



ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 25, ARTICLE 1, ARTICLE 2, ARTICLE 4, AND ARTICLE 5, OF THE HAWAI‘I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO SHORT-TERM VACATION RENTALS.

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

SECTION 1. Findings and Purpose. The short-term rental of residential units, as an alternative to traditional resort and hotel accommodations, is an emerging trend in the visitor industry that continues to grow in popularity.

The purpose of this ordinance is to manage the impacts of these short-term vacation rentals by: 1) defining where this use will be allowed; 2) establishing provisions and standards to regulate this use; and 3) providing an avenue for an existing use deemed to be improper by this ordinance, to apply for a nonconforming use certificate that would allow them to continue to operate in a non-permitted district.

SECTION 2. Chapter 25, article 4, division 1, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by adding the following new sections to be appropriately designated and to read as follows:

“Section 25-4- . Short-term vacation rentals.

- (a) Short-term vacation rentals; where permitted, specific prohibitions.
 - (1) Short-term vacation rentals shall be permitted in the:
 - (A) V, CG, and CDH districts;
 - (B) CV district, provided that a use permit is obtained for each use; and
 - (C) General Plan Resort areas and Resort Node, except that RS districts in the General Plan Resort areas and Resort Node shall require a use permit.
 - (2) Private covenants prohibiting use of any unit as a short-term vacation rental shall not be invalidated by this chapter.
- (b) Registration of all short-term vacation rentals.
 - (1) Short-term vacation rentals in existence on or before the effective date of this ordinance:
 - (A) Shall register with the planning department and pay a one-time fee of \$250 to the director of finance, if they exist within the following zoning districts:

- (i) The V, CG, and CDH; or
 - (ii) The general plan resort areas and resort node, in any district other than RS.
 - (B) The registration form and associated fee shall be submitted to the planning department no later than one hundred eighty days after the effective date of this ordinance.
- (2) Any new short-term vacation rental established in a zoning district after the effective date of this ordinance, where such use is permissible pursuant to this section, shall register with the director and pay a one-time fee of \$250 prior to use of such rental.
- (3) Owners of short-term vacation rentals shall register by submitting a form to the planning department in a format prescribed by the director. The registration form, at a minimum, shall require:
 - (A) Verification that State of Hawai'i general excise tax and transient accommodations tax licenses are in effect;
 - (B) Certification that the requisite amount of parking pursuant to section 25-4-51, is available;
 - (C) Submittal of a site plan showing the location of the rooms for rent and requisite parking; and
 - (D) Verification that notification letters have been sent to all owners and lessees of record of all lots of which any portion is within three hundred feet of any point along the perimeter boundary of the short-term vacation rental property. The notification letter shall provide detailed information about the short-term vacation rental operation including: number of units being rented; maximum number of guests permitted; number and location of required parking spaces; and instructions on how to submit complaints to the planning department about the subject rental operation.
- (4) Owners of short-term vacation rentals shall notify the director when a short-term vacation rental establishment ceases to operate for any reason.
- (5) Upon change in ownership, the new owner shall notify the director forthwith of the change in ownership and provide contact information for the reachable person. Registration shall automatically continue, subject to termination by the new owner.
- (6) Any short-term vacation rental that has not lawfully registered within the deadlines set forth in this section shall be considered an unpermitted use and subject to the penalties set forth in this chapter until such time proper registration and compliance with applicable requirements of this section is obtained.

(c) Standards.

All short-term vacation rentals shall be subject to the following standards:

- (1) The owner or reachable person shall reside in the County of Hawai'i and shall be reachable by guests, neighbors, and County

agencies on a twenty-four hour, seven days-per-week basis. The owner shall notify the planning department of any changes to their contact information forthwith.

