Aloha, and to promote health and safety and the general welfare, the Council of the County of Kaua'i does hereby enact the following law.

SECTION 2. Section 8-1.5, Kaua'i County Code 1987, as amended, is hereby amended by adding the [definition] definitions for "Bed and Breakfast [operation]" Operation (B&B)," "Director," "Transient or Transients," and "Visitor Destination Area or VDA," and amending the definition for "Transient Vacation Rentals" to include the definition of "Single-Family (Transient) Vacation Rental" and "Multi-Family (Transient) Vacation Rental" to read as follows:

" "Bed and Breakfast Operation (B&B)" means a use in which overnight accommodations are provided to guests for compensation, for periods of less than one hundred eighty (180) days, on the same parcel as that occupied by an owner, lessee, operator or proprietor of said parcel.

"Director" means the Planning Director of the County of Kaua'i.

"Transient or Transients" means any person who owns, rents or uses a dwelling unit or a portion thereof, for less than one hundred eighty (180) days and which dwelling unit is not the person's primary residence under the Internal Revenue Code. This definition shall not

apply to nonpaying guests of the family occupying the unit and to patients or clients in health care facilities, full-time students, employees who receive room and/or board as part of their salary or compensation, military personnel, low-income renters receiving rental subsistence from state or federal governments whose rental periods are for durations shorter than sixty days, or overnight accommodations provided by nonprofit corporations or associations for religious, charitable, or educational purposes where no rental income is transacted.

[‘Transient Vacation Rentals’ means rentals in a multi-unit building for visitors over the course of one (1) or more years, with the duration of occupancy less than thirty (30) days for the transient occupant.]

“Transient Vacation Rental” means a single-family or multi-family dwelling unit which is provided over the course of one (1) or more years, to transient occupants for compensation or fees, including club fees, with the duration of occupancy less than one hundred eighty (180) days.

“Single-Family Transient Vacation Rental” means a single-family dwelling unit, other than a bed and breakfast home/operation, which is used as a transient vacation rental.

“Multi-Family Transient Vacation Rental” means a multi-family dwelling unit which is used as a transient vacation rental.

“Visitor Destination Area or VDA” are those areas of Po’ipū, Līhu’e, Wailua-Kapa’a, and Princeville designated as Visitor Destination Areas or located within Time Share Boundaries on County of Kaua’i Zoning maps.”

SECTION 3. Section 8-3.1, Kaua’i County Code 1987, as amended, is hereby amended by adding a new subsection (e) to read as follows:

“(e) To maintain the character and integrity of communities within residential districts and to support residents in continuing to live and raise their families in these neighborhoods.”

SECTION [3.] 4. Section 8-3.3, Kaua’i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-3.3 Generally Permitted Residential Uses And Structures.

(a) The following types of residential uses and structures are permitted in districts R-1, R-2, R-4, and R-6 so long as the dwelling unit limitations established in Sec. 8-3.2 are not exceeded:

- (1) Single-family detached dwellings;
- (2) Accessory structures and uses, including one (1) guest house on a lot or parcel 9,000 square feet or larger;
- (3) Two (2) multiple-family dwelling units or two (2) single-family attached dwelling units upon a parcel of record as of June 30, 1980; and
- (4) Notwithstanding subsection (3) above, multiple family and single family attached dwellings developed pursuant to a Federal, State or County housing program.

(b) Multiple-family and single-family attached dwellings are permitted in districts R-10 and R-20 in addition to those types of residential uses and structures permitted under Subsection (a) above.

(c) Public and private parks and home businesses are permitted in all districts.

(d) Adult Family Boarding and Family Care Homes that comply with all State Department of Social Services and Housing and State Department of Health rules, regulations and requirements provided, however, that the Planning Director may require a use permit for such applications that may create adverse impacts to the health, safety, morals, convenience and welfare of the neighborhood or community that the proposed use is located.

(e) Transient Vacation Rentals and Bed and Breakfast operations within the designated Visitor Destination Areas established pursuant to Article 17 of this Chapter. These uses are prohibited in all non-VDA areas."

[SECTION 4. Section 8-3.4, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-3.4 Uses And Structures In Residential Districts That Require A Use Permit.

