

**A BILL FOR AN ORDINANCE AMENDING CHAPTERS 7, 8, AND 9,
KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE
ADJUSTMENT OF VARIOUS PERMITTING CHARGES AND FEES
LEVIED BY THE DEPARTMENT OF PLANNING**

(County of Kaua'i, Applicant)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The County of Kaua'i finds that many of the fees charged and levied by the Department of Planning pursuant to Chapters 7, 8 and 9 of the Kaua'i County Code 1987, as amended, no longer reflect an appropriate amount given the increased complexity of zoning enforcement, and the antiquated nature of the charges and fees as many were fixed and have remained the same amount since the Comprehensive Zoning Ordinance was enacted in 1972. The County of Kaua'i finds that fees related to Transient Vacation Rentals outside of the designated Visitor Destination Areas should be adjusted accordingly to absorb the increased cost associated with enforcement of Transient Vacation Rental certificates. The renewal process is also amended to clarify procedures concerning the timing of renewals to clearly set forth requirements. The County of Kaua'i also finds appropriate the levying and charging of fees for each individual permit rather than bundling and charging for only one fee. New processing fees for shoreline determination and subdivision applications are also included to reflect the complex review nature of the proposals.

SECTION 2. Chapter 7, Article 3, of the Kauai County Code 1987, as amended, shall be amended to read as follows:

"Sec. 7-3.1 In General.

The General Plan Ordinance or the General Plan of the County of Kauai may be amended by ordinance, in accordance with the Charter. An amendment may change provisions of this ordinance; text provisions or map designations of the General Plan document; or any of these in combination.

Sec. 7-3.2 Initiation.

(a) An amendment may be initiated by the Planning Director, by the Planning Commission, or by the Council.

(b) An amendment may be initiated by the verified petition of an owner or a person fully authorized by the owner of property affected by the proposed amendment.

(1) The petition shall be of such form and include such information and exhibits as may be prescribed by the Planning Director. The petition shall be filed with the Planning Department, accompanied by a filing fee of [One hundred dollars (\$100).] Six Hundred Dollars (\$600.00).

(2) Within 15 working days of a filing, the Planning Director shall accept or reject the petition for amendment, based on compliance with amendment application requirements. The petitioner shall be notified in writing of the acceptance decision.”

SECTION 3. Chapter 7, Article 3, of the Kaua‘i County Code 1987, as amended, shall be amended by adding a new Section 7-3.8 to read as follows:

Sec. 7-3.8 Fee Exemptions

(a) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing fee designated in Section 7-3.2(b)(1), provided such projects conform to applicable provisions of the County’s affordable housing program.

(b) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing fee designated in Section 7-3.2(b)(1), provided such projects conform to applicable provisions of the County’s affordable housing program.

(c) No exemptions shall be afforded for such housing projects from any fees or costs arising from compliance with Section 7-3.3(c) of this Article.

SECTION 4. Chapter 8, Article 3, of the Kaua‘i County Code 1987, as amended, shall be amended to read as follows:

“ARTICLE 3. GENERAL ADMINISTRATIVE REGULATIONS

Sec. 8-3.1 Zoning Permits.

(a) When Required.

No person shall undertake any construction or development or carry on any activity or use, for which a zoning permit is required by this Chapter, or obtain a building permit for construction, development, activity or use regulated by this Chapter, without first obtaining the required zoning permit.

(b) Applications.

The owner or lessee (holding under recorded lease the unexpired term of which is more than five (5) years from the date of filing the application), or any person duly authorized by the owner or lessee of the property affected, or any utility company possessing the power of eminent domain, may file a written application with the Planning Department for a zoning permit of the required type on a form prescribed by the Planning Department. The application shall contain or be accompanied by:

(1) A non-refundable filing and processing fee in the amount indicated in Sections 8-3.1(c)(1)[.], 8-3.1(d)(1), 8-3.1(e)(1), or 8-3.1(f)(1), as applicable.

