

## SUMMARY OF TRANSIENT VACATION RENTAL ORDINANCES IN HAWAII

The following is a summary of transient vacation rental bills from other Counties in the State of Hawaii.

### Hawaii County Code:

1. There are currently no ordinances regulating transient vacation rentals.

### Maui County Code:

1. Transient vacation rentals are allowed:
  - a. If the transient vacation rentals were in operation and registered pursuant to HRS Chapter 514E on the effective date of the ordinance (1989), or
  - b. In a hotel district provided such use is explicitly and prominent authorized by the project instrument. Project instrument is a document(s) containing restrictions or covenants regulating the use or occupancy of a project.
    - i. Project is defined as property that is subject to project instruments, including but not limited to, condominiums and cooperative housing corporations.
  - c. If the project in which a transient vacation rental is to be created is not a hotel and does not contain a transient vacation rental, then such use may be created only if such use is explicitly and prominently authorized by the project instrument or the project instrument is amended by unanimous vote of the unit owners to explicitly and prominently authorize the transient vacation rental, or
  - d. Applies for a conditional permit (this has posed a problem for the County of Maui).

### City and County of Honolulu:

1. Transient vacation rental is 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.

In all other areas, transient vacation rentals are prohibited unless a nonconforming use certificate is granted.

2. The owner of a transient vacation rental may obtain a nonconforming use certificate by establishing to the satisfaction of the Director that the use
  1. Was in existence prior to October 22, 1986; and,
  2. Has continued through December 28, 1989
- b. Owner of transient vacation rental was required to file within 9 months of December 29, 1989 (i.e., no later than September 29, 1990).
- c. Burden of proof is on the owner of the transient vacation rental.
- d. Documents which can be used to establish proof include:
  1. Records of occupancy
  2. Tax documents, such as State of Hawaii income general excise tax records
  3. Transient accommodations tax records
  4. Federal and/or State of Hawaii income tax returns for the years 1986-1989.
- e. The Director issues a nonconforming use certificate when he determines that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989.
3. The transient vacation rental outside of a permitted area is treated as an illegal use if a nonconforming use certificate is not obtained within 9 months of December 28, 1989.
4. The nonconforming use certificate must be renewed between September 1 and October 15 every even-numbered year. Each renewal application must include proof that:
  - c. 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 was in effect, and
  - d. There were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year, and
  - e. There has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy.
  - f. Failure to meet the above conditions results in a denial of renewal nonconforming use application.
  - g. The 35 days of transient occupancies shall be effective on July 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

5. Nonconforming use certificates must be displayed for the current year in a conspicuous place on the premises. If a single address is associated with numerous conforming use certificates, a listing of all units for that address holding current certificates may be displayed in a conspicuous common area instead.

## City and County of Honolulu

### **Sec. 21-5.640 Time sharing and transient vacation units.**

Time sharing and transient vacation units shall be 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.

(Added by Ord. 99-12)

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

(a) The purpose of this section is to treat certain transient vacation units 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 as provided by this section.

(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.

(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) 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) 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.

(Added by Ord. 99-12)

Maui County Code:

#### **2.94.020 Definitions.**

For the purpose of this chapter, the following definitions shall apply:

"Apartment-hotel" means a building or portion thereof used as a hotel as defined in chapter 19, Maui County Code, and containing the combination of individual guest rooms or suites or rooms with apartments or dwelling units.

"Hotel" or "motel" means a transient vacation rental, other than a bed and breakfast home, containing lodging or dwelling units. (Ord. 2093 § 1 (part), 1992)

#### **19.04.040 Definitions.**

When used in title 19 of this code, unless the context clearly indicates a different meaning, for the purposes of title 19 the following words and terms shall be defined as follows:

"Hotel or motel" means a transient vacation rental, other than a bed and breakfast home containing lodging or dwelling units.

"Short-term rental" means a transient vacation rental or use in which overnight accommodations are provided in dwelling units to guests for compensation, for periods of less than thirty days.

"Transient or transients" means any visitor or person who owns, rents or uses a lodging or dwelling unit, or portion thereof, for less than one hundred and eighty days and whose permanent address for legal purposes is not the lodging or dwelling unit occupied by the visitor. 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 lodging provided by nonprofit

corporations or associations for religious, charitable or education purposes; provided, that no rental income is produced.

"Transient vacation rentals or use" means occupancy of a dwelling or lodging unit by transients for any period of less than one hundred and eighty days.

#### **19.37.010 Geographic restrictions.**

A. Except as provided in this section, time share units, time share plans and transient vacation rentals are prohibited.

B. Existing time share units, time share plans and transient vacation rentals which were operating pursuant to and under law and which were registered pursuant to chapter 514E of the Hawaii Revised Statutes as of the effective date of the ordinance codified in this section shall not be impaired by the provisions of this section; provided any time share project operating under law that records in the bureau of conveyances within sixty days of the effective date of the ordinance codified in this section, a declaration in a form prescribed by the director of planning shall be deemed exempt from this section so long as the project or apartment unit identified by the declaration continues to operate under a lawful time share plan or registration.