The following uses and structures in residential districts require a use permit:

- (1) Botanical and zoological gardens.
- (2) Cemeteries, mortuaries and crematoriums.
- (3) Churches, temples, and monasteries.
- (4) Clubs, lodges and community centers.
- (5) Diversified and specialized agriculture and nurseries.
- (6) Dormitories, guest and boarding houses; but not hotels and motels.
- (7) Golf courses.
- (8) Medical and nursing facilities.
- (9) Museums, libraries and public services and facilities.

(10) Private and public utilities and facilities, other than maintenance and storage of equipment, materials, and vehicles.

(11) Project developments in accordance with Article 18 of this Chapter.

(12) Retail shops and stores.

(13) School and day-care centers.

(14) Transportation terminals and docks.

(15) Three (3) or more -family dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4, or the R-6 District.

(16) Three (3) or more single-family attached dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4 or the R-6 District.

(17) Residential care homes.

(18) Adult Family Group Living Home.

(19) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District.”]

SECTION 5. Section 8-4.3, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-4.3 Generally Permitted Resort Uses And Structures.

The following types of uses and structures are permitted in RR-10 and RR-20 Districts, so long as the dwelling unit limitations established in Sec. 8-4.2 are not exceeded and provided that each use or structure is incidental to or accessory to resort development:

- (1) Accessory structures and uses
- (2) Apartment hotels
- (3) Automobile service and storage
- (4) Barber shop and beauty shop
- (5) Commercial recreation
- (6) Gift shops
- (7) Golf courses
- (8) Home business
- (9) Hotels
- (10) Laundromat
- (11) Libraries
- (12) Motels
- (13) Museums
- (14) Police and fire stations
- (15) Public parks and monuments
- (16) Restaurants and food service
- (17) Retail cleaning outlets
- (18) Retail clothing shops
- (19) Retail food and drug shops
- (20) Shoe repair shops

- (21) Single family detached dwellings
- (22) Transient Vacation Rentals

SECTION 6. Section 8-4.5, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-4.5 Development Standards.

(a) Residential. Subject to the density and acreage limitations in the particular Resort District as provided in Sec. 8-4.2, the standards for the development of single family detached residential structures shall be the same as those provided in Sec. 8-3.1.

(b) Hotels. Buildings containing hotel rooms shall be considered the same as multiple family dwellings subject to the same standards as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:

- (1) there is no maximum distance requirement from buildings containing dwelling units to parking areas;
- (2) only one (1) parking space must be provided for each three (3) hotel rooms;
- (3) the maximum allowable land coverage shall be fifty percent (50%);

No hotel room in a structure containing more than three (3) rooms shall be converted to a dwelling unit without first obtaining a Class IV Zoning Permit.

(c) Motels. Development standards for motels shall be the same as those for multiple family dwellings as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:

- (1) parking spaces must be within one hundred fifty (150) feet of the dwelling unit or motel room served;
- (2) at least one (1) parking space shall be provided for each motel room.

(d) Transient Vacation Rentals. Development standards shall be the same as those for single-family detached dwellings as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:

- (1) only one sign no larger than three (3) square feet shall be permitted.
- (2) no direct illumination of the sign.
- (3) sign shall include the permit number for the operation.
- (4) an owner's name or contact person on-island along with a telephone number shall be filed with the zoning permit.

(5) a "rules of conduct" shall be filed with each zoning permit application. A "rules of conduct" shall be established for each dwelling unit and shall inform the occupants about noise generation in general and in relation to gatherings (not limited to parties, events, and activities.), hours for gatherings, types of

activities allowed, and other important information about the neighborhood to reduce the impacts of the visitor use of the property.

~~[(d)](e)~~ Other Permitted Uses. Parking service, open space and other requirements applicable to each use other than dwelling units shall be the same as the regulations established in the district other than Resort where such uses are permitted and regulated.

~~[(e)](f)~~ Other Requirements. Other requirements for development standards in resort districts are as follows:

(1) The Planning Director or the Planning Commission may revise the requirements if the plan review required for a zoning permit indicates that the specific nature of the overall development reasonably warrants the revisions.

(2) The Planning Commission may require the dedication of adequate public access ways not less than six (6) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development.”

[SECTION 7. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by adding a new Section 8-4.7 to read as follows:

“Sec. 8-4.7 Non-Conforming Use Certificate for Bed and Breakfast Operations.