- (2) Good neighbor policy. The owner or reachable person shall be responsible to ensure that activities taking place within the short-term vacation rental conform to the character of the existing neighborhood in which the rental is located. At a minimum, the following shall be prominently displayed within the dwelling unit and recited in the rental agreement signed by the tenant:
 - (A) Quiet hours shall be from 9:00 p.m. to 8:00 a.m., during which time the noise from the short-term vacation rental shall not unreasonably disturb adjacent neighbors.
 - (B) Sound that is audible beyond the property boundaries during non-quiet hours shall not be more excessive than would be otherwise associated with a residential area.
 - (C) Sound generated by any machine or device that is audible at a distance of fifty feet from the machine or device producing the sound is prohibited.
 - (D) Guest vehicles shall be parked in the designated onsite parking area.
- (3) All print and internet advertising of short-term vacation rentals, including listings with a rental service or real estate firm, shall include the registration or nonconforming use certificate number.
- (4) A copy of the registration or nonconforming use certificate, as well as the reachable person's name and phone number, shall be displayed in the back of the front door of the sleeping quarters.
- (5) Off-street parking shall meet the requirements set forth in section 25-4-51(a)(8) and applicable parking standards in this chapter.
- (6) Any commercial signage that advertises a short-term vacation rental shall comply with the requirements of section 22-2.6 and chapter 3 of this Code.

(d) Complaints and public information.

- (1) The director shall:
 - (A) Receive and track complaints regarding short-term vacation rentals; and
 - (B) Provide information about rules, policies, and procedures pertaining to short-term vacation rentals to property owners, managers, neighbors, and the general public.
- (2) The director shall adopt rules, in accordance with chapter 91, Hawai'i Revised Statutes, for the purpose of implementing this subsection.

(e) Director duties in event of emergency.

In the event of a declared emergency, natural or manmade, where a significant number of nonconforming short-term vacation rentals are permanently lost within any given judicial district, the director shall assess

the effect of such loss upon the affected district and if deemed necessary, initiate legislative and administrative opportunities to restore such loss in short term vacation rental capacity within the district of origin.

Section 25-4- .1. Short-term vacation rental nonconforming use certificate.

- (a) The owner of any short-term vacation rental which operated outside of a permitted zoning district prior to the effective date of this ordinance shall submit an application for a nonconforming use certificate to the director no later than one hundred eighty days after the effective date of this ordinance.
- (b) Prior Use. The applicant seeking a short-term vacation rental nonconforming use certificate shall have the burden of proof in establishing that the property was in use prior to the effective date of this ordinance. Evidence of such use prior to the effective date of this ordinance may include tax documents for the relevant time period, including: State of Hawai‘i general excise tax filings; transient accommodations tax filings; and federal and State of Hawai‘i income tax returns. Other reliable information may also be provided. Based on the evidence submitted, the director shall determine whether to issue a short-term vacation rental nonconforming use certificate for the short-term vacation rental.
- (c) Agricultural lands. A short-term vacation rental nonconforming use certificate may be issued for single-family dwellings on lots existing before June 4, 1976 located in the State land use agricultural district.
- (d) Display. Current short-term vacation rental nonconforming use certificates shall be displayed in a conspicuous place on the premises that is readily visible to an inspector. 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, readily visible common area instead.
- (e) Annual renewal. Nonconforming use certificates must be renewed every year on or before the expiration date indicated on the certificate. At the time of renewal the applicant shall pay a renewal fee of \$250 to the director of finance.
- (f) Denial.
 - (1) Renewal of a nonconforming use certificate shall be denied if the director finds that the short-term vacation rental use has been abandoned pursuant to section 25-4-62.
 - (2) Renewal may be denied if the director verifies any of the following:
 - (A) The applicant has violated provisions of this section or other pertinent laws:

- (B) The owner is delinquent in payment of County taxes, fees, fines, or penalties assessed in relation to the short-term vacation rental;
 - (C) The owner or reachable person has not been reachable; or
 - (D) Police reports or verified neighbor complaints of noise and other disturbances relating to the short-term vacation rental operations.
- (g) The decision by the director to deny renewal of a nonconforming use certificate shall require written notice to the property owner.
- (h) Appeal. Within thirty days after the receipt of the notice, the owner may appeal to the board of appeals as provided by section 6-9.2, County Charter and sections 25-2-20 through 25-2-24.