(2) A description of the property in sufficient detail to determine its precise location.

(3) A plot plan of the property, drawn to scale, showing all existing and proposed structures and any other information necessary:

(A) To show conformity with the standards established in this Chapter, and

(B) To a proper determination relative to the specific request.

(4) Any other plans and information required by the Planning Department.

(c) Class I Zoning Permits.

(1) The filing and processing fee is [Five Dollars (\$5)] Thirty Dollars (\$30.00).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, or use conforms to the standards established by this Chapter and may require additional information if necessary to make the determination.

(3) A Class I Zoning Permit shall be issued with or without conditions or denied by the Planning Director or by any member of the Planning Department to whom the Planning Director has delegated authority.

(4) If the Planning Director or his designee fails to take action on a completed application within twenty-one (21) days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.

(5) An applicant who is denied a Class I Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(d) Class II Zoning Permits.

(1) The filing and processing fee is [Ten Dollars (\$10)] Sixty Dollars (\$60.00).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use or plot plan conforms to the standards established by this Chapter and may

(A) refer the application to any County or State department for comment or approval and

(B) require additional information if necessary to make a determination.

(3) A Class II Zoning Permit shall be issued with or without conditions or denied by the Planning Director.

(4) If the Planning Director or his designee fail to take action on a completed application within thirty (30) days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.

(5) An applicant who is denied a Class II Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(e) Class III Zoning Permits.

(1) The filing and processing fee is [Thirty Five Dollars (\$35)] Two Hundred Dollars (\$200.00).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use, or plot plan conforms to the standards established by this Chapter and

(A) shall refer the application to the Department of Public Works and the Department of Water and may refer the application to any other County or State Department for comment or approval and

(B) may require additional information if necessary to make a determination.

(3) Within forty-five (45) days after the filing of a completed application, the Planning Director shall prepare a report that indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. The reports shall be sent to the applicant, to the Planning Commission, to any persons who have duly requested the report, and shall be made public.

(4) The Planning Director may, within forty-five (45) days after the filing of a completed application, issue a provisional Class III Zoning Permit with or without conditions, or deny the permit, or determine that the application for the permit should be decided in the first instance by the Planning Commission.

(5) If the Planning Director issues a provisional Class III Zoning Permit, with or without conditions, he shall notify the members of the Planning Commission, and any persons who have duly requested such notice, of that action. The provisional permit shall become final unless within thirty (30) days at least three (3) members of the Planning Commission request review by the Planning Commission. In that case, the Planning Commission shall determine whether or not to issue the permit.

(6) If the Planning Director refers the application to the Planning Commission or if three (3) members request Planning Commission review of a provisionally issued permit, the Planning Commission within sixty (60) days of the reference or request for review shall issue the permit with or without conditions or shall deny the permit.

(7) If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Article, unless the applicant assents to a delay, the application shall be deemed approved.

(8) An applicant who is denied a Class III Zoning Permit by the Planning Director, or who disagrees with the conditions that have been imposed on its issuance by the Planning Director may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(f) Class IV Zoning Permits.

(1) The filing and processing fee is [One Hundred Fifty Dollars (\$150),] Eight Hundred Dollars (\$800.00). [except where a Class IV Zoning Permit is only required because a Variance is necessary, in which case the fee is Fifty Dollars (\$50).]

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use or plot plan conforms to the standards established by this Chapter and

(A) shall refer the application to the Department of Public Works and the Department of Water and may refer the application to any other County or State Department for comment or approval and

(B) may require additional information if necessary to make a determination.

(3) Within sixty (60) days after the filing of a completed application, the Planning Director shall prepare a report that indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. The report shall be sent to the applicant, to the Planning Commission, to any persons who have duly requested the report, and shall be made public.

