

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,
KAUA'I COUNTY CODE 1987, AS AMENDED,
RELATING TO THE COMPREHENSIVE ZONING ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The purpose of this bill aims to amend particular provisions of Ordinances 864 and 876 relating to previously implemented grandfathering provisions for existing single-family transient vacation rentals outside the Visitor Destination Area ("VDA") boundaries. However, this bill maintains the prohibition concerning the commencement of any new single-family transient vacation rentals outside the VDAs if use was not established prior to March 7, 2008.

The Council finds that this ordinance will comport with the County General Plan which emphasizes the need to "enact clear standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agricultural, Open, and Resort zoning districts." The Council further finds certain provisions of Ordinances 864 and 876 have served contrary to this policy.

The County General Plan also entertains the possibility of alternative visitor accommodations, and "development standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agricultural, Open, and Resort zoning districts" should be implemented through zoning.

This ordinance will not invalidate non-conforming use certificates issued to single-family transient vacation rentals previous to the enactment of this ordinance. However, nonconforming use certificate holders will remain subject to a renewal process.

SECTION 2. Section 8-17.8 of the Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Section 8-17.8 Single Family Transient Vacation Rentals.

(a) Notwithstanding any underlying zoning designation and with the exception of properties on the National or State Register of Historic Places, single-family transient vacation rentals are prohibited in all areas not designated as Visitor Destination Areas.

(b) Development Standards for Single-Family Vacation Rentals permitted within Visitor Destination Areas and Holders of Nonconforming Use Certificates. Development standards shall be the same as those for single-family detached dwellings in Sections 8-3.5 through 8-3.8, inclusive, with the following additions:

(1) Applicant for a single-family transient vacation rental shall designate a contact person or owner's representative who shall be available on a 24-hour, 7-days-per-week basis. Applicant shall provide the name and contact information to neighbors adjacent to and directly across subject vacation rental, the Planning Department, the Kaua'i

Police Department, the Kaua'i Civil Defense Agency, and the Kaua'i Visitors Bureau upon issuance of a non-conforming use certificate or registration number. Owner is responsible for keeping information updated with all agencies.

(2) One outdoor sign no larger than the one square foot shall be posted in a visible place on a wall, fence, or post immediately inside or on the front boundary of the property where it is easy to see, for the purpose of providing the current Nonconforming Use Certificate number or the Registration Number and the 24/7 phone number. No other signs shall be allowed and there shall be no direct illumination of the required sign. The numbers on the sign shall be no smaller than two inches (2") in height.

(3) The applicant shall provide a list of requirements and information entitled "For the Safety and Comfort of You and Your Neighbors." This shall provide essential information to the visitor and shall seek to reduce negative impacts on the surrounding neighborhood. This information piece shall be provided to the Planning Department at time of application and shall be posted in a conspicuous place in the guest's sleeping quarters along with a copy of the Nonconforming Use Certificate or the Registration Number, whichever the case may be and if required. The list shall include, but not be limited to, suggested curfews, guidance with respect to the character of the neighborhood and gatherings and noise, and what to do in cases of emergency and natural disaster.

(4) All print and internet advertising for single-family vacation rentals, including listings with a rental service or real estate firm, shall include the Nonconforming Use Certificate or the Registration Number.

(5) A copy of the Nonconforming Use Certificate or the Registration Number, where required, shall be displayed in the back of the front door of the sleeping quarters.

(6) A site and floor plan shall be filed with the application[, and no interior lockouts shall be permitted]."

SECTION 3. Section 8-17.9 of the Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Section 8-17.9 Registration Of All Transient Vacation Rentals.

(a) All single-family transient vacation rentals, excluding, however, a Time Share Unit in a Time Share Plan subject to Chapter 514E of the Hawai'i Revised Statutes, as amended, lawfully existing in Visitor Destination Areas on the effective date of this ordinance shall register with the Director of Finance on a form prescribed by the Director of Finance no later than one hundred eighty (180) days after the effective date of this ordinance. Any new single-family transient vacation rental, excludes, however, a Time Share Unit in a Time Share Plan subject to Chapter 514E of the Hawai'i Revised Statutes, as amended, established in Visitor Destination Areas subsequent to the effective date of this law shall register with the Director of Finance prior to any such use of said rental. All single-family transient vacation rental uses will be subject to Kaua'i County Code Title III, Chapter 5A.