Section 25-4- .2. Prima facie evidence; short-term vacation rentals.

Advertising of any sort that offers a property as a short-term vacation rental shall constitute prima facie evidence that a short-term vacation rental is operating on that property. The burden of proof shall be on the owner or operator to establish either that the property is not being used as a short-term vacation rental or that it is being used for such purpose legally.

Section 25-4- .3 Short-term vacation rental enforcement account.

- (a) Pursuant to section 10-12, Hawai'i County Charter, a special fund to be known as the "short-term vacation rental enforcement fund" is created. This fund shall be administered by the director.
- (b) The purpose of the fund is to support efforts to enforce the County's short-term vacation rental law.
- (c) This account shall be funded by fees, collected in connection with: one-time registration fees for short-term vacation rentals pursuant to section 25-4 .(b); nonconforming use certificate renewal application fees pursuant to section 25-4 .1.(e); and fines.
- (d) The funds in this account shall be utilized to pay for expenses that facilitate enforcement of the County's short-term vacation rental enforcement law."

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 new definitions to be appropriately inserted and to read as follows:

““Reachable” means being able to respond via telephone to a request from a guest, neighbor, or County agency for his or her presence within one hour of receiving that request and be physically present at the short term vacation rental within three hours of receiving a call from a guest, neighbor, or County agency, when that guest, neighbor, or County agency requests the presence of the reachable person.”

““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 shall not apply to the short-term use of an owner’s primary residence as defined under the Internal Revenue Code.”

SECTION 4. Chapter 25, article 2, division 3, section 25-2-30, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

“Section 25-2-30. Violations.

Any approval or permit issued pursuant to the provisions of this chapter shall comply with all applicable requirements of this chapter. Failure to comply with any provision of this chapter, any rule adopted pursuant to this chapter, or with conditions imposed as part of any approval [or], permit, [including variances] or variance from the provisions of this chapter, shall constitute a violation of this chapter.”

SECTION 5. Chapter 25, article 2, division 6, section 25-2-61, 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 within designated County zoning districts only if a use permit is obtained for the use from the commission:
- (1) Bed and breakfast establishments in RS, RA, FA, and A districts, provided that the property is within the state land use urban district.
 - (2) Crematoriums, funeral homes, funeral services and mortuaries in RS, RD, RM, RCX, RA, FA, A and V districts.
 - (3) Churches, temples and synagogues, including meeting facilities for churches, temples, synagogues and other such institutions, in RS, RD, RM, RA, FA and A districts; provided that a minimum building site area of ten thousand square feet is required within the RS, RD, RM, and RA districts.
 - (4) Day care centers in RS, RD, RM, RA, FA and A districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, and RA districts.

- (5) Golf courses and related golf course uses including golf driving ranges, golf maintenance buildings, and golf club houses in the RS, RD, RM, RCX, RA, FA, A, V, CG, CV, and O districts, provided that the property is within the state land use urban or rural district. Golf courses and golf driving ranges shall not be permitted within the state land use agricultural district unless approved by the County before July 1, 2005.
- (6) Group living facilities that exceed the criteria in subsection 25-1-5(b), paragraph (b) of the definition of “group living facility” in the RS, RD, RM, RCX, RA, FA, A, CN, CG, CV, and V districts.
- (7) Hospitals, sanitariums, old age, convalescent, nursing and rest homes, and other similar uses devoted to the care or treatment of the aged, the sick, or the infirm in the RS, RD, RM, RCX, RA, FA, A, and V districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, RCX and RA districts.
- (8) Major outdoor amusement and recreation facilities in RS, RD, RM, RCX, RA, A, CN, CG, CV, MCX, ML, MG and O districts.
- (9) Schools in RS, RD, RM, RA, FA, A, V, MCX, ML, and MG districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, and RA districts.
- (10) Short-term vacation rentals in the RS district in the general plan resort and resort node and in the CV district.
- (11) Telecommunication antennas and towers in RS, RD, RM, RCX, RA, FA, A, IA and O districts.
- ~~[(11)]~~(12) Yacht harbors and boating facilities in the RS, RD, RM, RCX, RA, V, CG, CV, MCX, ML, MG and O districts.
- ~~[(12)]~~(13) Wind energy facilities in the O district; provided that the property is within the state land use agricultural district.
- ~~[(13)]~~(14) Other unusual and reasonable uses which are not specifically permitted in any zoning district with the approval of the director and the concurrence of the council by resolution.”

