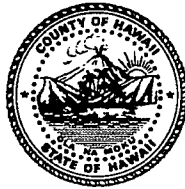


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 147
(Draft 2)

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 2 AND CHAPTER 25 OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO TRANSIENT ACCOMMODATIONS.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Chapter 2, article 7, of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended by adding a section to be appropriately inserted and to read as follows:

"Section 2- . STVR enforcement fund.

- (a) There is established an STVR enforcement fund to be administered by the planning director and funded by all fees, fines, and other monies collected in connection with the administration and enforcement of County transient vacation rental laws, rules, or land use regulations.
- (b) Use of the fund is restricted to expenses and payments that support, expand, improve, or otherwise facilitate enforcement of County transient vacation rental laws, rules, or land use regulations."

SECTION 2. Chapter 25, article 1, section 25-1-5, of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended by deleting from subsection (b) the following definitions:

~~"["Bed and breakfast establishment" means any single family dwellings and/or guest houses (pursuant to section 25-4-9), which have been permitted on a building site, in which overnight accommodations and only breakfast meals are provided to a maximum of ten guests, for compensation, for periods of less than thirty days.]"~~

~~"["Short term vacation rental" means a dwelling unit of which the owner or operator does not reside on the building site, that has no more than five bedrooms for rent on the building site, and is rented for a period of thirty consecutive days or less. This definition does not include the short term use of an owner's primary residence as defined under section 121 of the Internal Revenue Code.]"~~

SECTION 3. Chapter 25, article 1, section 25-1-5, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by adding definitions to be appropriately inserted in subsection (b) and to read as follows:

““Host” means a reachable person who resides in a principal home on the same building site as a hosted TVR while it is rented.”

““Hosted TVR” means a TVR that is located on the same building site as the principal home of a host, whether such establishment is known or advertised as a bed and breakfast or otherwise.”

““TVR” or “transient vacation rental” means a dwelling unit or portion thereof, containing no more than five bedrooms or suites:

(1) That is, or is offered to be, furnished and rented to a transient:

(A) For a rental period less than one hundred and eighty consecutive days;
and

(B) In exchange for money, goods, services, or other consideration; and

(2) Excluding hotels, motels, inns, apartment hotels, boarding facilities, lodges, timeshares, and tents.”

““Un-hosted TVR” means a TVR located on a building site on which a host does not reside while the TVR is being rented, whether such establishment is known or advertised as a short-term vacation rental or otherwise.”

SECTION 4. Chapter 25, article 1, section 25-1-5, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by amending the following definitions in subsection (b) to read as follows:

““Family” means an individual or two or more persons related by blood, state sanctioned adoption, foster parentage, guardianship or marriage, or a group of not more than five unrelated persons [(excluding servants), occupying a] residing in the same dwelling unit. Any renter or guest of a TVR does not fall under this definition.”

““Reachable” means being able to:

(1) Respond via telephone to a request or message from a guest, neighbor, or County agency within one hour of receiving [that] the request[;] or message;
and

(2) Be physically present at [the short-term vacation rental] a TVR within three hours of receiving a [call] request to do so from a guest, neighbor, or County agency[, when that guest, neighbor, or County agency requests the presence of the reachable person].”

SECTION 5. Chapter 25, article 2, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by adding a division to be appropriately inserted and to read as follows:

“Division . Violations, Penalties, Enforcement; Transient Vacation Rentals.

Section 25-2- . TVR enforcement; administrative provisions.

- (a) Upon determining that a TVR is in violation of any provision of this chapter, the director may assess an administrative fine for each day in which the violation persists in an amount no greater than twice the highest daily rate at which the TVR has been advertised in the preceding twelve months added to the following:
- (1) \$5,500 for the first violation;
 - (2) \$7,500 for the second violation; and
 - (3) \$10,000 for any subsequent violation.
- (b) In all respects not otherwise provided for, an enforcement action under this section is subject to and must be made in accordance with section 25-2-35.

Section 25-2- . TVR enforcement; prima facie evidence.

- (a) A determination that a TVR is in violation of any provision of this chapter may be made on the basis of any of the following prima facie evidence:
- (1) An active rental advertisement of the property;
 - (2) The fact that the property may be booked or reserved through a booking service;
 - (3) Transient accommodations tax returns; or
 - (4) Other information reported by a third party which the County may contract with to provide transient vacation rental information.
- (b) The burden of proof is on the owner to establish either that the property is not being used as a transient vacation rental or that it is being used for such purpose legally.”