B&B facilities not in the VDA that obtained Use Permits prior to the effective date of this Ordinance No. (insert number) shall be allowed to continue as a Non-Conforming Use as provided in Section 8-23.2.”]

[SECTION 8. Section 8-4.7, Kaua'i County Code 1987, as amended, is hereby amended by appropriately renumbering the section as “Section 8-4.8.”]

SECTION [9.] 7. Section 8-5.3, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-5.3 Generally Permitted Uses And Structures.

(a) Neighborhood Commercial. The following uses and structures are permitted in neighborhood commercial districts:

- (1) Accessory uses and structures
- (2) Automobile services
- (3) Churches, temples and monasteries
- (4) Clubs, lodges and community centers
- (5) Household services
- (6) Museums, libraries and public services

- (7) Personal services, such as barber shops, laundromats, and shoe repair shops
- (8) Professional offices
- (9) Public parks and monuments
- (10) Retail shops and stores
- (11) Restaurants and food services
- (12) Single family detached dwellings on lots or parcels of no less than six thousand (6,000) square feet, and to a density not to exceed six (6) units per acre.

(13) Transient Vacation Rentals, provided they are located within the designated Visitor Destination Areas established in Article 17 of this Chapter.

(b) General Commercial. The following types of uses and structures are permitted in general commercial districts:

- (1) Accessory uses and structures
- (2) Automobile sales, repair and storage
- (3) Automobile services
- (4) Churches, temples and monasteries
- (5) Clubs, lodges and community centers
- (6) Commercial indoor amusement and parks
- (7) Department stores
- (8) Hotels and motels
- (9) Household services
- (10) Light manufacturing, such as handicrafts and garment fabrication
- (11) Minor food processing, such as cracked seeds, jellies, candies and ice cream
- (12) Museums, libraries and public services
- (13) Offices and professional buildings
- (14) Parking garages
- (15) Personal services
- (16) Public offices and buildings
- (17) Public parks and monuments
- (18) Research and development
- (19) Restaurants and food services
- (20) Retail sales
- (21) Supermarkets and shopping centers

(22) Transient Vacation Rentals, provided they are located within the designated Visitor Destination Areas established in Article 17 of this Chapter.

- ~~[(22)](23)~~ Transportation terminals and docks
- ~~[(23)](24)~~ Warehouses
- ~~[(24)](25)~~ Wholesale outlets”

SECTION [10.] 8. Section 8-5.4, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-5.4 Uses And Structures In Commercial Districts That Require A Use Permit.

(a) Neighborhood Commercial. The following uses and structures in neighborhood commercial districts require a use permit:

- (1) Animal hospitals
- (2) Automobile sales, repair and storage
- [(3) Botanic and zoologic gardens]
- (3) Botanical and zoological gardens
- (4) Communications facilities
- (5) Construction materials storage
- (6) Diversified agriculture
- (7) Food processing and packaging
- (8) Light manufacturing
- (9) Multiple family dwellings and single family attached dwellings
- (10) Private and public utilities and facilities
- (11) Project development in accordance with Article 18 of this Chapter
- (12) Research and development
- (13) Schools and day care centers
- (14) Warehouses
- (15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District.

(b) General Commercial. The following uses and structures in general commercial districts require a use permit:

- (1) Animal hospitals
- (2) Bars
- [(3) Botanic and zoologic gardens]
- (3) Botanical and zoological gardens
- (4) Commercial outdoor amusement
- (5) Communications facilities
- (6) Construction materials storage
- (7) Diversified agriculture
- (8) Food processing and packaging
- (9) Nightclubs and cabarets
- (10) Private and public utilities and facilities
- (11) Project development in accordance with Article 18 of this Chapter.
- (12) Residential dwellings, detached, attached or multi-family
- (13) Schools and day care centers
- (14) Warehouses

(15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the Planning Director.”

[SECTION 11. Section 8-17.1, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-17.1 Limitations On Location.

Except as provided in this section, B&B operations, time share units, time share plans and transient vacation rentals are prohibited.”]

SECTION [12.] 9. Section 8-17.2, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-17.2 Permitted [Time Share] Locations.