SECTION 6. Chapter 25, article 5, division 1, section 25-5-3, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (b) to read as follows:

- “(b) In addition to those uses permitted under subsection (a) above, the following uses may be permitted in the RS district, provided that a use permit is issued for each use:
- (1) Bed and breakfast establishments as permitted under section 25-4-7.
 - (2) Care homes.
 - (3) Churches, temples and synagogues.
 - (4) Crematoriums, funeral homes, funeral services, and mortuaries.
 - (5) Day care centers.
 - (6) Golf courses and related golf course uses, including golf driving ranges, golf maintenance buildings and golf club houses, provided that the property is within the state land use urban or rural district. Golf courses and golf driving

ranges shall not be permitted within the state land use agricultural district unless approved by the County before July 1, 2005.

- (7) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.
- (8) Major outdoor amusement and recreation facilities.
- (9) Schools.
- (10) Short-term vacation rentals in the general plan resort and resort node.

- (11) Telecommunication antennas and towers.
- ~~(11)~~(12) Yacht harbors and boating facilities.”

SECTION 7. Chapter 25, article 5, division 12, section 25-5-122, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (b) to read as follows:

- “(b) In addition to those uses permitted under subsection (a) above, the following uses may be permitted in the CV district, provided that a use permit is issued for each use:
- (1) Golf courses and related golf course uses, including golf driving ranges, golf maintenance buildings and golf club houses, provided that the property is within the state land use urban or rural district. Golf courses and golf driving ranges shall not be permitted within the state land use agricultural district unless approved by the County before July 1, 2005.
 - (2) Major outdoor amusement and recreation facilities.
 - (3) Short-term vacation rentals.
 - (4) Yacht harbors and boating facilities.”

SECTION 8. Chapter 25, article 5, division 9, section 25-5-92, 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 V district:
- (1) Adult day care homes.
 - (2) Amusement and recreational facilities, indoor.
 - (3) Art galleries, museums.
 - (4) Automobile service stations.
 - (5) Bars, night clubs and cabarets.
 - (6) Bed and breakfast establishments, as permitted under section 25-4-7.
 - (7) Business services.
 - (8) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
 - (9) Churches, temples, and synagogues.
 - (10) Commercial parking lots and garages.
 - (11) Community buildings, as permitted under section 25-4-11.
 - (12) Day care centers.
 - (13) Dwellings, double-family or duplex.

- (14) Dwellings, multiple-family.
- (15) Dwellings, single-family.
- (16) Family child care homes.
- (17) Financial institutions.
- (18) Group living facilities.
- (19) Home occupations, as permitted under section 25-4-13.
- (20) Hotels.
- (21) Lodges.
- (22) Medical clinics.
- (23) Meeting facilities.
- (24) Major outdoor amusement and recreation facilities.
- (25) Model homes, as permitted under section 25-4-8.
- (26) Parks, playgrounds, tennis courts, swimming pools, and other similar open area recreational facilities.
- (27) Personal services.
- (28) Photography studios.
- (29) Public uses and structures, as permitted under section 25-4-11.
- (30) Restaurants.
- (31) Retail establishments.
- (32) Short-term vacation rentals.
- ~~[(32)]~~(33) Telecommunication antennas, as permitted under section 25-4-12.
- ~~[(33)]~~(34) Temporary real estate offices, as permitted under section 25-4-8.
- ~~[(34)]~~(35) Theaters.
- ~~[(35)]~~(36) Time share units.
- ~~[(36)]~~(37) Utility substations, as permitted under ~~[Section]~~ section 25-4-11.
- ~~[(37)]~~ (38) Visitor information centers.”