(4) Within sixty (60) days after the receipt of the Planning Director's report or within such longer period as may be agreed to by the applicant, the Planning Commission shall hold at least one public hearing on the application and issue the permit with or without conditions or deny the permit. Notice of the proposed public hearing shall be given to the applicant and shall also be published at least once in a newspaper of general circulation in the County, at least twenty (20) days prior to the date of the hearing.

In proceedings involving use permits within the Residential, Agriculture and Open Districts and for all Project Developments pursuant to Section 8-3.2, and for variances involving height limitations pursuant to Section 8-3.3, the following procedures shall apply in addition to the above paragraphs:

The applicant, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the County of Kaua'i, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards for at least eighty-five per cent (85%) of all parcels of real property within 300 feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in a form approved by the Planning Director:

- (A) date;
- (B) time;
- (C) location;
- (D) purpose; and
- (E) description or sketch of property involved.

At least seven (7) days prior to the hearing date, the applicant shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to which such notices were sent.

Should the applicant fail to submit the affidavit within the time required, the public hearing shall be postponed. In this case, the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The applicant shall be required to pay for the republication costs and shall follow the same notice requirements of this paragraph in the renotification of affected persons.

(5) If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Article, unless the applicant assents to a delay, the application shall be deemed approved.

(g) Appeal.

An applicant who seeks to appeal from an adverse decision of the Planning Director or his designee shall file a notice of appeal with the Planning Director and the Planning Commission within twenty-one (21) days after the adverse decision. If the appeal is from the denial of a Class III Zoning Permit, the Planning Director shall make the notice public and shall notify any persons who have duly requested notice of appeals. The Planning Commission shall consider the appeal within sixty (60) days of the filing of the notice at a public session and shall render its decision within that period.

(h) After-the-fact Permits.

In addition to the Zoning Permit filing and processing fee(s), an application for a Zoning Permit for a structure partially or fully constructed without the required approvals and/or a use that has commenced prior to the required approvals shall have an additional filing, inspection, and processing fee(s) which is double that of the original filing and processing fee(s) or five hundred dollars (\$500.00), whichever is greater.

(i) Fee Exemptions

(1) A zoning permit application for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.1(b)(1), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A zoning permit application for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and

processing fee required in Section 8-3.1(b)(1), provided such projects conform to applicable provisions of the County's affordable housing program.

(3) No exemptions shall be afforded for such housing projects from any fees or costs arising from compliance with Section 8-3.1(f)(4) or 8-3.1(h) of this Article.

Sec. 8-3.2 Use Permits.

(a) Purpose.

The purpose of the "Use Permit" procedure is to assure the proper integration into the community of uses which may be suitable only in specific locations in a district, or only under certain conditions, or only if the uses are designed, arranged or conducted in a particular manner, and to prohibit such uses if the proper integration cannot be assured.

(b) When Required.

No person shall undertake any construction or development, or carry on any activity or use for which a Use Permit is required by this Chapter, or obtain a building permit for construction, development, activity or use for which a Use Permit is required by this Chapter, without first obtaining a Use Permit.

(c) Application.

An application for a Use Permit may be filed by any person authorized to file an application for a Zoning Permit under Section 8-3.1(b). The application, whenever feasible, shall be filed together with the application for the required zoning permit, and a single application shall be used for both permits in those cases. The application shall contain the information required by Section 8-3.1(b) and other information justifying the issuance of the Use Permit.

(d) Fees.

[There shall be no additional filing and processing fee for a Use Permit application filed in conjunction with an application for a Zoning Permit. In other cases, a] A non-refundable fee of [Fifty Dollars (\$50)] Three Hundred Dollars (\$300.00) shall accompany the application for the Use Permit[.], except that filing and processing fees shall be exempted as follows:

(1) A use permit application for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.2(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A use permit application for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 8-3.2(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(e) Standards.

(1) A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity or use in the particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort and the general welfare of persons residing or working in the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.