(b) No single-family transient vacation rental shall operate outside a Visitor Destination Area without a Nonconforming Use Certificate obtained under Section 8-17.10."

SECTION 4. Section 8-17.10 of the Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Section 8-17.10 Nonconforming Use Certificates for Single-Family Vacation Rentals.

(a) The purpose of this section is to provide a process to identify and register those single-family transient vacation rentals as nonconforming uses which have been in lawful use prior to the effective date of this ordinance 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] operated outside of a Visitor Destination Area [on the effective date of this ordinance] prior to March 7, 2008 shall [by March 30, 2009,] obtain a nonconforming use certificate for single family vacation rentals.

(c) No nonconforming use certificate shall be issued by the Planning Director unless the use as a single-family rental is a legal use under the Comprehensive Zoning Ordinance, and the applicant provides a sworn affidavit and demonstrates to the satisfaction of the Planning Director that a dwelling unit was being used as a vacation rental on an ongoing basis prior to [the effective date of this ordinance and was in compliance with all State and County land use and planning laws, including but not limited to, HRS. Chapter 205, the Comprehensive Zoning Ordinance, Special Management Area, Flood Plain Management and Shoreline Setback laws at the effective date of this ordinance, up to and including, the time of application for a nonconforming use certificate.] March 7, 2008. The Planning Director, in making the decision, shall take into consideration, among other things, the following guidelines:

(1) The applicant had a State of Hawai'i General excise tax license and transient accommodations tax license for the purpose of the lawful operation of single-family transient vacation rentals for a period long enough to demonstrate actual payment of taxes.

(2) That prior to the effective date of this ordinance, applicant had deposits for reservations by transient guests in exchange for compensation for use of subject property as a vacation rental.

(3) That applicant had transient guests occupy subject property in exchange for compensation prior to the effective date of this ordinance, with a pattern of consistency that evidences an ongoing and lawful enterprise.

(d) Applications for nonconforming use certificates for single-family transient vacation rentals located on land designated “Agricultural” pursuant to Chapter 205 of the Hawaii Revised Statutes shall be made within sixty (60) days of the effective date of this ordinance. If an operator as defined under Section 8-17.10(c) fails to apply for a nonconforming use certificate within sixty (60) days of the effective date of this ordinance, then the Planning Director shall assess an administrative late application processing fee of Fifteen Hundred (\$1,500.00) Dollars at filing. [Pursuant to HRS Chapter 205, no] A nonconforming use certificate [shall] may be issued for [any] a single-family transient vacation rental located on land [designated “Agricultural” by State law, unless] in the State of Hawai'i's land use agricultural district if:

(1) It was built prior to June 4, 1976, or

(2) The Applicant has obtained a special permit under Hawai'i Revised Statutes, Section [205.6] 205-6 which specifically permits a vacation rental [and the permit was secured prior to the enactment of this ordinance.] on the subject property.

(A) An application for a special permit shall include verification by the Applicant that the farm dwelling unit was

being used as a vacation rental on an ongoing basis in accordance with Section 8-17.10(c).

(B) An application for a special permit pursuant to Hawaii Revised Statutes Section 205-6 and Chapter 13 of the Rules of Practice and Procedures of the Planning Commission that is deemed complete by the Planning Director must be filed within one (1) year of the effective date of this ordinance. Upon completion of the application, the Planning Director shall issue a provisional certificate that will allow the transient vacation rental to operate. The provisional certificate shall be null and void after the Planning Commission or the Land Use Commission makes a decision upon the application.