SECTION 9. Chapter 25, article 5, division 11, section 25-5-112, 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 uses in the CG district:
- (1) Adult day care homes.
 - (2) Amusement and recreation facilities, indoor.
 - (3) Art galleries, museums.
 - (4) Art studios.
 - (5) Automobile service stations.
 - (6) Automobile sales and rentals.
 - (7) Bars, nightclubs and cabarets.
 - (8) Bed and breakfast establishments, as permitted under section 25-4-7.
 - (9) Boarding facilities, rooming, or lodging houses, provided that the maximum density shall be one thousand two hundred fifty square feet of land area per rentable unit or dwelling unit.
 - (10) Broadcasting stations.
 - (11) Business services.

- (12) Car washing, provided that if it is mechanized, sound attenuated structures or sound attenuated walls shall be erected and maintained on the property lines.
- (13) Catering establishments.
- (14) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
- (15) Churches, temples and synagogues.
- (16) Cleaning plants using only nonflammable hydrocarbons in a sealed unit as the cleansing agent.
- (17) Commercial parking lots and garages.
- (18) Community buildings, as permitted under section 25-4-11.
- (19) Convenience stores.
- (20) Crematoriums, funeral homes, funeral services, and mortuaries.
- (21) Crop production.
- (22) Day care centers.
- (23) Display rooms for products sold elsewhere.
- (24) Dwellings, double-family or duplex, provided that the maximum density shall be one thousand two hundred fifty square feet of land area per rentable unit or dwelling unit.
- (25) Dwellings, multiple-family, provided that the maximum density shall be one thousand two hundred fifty square feet of land area per rentable unit or dwelling unit.
- (26) Dwellings, single-family.
- (27) Equipment sales and rental yards, and other yards where retail products are displayed in the open.
- (28) Family child care homes.
- (29) Farmers markets. When the vending activity in a farmers market involves more than just the sale of local fresh and/or raw produce, plant life, fish and local homegrown and homemade products for more than two days a week, the director, at the time of plan approval, shall restrict the hours of use, maintenance and operations and may require improvements as determined appropriate to ensure its compatibility with the existing character of the surrounding area.
- (30) Financial institutions.
- (31) Group living facilities.
- (32) Home occupations, as permitted under section 25-4-13.
- (33) Hospitals, sanitariums, old age, convalescent, nursing and rest homes and other similar uses.
- (34) Hotels.
- (35) Ice storage and dispensing facilities.
- (36) Laboratories, medical and research.
- (37) Laundries.
- (38) Light manufacturing, processing and packaging, where the only retail sales outlet for products produced is on the premises where produced.
- (39) Medical clinics.
- (40) Meeting facilities.
- (41) Model homes, as permitted under section 25-4-8.

- (42) Neighborhood parks, playgrounds, tennis courts, swimming pools, and similar neighborhood recreational areas and uses.
- (43) Offices.
- (44) Personal services.
- (45) Photography studios.
- (46) Public uses and structures, as permitted under section 25-4-11.
- (47) Printing shops, cartographing and duplicating processes such as blueprinting or photostating shops.
- (48) Repair establishments, minor.
- (49) Restaurants.
- (50) Retail establishments.
- (51) Schools.
- (52) Short-term vacation rentals.
- ~~[(52)]~~(53) Telecommunication antennas, as permitted under section 25-4-12.
- ~~[(53)]~~(54) Theaters.
- ~~[(54)]~~(55) Time share units.
- ~~[(55)]~~(56) Utility substations, as permitted under section 25-4-11.
- ~~[(56)]~~(57) Veterinary establishments.”

SECTION 10. 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 11. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, 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.

SECTION 12. This ordinance shall take effect upon approval.

INTRODUCED BY:

Karen Gott ^{LC}_{FOR}
COUNCIL MEMBER, COUNTY OF HAWAII

Don Kama ^{LC}_{FOR}
COUNCIL MEMBER, COUNTY OF HAWAII

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

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