

**INTERPRETIVE ADMINISTRATIVE ZONING RULES AND REGULATIONS (2014)  
OF THE KAUA'I PLANNING COMMISSION RELATING TO CHAPTERS 8, 9, AND 10  
OF THE KAUA'I COUNTY CODE**

**KPAR-8-19-1**  
**TRANSIENT VACATION RENTALS**

**AUTHORITY:**

Pursuant to Article XIV Section 14.03.E of the Kauai County Charter, the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Planning Department to enforce Chapter 8, Article 17 of the Kauai County Code 1987, as amended, ("KCC") concerning to the certification and enforcement of Transient Vacation Rentals.

Pursuant to KCC Section 8-17.10(h), the annual renewal of a non-conforming use certificate is required in accordance with KCC Sections 8-17-10(a-h). The renewal documentation requires at a minimum:

*...proof that there is a currently valid State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use. Failure to meet this condition will result in the automatic denial of the application for renewal of the nonconforming use certificates.*

Non-conforming uses are defined under KCC Section 8-13.2, and specifically Section 8-13.2(b), which states as follows:

*If any nonconforming use ceases for any reason for a continuous period of twelve (12) calendar months or for one (1) season if the use be seasonal, then the use shall not be resumed and any use of the land or building thereafter shall be in full conformity of the provisions of this chapter.*

**FINDINGS:**

The purpose of these rules is to clarify the Planning Department's responsibilities in implementing Chapter 8, Article 17 of the KCC. In particular, the rules clarify the documentation and evidence required to maintain a non-conforming use as defined in KCC Section 8-13, and the procedures necessary for a certificate holder to seek due process in the event of non-renewal.

**RULE:**

**1. NON-CONFORMING USE CERTIFICATE (NCUC) RENEWAL**

- A. Requirements for Renewal.** Applications for renewal shall be accepted by the Planning Department sixty (60) no earlier than days prior to the NCUC's expiration date. The annual renewal deadline is on the same day and month of the original determination made by the Planning Department, which certified the non-conforming

use. Along with the mandatory renewal form, the following documents must accompany the submittal, pursuant to KCC 8-17.10(h)(1):

1. The renewal fee in the amount set forth by ordinance;
2. A copy of a current and valid General Excise Tax (GET) certificate for the transient vacation rental; and
3. A copy of a current and valid Transient Accommodation Tax (TAT) certificate for the transient vacation rental.

Further, in order to comply with KCC Section 8-17.8(b) and ascertain continuous use pursuant to KCC Section 8-13.2(b), the following shall also be submitted to the Planning Department:

1. All print and internet advertising for transient vacation rental operations, including listings with a rental service or real estate firm, must include the NCUC certificate number and an on-island 24/7 contact name and phone number. For those Transient Vacation Rentals located in the tsunami evacuation zone, advertising must include information that the transient vacation rental is located in the tsunami evacuation zone.
2. A dated, updated copy of the "For Your Safety and Comfort" information document provided to vacation rental tenants, which includes:  
For those Transient Vacation Rentals located in the tsunami evacuation zone, prior to registration renters must be informed that the transient vacation rental is located in the tsunami evacuation zone and of the corresponding evacuation procedures.
3. A dated picture of the required transient vacation rental sign with the house in viewing range; and
4. A copy or copies of annual tax return and reconciliation report for the previous year that evidences payment of the GET and TAT taxes.

- B. Renewal Applications.** It is the certificate holder's responsibility to submit applications to renew the NCUC by the NCUC's expiration date. The Planning Department shall not be responsible for notifying the holder of any pertinent deadlines.
- C. Late Renewal Applications.** Failure to submit an application to renew the NCUC by the NCUC's expiration date will result in the automatic denial of the application. The Planning Department shall not accept applications submitted after the expiration date.
- D. Inspections.** Once an application is accepted, the Planning Department may require an inspection to verify the non-conforming use and compliance with the Comprehensive Zoning Ordinance and other pertinent land use laws. The Planning Department may withhold approval of a renewal application and issue cease and desist notices to the applicant until all violations have been resolved to the satisfaction of the Planning Director.

- E. Renewal Notices.** The Planning Department shall notify the certificate holder if the renewal application has been approved, approved pending a certain action, withheld, or denied within forty-five (45) days of the certificate's renewal deadline.
- F. Appeal.** Determination that the renewal application has been approved, approved pending a certain action, withheld, or denied may be appealed pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission.
- G. Voluntary Forfeiture.** A certificate holder may voluntarily forfeit the NCUC provided an declaration attesting to the voluntary action is submitted contemporaneously with a form provided by the Planning Department.