(C) In addition to the Special Permit standards set forth in Hawai'i Revised Statutes Section 205-6 and Chapter 13 of the Rules of Practice and Procedure of the Planning Commission, the Planning Commission may only grant a special permit if, prior to March 7, 2008: (1) the property upon which the transient vacation rental is located had a registered agricultural dedication pursuant to the guidelines set forth in the County of Kaua'i's Department of Finance Real Property Tax Division Agricultural Dedication Program Rules; (2) a bona fide agricultural operation existed, as shown by State General Excise Tax Forms and/or Federal Income Tax Form 1040 Schedule F filings; or (3) the Planning Commission finds that the size, shape, topography, location or surroundings of the property, or other circumstances, did not allow an applicant to qualify for an agricultural dedication pursuant to the County of Kaua'i's Department of Finance Real Property Tax Division Agricultural Dedication Program Rules or inhibited intensive agricultural activities

(D) If the application for the special permit is granted, then the transient vacation rental operation shall be subject to conditions imposed by the Planning Commission or the Land Use Commission.

(E) If the application for special permit is denied, then the nonconforming use certificate shall not be issued and the transient vacation rental must cease operation.

(e) The owner, operator, or proprietor shall have the burden of proof in establishing that the use is properly nonconforming based on the following documentation which shall be provided to the Planning Director as evidence of a nonconforming use: records of occupancy and tax documents, including all relevant State of Hawai'i general excise tax filings, all relevant transient accommodations tax filings, federal and/or State of Hawai'i income tax returns for the relevant time period, reservation lists, and receipts showing payment. Other reliable information may also be provided. Based on the evidence submitted, the Planning Director shall determine whether to issue a nonconforming use certificate for the single-family transient vacation rental.

(f) The Planning Director shall make available to the public at the Planning Department counter and on the County of Kaua'i website a list of all completed applications for non-conforming use certificates. Applications deemed completed shall concurrently be made available to the public. [All applications shall be made available no later than March 2, 2009.] Copies of applications shall also be made available to the public as public information, as provided by Haw. Rev. Stat. Chapter 92F (the Uniform Information Practices Act). Such list shall include the names of the applicants and the tax map key number of the parcels which are the subject

of the applications. The Planning Department may physically inspect a single-family transient vacation rental prior to a non-conforming use certificate being issued. [The Planning Department shall physically inspect every single-family transient vacation rental prior to a non-conforming use certificate being issued. No non-conforming use certificate shall be issued without a physical inspection.]

The Planning Commission shall promulgate administrative rules prior to the July 31, 2009 application deadline for annual renewal of nonconforming use certificates for single-family vacation rentals required by Section 8-17.10 (h) to allow members of the public to contest the re-issuance of any nonconforming use permit based on complaints related to the loss of quiet enjoyment or transgressions of visitor industry standard 'rules of occupancy,' as well as non-compliance with all State and County land use or planning laws. As part of the annual certificate renewal process, the Planning Commission shall also develop a standardized list of requirements and information entitled 'For the Safety and Comfort of You and Your Neighbors' for use as prescribed in Section 8-17.8 (b) (3).

(g) Failure to apply for a nonconforming use certificate by October 15, 2008 or failure to obtain a nonconforming use certificate by March 30, 2009, shall mean that the alleged nonconforming use is not a bona fide nonconforming use, and it shall be treated as an unlawful use, unless the applicant demonstrates to the satisfaction of the Planning Commission that the alleged vacation rental use meets the criteria under Section 8-17.10(c) and (d). The Planning Director shall prepare an application form which shall be available to the public by March 30, 2008.]

(g) The Planning Director shall prepare an application form which shall be available to the public. If an operator as defined under Section 8-17.10(c) fails to apply for a nonconforming use certificate within sixty (60) days of the effective date of this ordinance the Planning Director shall assess an administrative late application processing fee of Fifteen Hundred (\$1,500.00) Dollars at filing. Applications received more than one (1) year after the effective date of this ordinance shall not be accepted and the use of a transient vacation rental shall be deemed discontinued.

(h) The owner or lessee who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate [by July 31 for every year] annually on the date of issuance of the non-conforming use certificate.