SECTION 6. Chapter 25, article 4, division 1, sections 25-4-7, 25-4-16, 25-4-16.1, 25-4-16.2, and 25-4-16.3, of the Hawai‘i County Code 1983 (2016 Edition, as amended) are hereby repealed.

SECTION 7. Chapter 25, article 4, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by adding a division to be appropriately inserted and to read as follows:

“Division . Use Regulations; Transient Vacation Rentals.

Section 25-4-A. Applicability.

This division does not apply to any accommodation, lease, letting, or rental activity that is:

- (1) Exempt from the Hawai‘i Revised Statutes, chapter 237D;
- (2) Subject to the Residential Landlord-Tenant Code, Hawai‘i Revised Statutes, chapter 521;

- (3) Furnished to a health care worker temporarily employed at a medical facility in the County; or
- (4) Authorized by a declaration of a state of emergency.

Section 25-4-B. Hosted TVRs; where permitted.

A hosted TVR is permitted in the following zoning districts:

- (1) RS, RD, RM, RCX, V, CN, CG, CV, CDH, and PD; and
- (2) Any agricultural district, other than IA, that is wholly situated within:
 - (A) The State land use urban or rural district; or
 - (B) The State land use agricultural district, provided that:
 - (i) There is no farm dwelling on the building site; or
 - (ii) If there is a farm dwelling on the building site, the farm dwelling is also the principal home of the host, in which case, a special permit is required.

Section 25-4-C. Un-hosted TVRs; where permitted; nonconforming use certificate.

(a) An un-hosted TVR is permitted in the following zoning districts:

- (1) V, CG, CV, and CDH;
 - (2) CN or any residential district, provided that the building site is wholly situated within any of the following:
 - (A) A Resort or Resort Node area, as designated in the General Plan; or
 - (B) An area designated as Open in the General Plan that is adjacent to an area identified in subparagraph (A) and that is located along the shoreline;
 - (3) A project district, where consistent with the uses allowed in the underlying zoning district; and
 - (4) RM, situated outside of the area described in paragraph (2), provided that plan approval for the dwelling used as the un-hosted TVR was issued prior to the effective date of this ordinance.
- (b) In any district or area not identified in subsection (a), an un-hosted TVR may operate:
- (1) With a nonconforming use certificate issued pursuant to Ordinance No. 18-114; or
 - (2) With a use permit, provided that:
 - (A) At any time between April 1, 2019, and the effective date of this ordinance, the building site was in use as an STVR available exclusively for rental periods more than thirty days and less than one hundred eighty days; and
 - (B) If situated within the State land use agricultural district, the building site was created prior to June 4, 1976.
- (c) In the event that the director, pursuant to section 6-52 of this Code, cancels the TVR registration of a TVR operating under a nonconforming use certificate, such cancellation shall also cause and constitute revocation of the nonconforming use certificate.
- (d) An un-hosted TVR operating under a nonconforming use certificate may increase the number of bedrooms available to rent; provided that the number of rooms

available to rent does not exceed five and that the owner registers the change with the director.

- (e) An un-hosted TVR permitted under subsection (b)(2) may not be rented for a rental period of thirty days or less.

Section 25-4-D. General provisions.

- (a) Use of a TVR, including the structure or dwelling, the rental activity, and any other activity on the property in connection therewith, must be done in accordance with the provisions of this division and is subject to chapter 6, article 7, of this Code.
- (b) The owner and, if applicable, the host of a TVR are responsible for compliance with the provisions of this division.
- (c) Except where otherwise provided or allowed by a use permit or special permit, use of a TVR is subject to the operational standards set forth in this division. In the case of a conflict between the operational standards set forth in this division and the conditions of a use permit or special permit regulating the rental activity of a TVR, the latter shall control.
- (d) A building site is limited to one TVR; except that, in the case of a building site governed as a condominium property regime under the Hawai'i Revised Statutes, chapter 514B, each condominium unit is limited to one TVR.
- (e) A tent may not be used as a TVR.
- (f) An additional farm dwelling may not be used as a TVR.

Section 25-4-E. Operational standards; responsible management.

- (a) The owner of a TVR shall keep conspicuously posted in a manner visible or accessible within the TVR the following information:
 - (1) A copy of the TVR registration issued under chapter 6, article 7, of this Code and any applicable nonconforming use certificates;
 - (2) A copy of the operational standards set forth in this division;
 - (3) The name, phone number, and e-mail of the host or other reachable person;
and
 - (4) Emergency and hazard information, including:
 - (A) A notification stating that routine testing of the civil defense emergency siren system occurs monthly;
 - (B) Evacuation routes for the location of the TVR;
 - (C) Contact information for the civil defense agency, Hawai'i fire department, and police department; and
 - (D) Other information as the director may require.
- (b) A host shall reside in a dwelling on the same building site as the hosted TVR during rental operations. A hosted TVR shall be subordinate and incidental to the use of the building site as the principal home of the host.
- (c) In the case of an un-hosted TVR, the reachable person shall:
 - (1) Respond via telephone to a request or message from a guest, neighbor, or County agency within one hour of receiving the request or message; and
 - (2) Be physically present at the un-hosted TVR within three hours of receiving a request to do so from a guest, neighbor, or County agency.

