

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.

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(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.

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(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.

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(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.



**NOT APPROVED**

Section 18-17.12 Historic Properties 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.)

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