## 2. VIOLATIONS

- A. Transient Vacation Rentals with NCUC and Violations.** Pursuant to KCC Section 8-17.10(h)(2), the Planning Department may withhold the renewal of a NCUC if a violation of the Comprehensive Zoning Ordinance (CZO) or other pertinent land use laws are identified on the property. A temporary cease and desist order shall be issued to the certificate holder to immediately suspend vacation rental activities until the violation has been rectified. Should the vacation rental use continue in violation of the temporary cease and desist order, and the order has not been appealed pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission, fines shall be applicable as a non-allowed use outside the Visitor Destination Area.
  - 1. **CZO Violations.** For lots with active transient vacation rental NCUCs, the Planning Department shall keep a record of any complaints and violations on the property. Along with a withhold notice, any violations shall require the issuance of a temporary cease and desist order to the certificate holder within ten (10) days from submittal of the renewal form. The letter shall clearly state that any vacation rental use must cease until the violation is rectified or if the order is appealed. Failure to rectify the violation within one (1) year of the temporary cease and desist order shall be considered abandonment pursuant to KCC Section 8-23.2(b). Fines for the actual CZO violations leading to certificate withholding shall be issued as a separate order and separately appealable.
  - 2. **Violations of other Pertinent Land Use Laws.** For lots with active transient vacation rental NCUCs, the Planning Department shall notify other County agencies of the nonconforming use with instructions to carbon copy any violation notices of their relevant codes to the Planning Department. The Department shall catalog these violation notices. At the time of renewal, should a cataloged violation notice be present and active in the file, the Planning Department shall issue a temporary cease and desist order along with information the certificate holder that the a future renewal will be withheld pending resolution of any violations. The letter shall clearly state that any vacation rental use must cease until the violation is rectified and the order is appealable. Failure to rectify the violation within one (1) year of the temporary cease and desist order shall be considered abandonment pursuant to KCC Section 8-23.2(b). A letter from the

County agency that the violation has been rectified must be submitted to the Planning Department to release the hold on the renewal.

**B. Single-Family Transient Vacation Rentals Operating Without Certificate.** A Zoning Compliance notice shall be issued on a lot where an inspection has ascertained a Single-Family Transient Vacation Rental use. An after-the-fact NCUC shall not be issued by the Planning Department, the final appealable decision of the Director shall be upon the second notice, should the use persist, whereby the Director has levied a fine.

**3. ENFORCEMENT.**

**A. Zoning Compliance Notice.** A Zoning Compliance Notice related to Single-Family use shall require a response from the person notified within ten (10) days of service. A withholding of the renewal and temporary cease and desist order shall be treated as a Zoning Compliance Notice.

**B. Notice of Violation.** Should no response be received after service of a Zoning Compliance Notice, or the Planning Director finds lack of progress to timely rectify the violation the Planning Department shall issue a Notice of Violation. The Notice of Violation shall include a levy of fines, which may be appealed pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission.

**4. FINE SCHEDULE**

Fines shall be levied in addition to any permitting fees required to rectify the violation.

<b>TVR NCUC FINE SCHEDULE</b>		
<b>Type</b>	<b>Example</b>	<b>Fine per instance or per day</b>
<b>STRUCTURE VIOLATIONS</b>		
Class I or II required	Lawn Building/Unpermitted addition	Starting at \$500
Class III required	Unpermitted Construction	Starting at \$500
Class IV required	Unpermitted Construction	Starting at \$2,500
Use Permit/Variance required	Building height violation	Starting at \$5,000
Not allowed in the zoning district	Illegal Density	\$10,000
<b>USE VIOLATIONS</b>		
Use Permit/Variance required	Baseyard in Res District	Starting at \$5000

Not allowed in the zoning district	TVR w/o NCUC	\$10,000
<b>OTHER VIOLATIONS</b>		
Non-Compliance with Ordinance	No NCUC Sign	Starting at \$1,000

PUBLIC NOTICE: August 22, 2017 (Posted with Office of County Clerk); August 22, 2017 (Publications, Garden Island Newspaper and Star Advertiser)  
PUBLIC HEARING: September 26, 2017


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KAUA'I PLANNING COMMISSION RELATING TO CHAPTERS 8, 9, AND 10 OF THE KAUA'I  
COUNTY CODE

Interpretive Administrative Zoning Rules and Regulations (2014) of the Kaua'i Planning Commission relating to Chapters 8, 9, and 10 of the Kaua'i County were adopted by a vote of 5 to 0, with 2 absent members of the Planning Commission of the County of Kaua'i, State of Hawai'i at its meeting held on the 26th day of September, 2017 as follows:


FOR	AGAINST	ABSTAIN/ABSENT
Keawe, Ho, Lord, Mahoney, Nogami-Streifert		Ahuna, Apisa

The amendments shall become effective ten (10) days upon filing with the County Clerk of the County of Kauai.

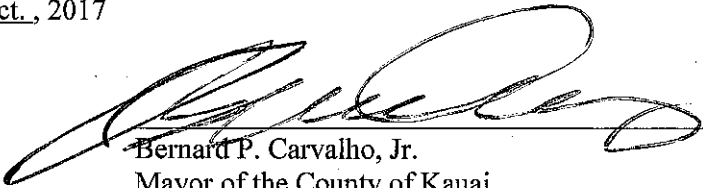
BY ORDER OF THE PLANNING COMMISSION OF THE COUNTY OF KAUA'I, STATE OF HAWAII.

  
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Kimo Keawe, Chair


APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Jodi Higuchi  
Deputy County Attorney

APPROVED THIS 6<sup>th</sup> DAY OF Oct., 2017

  
\_\_\_\_\_  
Bernard P. Carvalho, Jr.  
Mayor of the County of Kauai

I HEREBY CERTIFY THAT THE FOREGOING RULES WERE RECEIVED AND FILED IN THE OFFICE OF THE COUNTY CLERK THIS 13<sup>th</sup> DAY OF November, 2017

  
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Jade K. Fountain-Tanigawa  
County Clerk