Section 25-4-F. Operational standards; good neighbor policy.

- (a) Unless established otherwise by the director, the renter limit for adult occupants in a TVR is the lesser of:

 - (1) Twelve; or
 - (2) Twice the number of bedrooms available for rent plus two.
- (b) The number of individuals who may gather at a TVR at the same time may not exceed twice the applicable renter limit of the TVR.
- (c) Any gathering at a TVR must be consistent with activities of a residential nature or character, such as a picnic, family dinner, birthday party, or fitness activity.
- (d) Breakfast may not be served or offered, whether or not in exchange for payment, to any person at a hosted TVR, except a registered guest.
- (e) A guest or renter of a TVR may not use it for a wedding, wedding reception, concert, or other special event.
- (f) Quiet hours shall be from 10:00 p.m. to 8:00 a.m., during which time any noise from a TVR may not disturb neighbors. During all other times, any noise from a TVR may not exceed the standards set forth in title 11, chapter 46, of the Hawai'i Administrative Rules.
- (g) In the case of an un-hosted TVR, the rental of individuals bedrooms, such that multiple renters can rent different bedrooms within the un-hosted TVR at the same time, is prohibited.
- (h) A guest vehicle at a TVR must be parked within the designated on-site parking area.

Section 25-4-G. Operational standards; advertising and signage.

- (a) Any advertising of a TVR, including signage or other public listing of a TVR as available for rent, whether in print or an electronic format, must include the TVR registration number issued under section 6-49.
- (b) No person may advertise a TVR as a venue for weddings, wedding receptions, concerts, or other special events.
- (c) Signage associated with a TVR must comply with section 22-2.6 and chapter 3 of this Code.
- (d) The street address of a TVR must be visible from the street used to access the TVR.
- (e) A hosted TVR may be advertised as a bed and breakfast."

SECTION 8. Chapter 25, article 2, division 6, section 25-2-61, of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended by striking from subsection (a) the paragraph reading "Bed and breakfast establishments in RS, RA, FA, and A districts, provided that the property is within the state land use urban district."

SECTION 9. Chapter 25, article 4, division 5, section 25-4-51, of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended by striking the paragraph reading "Bed and breakfast establishments: one for each guest bedroom, in addition to one for the dwelling unit."

SECTION 10. Chapter 25, article 5, division 1, section 25-5-3, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by striking from subsection (b) the paragraph reading “Bed and breakfast establishments as permitted under section 25-4-7.”.

SECTION 11. Chapter 25, article 5, division 1, section 25-5-3, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by adding a paragraph to be appropriately inserted in subsection (a) and to read as follows:

“() Hosted TVRs.”

SECTION 12. Chapter 25, article 5, division 2, section 25-5-22, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by striking from subsection (a) “Bed and breakfast establishments as permitted under section 25-4-7.” and inserting “Hosted TVRs.” in lieu thereof.

SECTION 13. Chapter 25, article 5, division 3, section 25-5-32, division 4, section 25-5-42, division 9, section 25-5-92, division 10, section 25-5-102, division 11, section 25-5-112, division 12, section 25-5-122, and article 7, division 2, section 25-7-22, of the Hawai‘i County Code 1983 (2016 Edition, as amended) are amended by striking from each respective subsection (a) “Bed and breakfast establishments, as permitted under section 25-4-7.” and inserting “Hosted TVRs.” in lieu thereof.

SECTION 14. Chapter 25, article 5, division 5, section 25-5-52, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by striking from subsections (c) and (d) the paragraph reading “Bed and breakfast establishments, as permitted under section 25-4-7.”.

SECTION 15. Chapter 25, article 5, division 5, section 25-5-52, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by adding a paragraph to be appropriately inserted in subsection (a) and to read as follows:

“() Hosted TVRs, as permitted under section 25-4-B.”

SECTION 16. Chapter 25, article 5, division 6, section 25-5-62, and division 7, section 25-5-72, of the Hawai‘i County Code 1983 (2016 Edition, as amended) are amended by striking from each respective subsection (c) and (d) the paragraph reading “Bed and breakfast establishments, as permitted under section 25-4-7.”.