C. Time share units, time share plans and transient vacation rentals are allowed in the hotel district; provided, such use is explicitly and prominently authorized by the project instrument. As used in this section, "project instrument" means one or more documents, including any amendments to the documents, by whatever name denominated, containing restrictions or covenants regulating the use or occupancy of a project. As used in this section, "project" means property that is subject to project instruments, including but not limited to, condominiums and cooperative housing corporations.

D. If the project in which the time share unit, time share plan, or transient vacation rental is to be created is not a hotel and does not contain time share units, time share plans, or transient vacation rentals, then such use may be created only if such use is explicitly and prominently authorized by the project instruments, or the project instruments are amended by unanimous vote of the unit owners to explicitly and prominently authorize time sharing or transient vacation rentals. (Ord. 1989 § 1, 1991: Ord. 1134 § 3, 1981)

#### Title 19. Zoning

#### Chapter 19.40 CONDITIONAL PERMITS

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#### **19.40.020 General.**

The commission shall hear and review an application for a conditional permit and provide a recommendation to the council. (Ord. 1684 § 2 (part), 1988)

#### **19.40.030 Application.**

A developer, owner, lessee (holding a recorded lease, the unexpired term of which is more than five years from the date of filing of the application) or applicant with notarized written authorization for the application from the owner may file with the department of planning, an application for a conditional permit. Upon filing the planning director shall review the application for completeness. The application shall include the following information and documentation:

A. A written description which sets forth the nature of the request and the conditions justifying the request;

B. Documentation of ownership, or if appropriate, authorization by the landowner;

C. A scaled site plan showing existing and proposed buildings, parking, and access;

D. The names, addresses and tax map key numbers of owners and lessees of record of all real property situated within five hundred feet of the land on which the proposed action is to occur. Said list shall be based on current real property tax assessment records of the County and verified by the department of finance. The applicant shall provide a tax map graphically depicting the areas within five hundred feet of the subject property boundaries; and

E. A nonrefundable filing fee in the amount specified in the annual budget of the County. (Ord. 2984 § 1, 2001; Ord. 1867 § 1 (part), 1989; Ord. 1684 § 2 (part), 1988)

#### **19.40.040 Application withdrawal or return.**

If an application is withdrawn or returned, the same or similar application will not be accepted for processing sooner than six months from the date of withdrawal or return. (Ord. 1684 § 2 (part), 1988)

#### **19.40.050 Application review.**

Upon receipt of a complete application, the planning director shall review the project parameters, including, but not limited to, location, design, configuration, and impact by comparing the proposed project to fixed standards. (Ord. 1684 § 2 (part), 1988)

#### **19.40.060 Processing procedure.**

The application shall be processed in accordance with the provisions of this chapter. (Ord. 1684 § 2 (part), 1988)

#### **19.40.070 Establishment.**

A. Upon finding by the appropriate planning commission that reasons justifying granting of a conditional permit exist, and that the proposed use would not be significantly detrimental to the public interest, convenience and welfare, and will be in harmony with the area in which it is to be located; issuance of a conditional permit may be recommended, subject to such terms and conditions and for such period of time as the facts may warrant.

B. Should the commission determine that the permit requested is for a use which is substantially different from those uses permitted in the use zone, the commission shall recommend denial of the request and may instruct the applicant to seek a change of zoning should the facts warrant such an application.

C. Every conditional permit shall be conditioned upon the proposed development fully complying with all requirements of this title and other applicable governmental requirements.

D. Approval of a conditional permit application shall be through enactment of an ordinance by the council, in accordance with the provisions of the charter. (Ord. 1985 § 1, 1991: Ord. 1684 § 2 (part), 1988)

#### **19.40.080 Conditions, amendments, modifications.**

A. Conditional permits may be issued subject to such terms and conditions deemed reasonable and necessary to fulfill the intent and purposes of this title. All changes in the use or appearance of land or buildings allowed by the permit shall be in accordance with the specified conditions and the proposal as approved. Such permit shall be issued subject to compliance with and/or fulfillment of such terms and conditions and shall so state.

B. Any person who has been issued a conditional permit may request the commission to review a request to amend or delete any terms, conditions and time stipulations imposed upon such permit.

C. The commission on request or on its own initiative may recommend action to revoke any conditional permit or amend or delete any terms, conditions, and time stipulations of such conditional permit if such action is deemed necessary to effectuate the purpose and intent of this chapter. The commission shall provide due notice in writing to the applicant/permittee and an opportunity for a hearing. (Ord. 1684 § 2 (part), 1988)

#### **19.40.090 Extensions.**

Conditional permits shall not be extended unless the terms of the initial issuance explicitly provide for same. In any case, extensions must be applied for no later than ninety days prior to expiration and shall be made and approved in the same manner as an original application. If the administration determines that there has been no substantial change in the factors surrounding the original application, no public hearing need be held. (Ord. 1684 § 2 (part), 1988)



**19.40.100 Expiration of permits.**

Each permit and the ordinance enacting same shall state the duration of the permit and if a specific expiration date is stated such permit shall expire and be repealed on said date without further action. (Ord. 1684 § 2 (part), 1988)

**19.40.110 Reporting.**

The department of public works shall submit to the county council quarterly reports on the status of all conditional permits. (Ord. 1684 § 2 (part) 1988)

**HAWAII COUNTY CODE:**

Per Hawaii County Planning Department staff, no ordinances regulating transient vacation rentals. There are ordinances regulating bed and breakfasts exists.