(1) Each application to renew shall include proof that[:

(A) There] there is [in effect] a currently valid State of Hawai'i general excise tax license and transient accommodations tax license for the Nonconforming use.

[(B) notwithstanding any other ordinance or rule to the contrary, the use has been ongoing, with a presumption that if the nonconforming use has occurred less than a total of thirty (30) days, said use has been abandoned, and

(C) that at the time of renewal the dwelling unit was in compliance with all State and County land use or planning laws, including but not limited to HRS Chapter 205, the Comprehensive Zoning Ordinance, Shoreline Management Area, Flood Plain Management, and Shoreline Setback laws.]

[(2)] Failure to meet [these] this [conditions] condition will result in the automatic denial of the application for renewal of the nonconforming use certificates. The applicant may reapply for renewal upon presenting a currently valid State of Hawai'i general excise tax license and transient accommodation tax license for the nonconforming use.

Failure to meet [these] this [condition] condition will result in the automatic denial of the application for renewal of the nonconforming use certificates.

(2) Upon renewal, the Planning Department may initiate re-inspection of properties for compliance with other provisions of this chapter, or other pertinent land use laws, and 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.

(3) Applicant shall pay a renewal fee of One Hundred Fifty Dollars (\$150.00) which shall be deposited into the County General Fund.”

SECTION 5. Section 8-17.11 of the Kaua'i County Code 1987, as amended, shall be amended to read as follows:

“Section 8-17.11 Enforcement Against Illegal Transient Vacation Rentals

(a) In addition to other penalties provided by law, including but not limited to Section 8-17.6, Section 8-24.1 and the Planning Commission Rules, as amended, the Planning Director, or any member of the public who has duly obtained standing pursuant to rules promulgated by the commission, may initiate proceedings to revoke or modify the terms of a nonconforming use certificate [or to stop an unpermitted use] pursuant to [Chapter 12 of] the Rules of Practice and Procedures of the Planning Commission, as amended. Violations of conditions of approval or providing false or misleading information on the application or in any information relating thereto at any time during the application process shall be grounds for revocation or cease and desist orders.

(b) 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 lessee 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 unlawfully, penalties established in Section 8-17.6 and Section 8-24.1 shall apply.”

SECTION 6. If any provision of this ordinance or the application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 7. 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 8. This ordinance shall take effect upon its approval.

Introduced by: /s/ JAY FURFARO
(By Request)

Date of Introduction:

May 26, 2010

Lihue, Kaua'i, Hawai'i

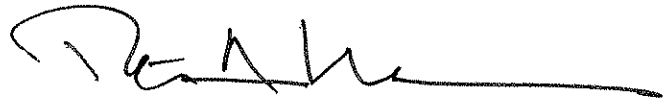
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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2364, Draft 2, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on July 28, 2010, by the following vote:

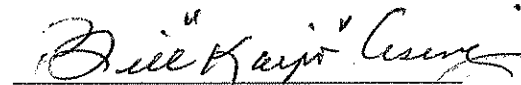
FOR ADOPTION: Bynum, Chang, Furfaro, Kaneshiro, Kawahara	TOTAL - 5,
AGAINST ADOPTION: Kawakami, Asing	TOTAL - 2,
EXCUSED & NOT VOTING: None	TOTAL - 0,
RECUSED & NOT VOTING: None	TOTAL - 0.

Līhu'e, Hawai'i
July 29, 2010



Peter A. Nakamura
County Clerk, County of Kaua'i

ATTEST:

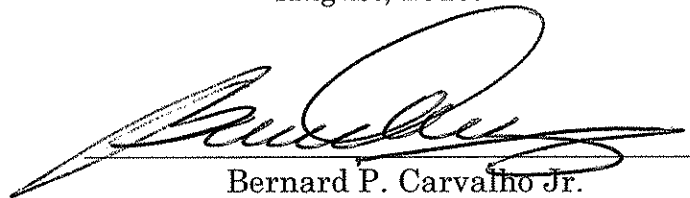


Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

Approved this 16th day of

August, 2010.



Bernard P. Carvalho Jr.
Mayor
County of Kaua'i