SECTION 17. Chapter 25, article 5, division 6, section 25-5-62, and division 7, section 25-5-72, of the Hawai‘i County Code 1983 (2016 Edition, as amended) are amended by adding in each respective subsection (a) and (c) a paragraph to be appropriately inserted and to read as follows:

“() Hosted TVRs, as permitted under section 25-4-B.”

SECTION 18. Chapter 25, article 5, division 1, section 25-5-3, division 2, section 25-5-22, division 4, section 25-5-42, and division 10, section 25-5-102, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by striking from each respective subsection (a) “Short-term vacation rentals situated in the general plan resort and resort node areas.” and inserting “Un-hosted TVRs, as permitted under section 25-4-C.” in lieu thereof.

SECTION 19. Chapter 25, article 5, division 3, section 25-5-32, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by amending subsection (a) to read as follows:

“(a) The following uses shall be permitted in the RM district:

- (1) Adult day care homes.
- (2) Apiaries.
- (3) Bed and breakfast establishments, as permitted under section 25-4-7.
- (4) Boarding facilities, rooming, or lodging houses.
- (5) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
- (6) Commercial or personal service uses, on a small scale, as approved by the director, provided that the total gross floor area does not exceed one thousand two hundred square feet and a maximum of five employees.
- (7) Crop production.
- (8) Dwellings, double-family or duplex.
- (9) Dwellings, multiple-family.
- (10) Dwellings, single-family.
- (11) Family child care homes.
- (12) Group living facilities.
- (13) Home occupations, as permitted under section 25-4-13.
- (14) Household henneries, as permitted under section 25-4-18.
- (15) Meeting facilities, as permitted under section 25-4-17.
- (16) Model homes, as permitted under section 25-4-8.
- (17) Neighborhood parks, playgrounds, tennis courts, swimming pools, and similar neighborhood recreational areas and uses.
- (18) Public uses and structures, as permitted under section 25-4-11.
- ~~[(19) Short-term vacation rentals situated in any of the following:~~
 - ~~(A) General plan resort and resort node areas.~~

- (B) ~~Outside the general plan resort and resort node areas, in multiple family dwellings within a condominium property regime as defined and governed by chapters 514A or 514B, Hawai'i Revised Statutes.]~~
- ~~[(20)]~~ (19) Telecommunication antenna and towers, as permitted under section 25-4-12.
- ~~[(21)]~~ (20) Temporary real estate offices, as permitted under section 25-4-8.
- ~~[(22)]~~ (21) Time share units situated in any of the following:
- (A) Areas designated as resort under the general plan land use pattern allocation guide (LUPAG) map.
 - (B) Areas determined by the director to be within resort areas identified by the general plan land use element, except for retreat resort areas.
 - (C) Areas determined for such use by the council, by resolution.
- (22) Un-hosted TVRs, as permitted in section 25-4-C.
- (23) Utility substations, as permitted under section 25-4-11."

SECTION 20. Chapter 25, article 5, division 9, section 25-5-92, division 11, section 25-5-112, and division 12, section 25-5-122, of the Hawai'i County Code 1983 (2016 Edition, as amended) are amended by striking from each respective subsection (a) "Short-term vacation rentals." and inserting "Un-hosted TVRs." in lieu thereof.

SECTION 21. Chapter 25, article 7, division 2, section 25-7-22, of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended by adding a paragraph to be appropriately inserted in subsection (a) and to read as follows:

"() Un-hosted TVRs."

SECTION 22. Notwithstanding any provision of law or rule to the contrary, with respect to any special permit application for a hosted TVR filed before September 1, 2027:

- (1) The planning director is not required to accept the application within fifteen days;
- (2) The leeward or windward planning commission is not required to commence a public hearing on the application within ninety days of acceptance; and
- (3) The applicant is exempt from sign posting requirements in connection with the special permit application.

SECTION 23. If deemed necessary by the planning director to allow affected persons adequate time to enter into compliance with this ordinance, the planning director may delay enforcement against any violation of this ordinance on the basis of a dwelling or portion thereof used as a TVR that is not duly permitted under chapter 5, 5A, 5B, 5C, 5D, 5E, or 5F for a period not to exceed December 31, 2027.

SECTION 24. Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

SECTION 25. Severability. If any provision of this ordinance, or the application hereof to any taxpayer or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 26. This ordinance shall take effect upon its approval.

INTRODUCED BY:



HEATHER KIMBALL
Council Member

_____, Hawai'i
Date of Introduction:
Date of 1st Reading:
Date of 2nd Reading:
Effective Date:

REFERENCE Comm. 806.15