Subject to the limitations contained in Sections 8-17.4 and 8-17.5, time share units, time share plans and transient vacation rentals are allowed:

(a) In Hotels in Resort or Commercial Districts; and

(b) In the Resort RR-10 and RR-20 Districts and multi-family R-10 and R-20 Residential Districts when such districts are located within the visitor destination areas of Po'ipū, Līhu'e, Wailua-Kapa'a or Princeville, as more particularly designated on County of Kauai Visitor Destination Area maps attached to Ordinance No. 436 and incorporated herein by reference. The boundary lines established on these visitor destination maps shall be transferred onto the official zoning maps for reference purposes.

(c) Time share units and time share plans are prohibited in the R-1, R-2, R-4 and R-6 Residential Districts.”

SECTION [13.] 10. Section 8-17.5, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-17.5 Existing Uses.

(a) “Existing” shall mean existing as of September 22, 1982.

[(a)] (b) Existing Time Share Units, Time Share Plans and multi-family Transient Vacation Rentals in Projects Not Located in Visitor Destination Areas. Nothing in this Article shall impair the use in a project of an existing time share unit, an existing time share plan, or an existing transient vacation rental when such project is not located within the visitor destination areas described in Section 8-17.2. All such existing time share units, time share plans and multi-family transient vacation rentals in such a project shall be regulated according to the terms, if any, of the project instruments. However, no additional time share units, time share plans, or transient vacation rentals shall be created in such a project after [the effective date of this section,]

September 22, 1982, nor shall the terms of the project instrument be amended or modified after [the effective date of this section] September 22, 1982 in any manner that will allow an increase in the number of time share units, time share plans, or transient vacation rentals within the project. The uses left unimpaired by this subsection shall not be lost by the failure to exercise the use unless it clearly appears that the use has been abandoned for a period in excess of two years. This subsection shall not apply to hotels in Resort or Commercial Districts.

[(b)](c) Existing Time Share Units, Time Share Plans And Transient Vacation Rentals in Projects Located Within Visitor Destination Areas. Time share units and time share plans in existing projects located within the visitor destination areas described in Section 8-17.2 shall be regulated in accordance with the provisions of Section 8-17.4."

SECTION 11. Chapter 8, Article 17, Kaua'i County Code 1987, as amended, is hereby amended by adding the following sections 8-17.8, 8-17.9, 8-17.10, 8-17.11, and 8-17.12 to read as follows:

"Section 8-17.8 Single Family Vacation Rentals.

(a) Notwithstanding any underlying zoning designation and with the exception of properties on the National or State Historic Register, single-family vacation rentals are prohibited in all areas not designated as Visitor Destination Areas, and single-family vacation rentals are permitted uses within Visitor Destination Areas.

(b) Development Standards for Applicants of Nonconforming Use Certificates. Development standards shall be the same as those for single-family detached dwellings in Sections 8-3.5 through 8-3.8, inclusive, with the following additions:

(1) Applicant shall designate and provide the Planning Department and the public with the name of a contact person or owner's representative who shall be available on a 24-hour, 7-days-per-week basis.

(2) Only one sign no larger than 5" x 18" shall be permitted under the house number. Only the Nonconforming Use Certificate Number and the phone number of the 24/7 Contact person shall be permitted on the sign.

(3) There shall be no direct illumination of said sign.

(4) The applicant shall provide a list of requirements and information entitled "For the Safety and Comfort of You and Your Neighbors," which shall be provided to the Planning Department at time of application and shall be posted in a conspicuous location in the transient vacation rental. This list shall include suggested curfews, guidance with respect to

gatherings and noise, and what to do in cases of emergency and natural disasters.

Section 8-17.9 Registration Via Permitting of all Transient Vacation Rentals

(a) All single-family and multi-family transient vacation rentals existing in Visitor Destination Areas at the effective date of this ordinance shall apply for and secure a Class I Zoning Permit no later than twelve (12) months after the effective date of this ordinance. Any new single-family and multi-family transient vacation rental established in Visitor Destination Areas subsequent to the effective date of this law shall apply for and secure a Class I Zoning Permit prior to the operation of said rental.

(b) No single-family transient vacation rental shall operate outside a Visitor Destination Area without a Non-Conforming Use Certificate obtained under Section 8-17.10.