(2) The Planning Commission may impose conditions on the permit involving any of the following matters: location, amount and type and time of construction, type of use, its maintenance and operation, type and amount of traffic, off-street parking, condition and width of adjoining roads, access, nuisance values, appearance of the building, landscaping, yards, open areas and other matters deemed necessary by the Planning Commission.

(f) Procedure.

(1) The procedures established in Section 8-8-3.1(e) for a Class III Zoning Permit shall be followed except:

(A) All Use Permits for development or use in a Residential District, and all Use Permits for a Project Development, shall require a public hearing in accordance with the procedure specified for Class IV Zoning Permits.

(2) Upon findings of the Commission that a Use Permit may be granted consistent with the requirements of this Article, the permit shall be issued to the applicant on such terms and conditions and such a period of time, as the facts may warrant.

(3) Use Permits may be revoked by the Commission after due hearing if such action shall be necessary to effectuate the purpose of this Chapter.

(g) Application Denials And Appeal.

When a Use Permit application is denied by the Planning Director and no appeal is taken, or is denied by the Planning Commission, an application for a Use Permit involving the same or substantially similar construction, development, activity or use may not be filed sooner than six (6) months following the denial.

Sec. 8-3.3 Variance

(a) Authority.

The Planning Commission may grant variances from the provisions of this Chapter only in particular cases as set forth in this Article.

(b) Standards.

Variances from the terms of this Chapter shall be granted only if it is found that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and the applicant shows that he cannot make a reasonable use of the property if the regulations are applied. Where these conditions are found, the variance permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation of privileges enjoyed by other property and to facilitate a reasonable use, and which will not create significant probabilities of harm to property and improvements in the neighborhood or of substantial harmful environmental consequences. Financial hardship to the applicant is not a permissible basis for the granting of a variance. In no case may a variance be granted that will provide the applicant with any special privileges not enjoyed by other properties in the vicinity. The Planning Commission shall indicate the particular evidences that support the granting of the variance.

(c) Application.

An application for a Variance may be filed by any person authorized to file an application for a Zoning Permit under Section 8-3.1(b). The application, wherever feasible, shall be filed together with the application for the required Zoning Permit and a single application shall be used for both permits in those cases. The application shall contain the information required pursuant to Section 8-3.1(b) and other information justifying the issuance of the Variance.

(d) Fees.

[There shall be no additional filing and processing fee for a Variance application filed in conjunction with an application for a Zoning Permit. In other cases, a] A non-refundable fee of [Fifty Dollars (\$50)] Three Hundred Dollars (\$300.00) shall accompany the application for the Variance[.], except that filing and processing fees shall be exempted as follows:

(1) A variance permit application for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.3(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A variance permit application for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 8-3.3(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(e) Procedure.

(1) The procedure established in Section 8-3.1(f) for a Class IV Zoning Permit shall be followed.

(2) Upon findings of the Planning Commission that a Variance may be granted consistent with the requirements of this Article, the Variance shall be issued to the applicant on such terms and conditions, and for such period of time, as the facts may warrant. The Planning Commission shall

append conditions that achieve a substantial equivalent or alternative to the regulation from which the Variance is sought.

(3) When a Variance is denied by the Planning Commission, an application for a Variance involving the same or substantially similar construction, development, use or activity may not be filed sooner than six (6) months following the denial.

Sec. 8-3.4 Amendments

(a) Amendments.

This Chapter may be amended by changing the boundaries of districts or by changing the text whenever the public necessity and convenience and the general welfare require an amendment.

(b) Initiation.

The amendment may be initiated by the verified petition of one (1) or more owners of property affected by the proposed amendment, which petition shall be on a form prescribed by and filed with the Planning Commission and shall be accompanied by a processing fee of [Fifty Dollars (\$50)] Three Hundred Dollars (\$300.00).

(1) For the purpose of complying with this Section a property owner is to include the holder of a lease interest the expiration of which will occur more than five (5) years after the date of filing the petition.