Section 8-17.10 Nonconforming Use Certificates for Single-Family Vacation Rentals.

(a) The purpose of this section is to provide a process for designating those single-family transient vacation rentals which have been in operation legally for at least one year prior to the effective date of this ordinance as nonconforming uses and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section.

(b) The owner, operator, or proprietor of any single-family transient vacation rental which is operating outside of a Visitor Destination Area on the effective date of this ordinance shall, by March 31, 2008, establish to the satisfaction of the director:

(1) that the relevant building was completed with all necessary permits and final inspection completed at least one year prior to the effective date of this ordinance.

(2) that the use was in existence at least one year prior to the effective date of this ordinance.

(3) that there is no outstanding building or zoning violation at the time of application for a NUC.

(4) that all required permits relating to the establishment of said use were secured in a timely manner (i.e., that there were no "after the fact" permits).

(5) that all required taxes were paid in a timely manner, and that the applicant had a State of Hawai'i general excise tax license and a transient accommodations tax license for said year.

(6) that the single-family transient vacation rental is not located on lands zoned or districted "Agriculture," and

(7) that said use has continued legally up to and through the effective date of this ordinance, or shall cease operation.

The owner, operator, or proprietor shall have the burden of proof in establishing that the use is properly nonconforming. The following documentation substantiating existence shall be provided and shall include records of occupancy and tax documents, including all relevant State of Hawai'i general excise tax filings and a tax clearance, all relevant transient accommodations tax filings, and federal and/or State of Hawai'i income tax returns for the relevant time period. Upon a determination that the use was in existence in a proper and legal manner for at least one year prior to the effective date of this ordinance, and has continued up to and through the effective date of this ordinance, the director shall issue a nonconforming use certificate for the single-family transient vacation rental.

(c) Failure to obtain a nonconforming use certificate by March 31, 2008 shall mean that the alleged nonconforming use, as of the effective date of this ordinance, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.

(d) The owner, operator, or proprietor who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate between September 1 and October 15, 2009 and every even-numbered year thereafter.

(1) Each application to renew shall include proof that:

(i) there were in effect a State of Hawai'i 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 for a total of at least 90 days during each such year, and

(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, and

(iii) there has been no transfer of ownership of said property to a non-family member.

(e) Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate.

(f) 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. The nonconforming use certificate obtained under this section shall cease upon sale of the transient vacation rental unit.

Section 18-17.11 Enforcement Against Illegal Single-Family and Multi-Family Transient Vacation Rentals.

(a) The Planning Director or a member of the public may initiate proceedings to revoke a nonconforming use certificate if it can be shown that the applicant intentionally misrepresented a material fact in the application for said certificate, including all attachments to such application;

(b) The Planning Director shall serve written notice of the proposed revocation on the applicant by registered or certified mail with return receipt.

(c) The applicant, may, within thirty (30) days after receipt of the proposed revocation notice, appeal the revocation notice to the Planning Commission per rules promulgated by the Planning Commission.

(d) Any person aggrieved by the decision of the Planning Director in the issuance or denial of a nonconforming use certificate may appeal the Planning Director's action to the Planning Commission. An appeal to the Planning Commission shall stay the provisions of the Planning Director's orders pending final decision of the Planning Commission.

(e) Advertising of any sort which offers a property as a transient vacation rental shall constitute prima facie evidence of the operation of a transient vacation rental on said property and the burden of proof shall be on the owner, operator, or proprietor to establish that the subject property is not being used as a transient vacation rental or that it is being used for such purpose legally. If any unit is found to be operating illegally, penalties established in Section 8-17.6 shall apply. Such advertising shall also constitute probable cause for a search warrant.

Section 18-17.12 Historic Properties Exemption. Single-Family Dwelling Units on the Federal or State Historic Register may be allowed to operate as a transient vacation rental through a use permit and by abiding by the standards of conduct specified herein. Any substantial violation shall be grounds for revocation of the use permit."

SECTION [14.] 12. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Kaua'i County Code 1987, the brackets, bracketed material, and underscoring shall not be included.

SECTION [15.] 13. This ordinance shall take effect upon its approval."

(Material to be deleted is bracketed. New material to be added is underscored.)

3/9/2007 9:05 AM