(2) The petition shall contain or be accompanied by the following:

(A) a statement of the nature of the petitioner's interest;

(B) a draft of the substance of the proposed amendment;

(C) a specific statement of the reasons for granting the proposed change, and if requested by the Planning Director, supported by a written documented analysis of the district involved using all the pertinent elements upon which the Zoning is based;

(D) a map, drawn to scale, describing the property and showing its location in relation to surrounding properties and to known landmarks or improvements.

(3) Processing fees for amendments shall be exempted as follows:

(A) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.4(b), provided such projects conform to applicable provisions of the County's affordable housing program.

(B) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 8-3.4(b), provided such projects conform to applicable provisions of the County's affordable housing program.

(C) No exemptions shall be afforded for such housing projects from any fees or costs arising from compliance with Section 8-3.4(c)(3) of this Article.

(c) Public Hearings.

The Commission shall hold at least one (1) public hearing on any proposed amendment.

(1) Except for amendments relating to necessary governmental public utility developments and District Boundary change applications pending before the State Land Use Commission on or prior to July 3, 1973, all proposed amendments shall be considered for public hearing only during four (4) months per calendar year.

(A) Public hearings shall be conducted by the Planning Commission only during the months of January, April, July and October. At any public hearing, any number of petitions may be heard provided that each petition is heard separately.

(B) Petitions and resolutions received in an acceptable form by the Planning Commission not later than sixty (60) days prior to the public hearing date shall be considered by the Planning Commission and Council for review and action.

(2) At least fifteen (15) days prior to the public hearing, the Planning Commission shall give notice thereof to the petitioner and also by publishing at least once in a newspaper of general circulation published in the County the time, date and place of the hearing, its purpose and a description of any property which may be involved.

(3) In the case of a petition for the amendment of district boundaries, the petitioner, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the County of Kauai, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards, for at least eighty-five per cent (85%) of all parcels of real property within three hundred (300) feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in form approved by the Planning Director:

- (A) date;
- (B) time;
- (C) location;
- (D) purpose;
- (E) description or sketch of property involved; and
- (F) explanation of amendment process with emphasis on forthcoming Council action.

At least seven (7) days prior to the hearing date, the petitioner shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to which such notices were sent.

Should the petitioner fail to submit the affidavit within the time required, the public hearing shall be postponed and the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The petitioner shall be required to pay for the republication costs and shall follow the notice requirements of this paragraph in the re-notification of affected persons.

(4) Where the zoning amendments are initiated by the Planning Commission or the Council, the public hearing notice requirements of paragraph (c) above shall apply, except that in the consideration of community development plans and updates, the requirements of paragraph (b), above, shall apply.

(d) Consideration.

In considering an amendment, the Planning Commission shall consider the purposes of the existing and proposed changes to the Zoning Ordinance. A change in the Zoning Map or text shall not be made unless the change will further the public necessity and convenience and the general welfare.

(e) Report Filed With Council.

After the conclusion of the public hearing, the Planning Commission shall approve, approve with modifications or disapprove any proposed amendment and shall file a report with the Council and the petitioner of its findings and action taken. The report shall be filed within sixty (60) days after the public hearing, or within a longer period as may be agreed upon between the Planning Commission and the initiator of the action

(1) Failure by the Planning Commission to report within the sixty (60) day period specified in this Section or within a period as may be agreed upon shall be an approval of the proposed amendment by the Planning Commission and shall be reported to the Council by the Planning Director.

(f) Approval Or Denial Of Proposal.

In the event that the Planning Commission approves the proposal, the Council shall act on the proposal as indicated in this Article. However, in the event the Planning Commission denies the proposal, its decision is final except that the petitioners within fifteen (15) days after notice of the action may in writing appeal the decision to the Council, in which case the Council shall hear the matter in the same manner as for an approval by the Planning Commission.

(1) Within forty-five (45) days of receipt of the report for approval, the Council may affirm, reverse or modify the Planning Commission's decision and may adopt the proposed amendment or any part thereof by a majority vote of the Council in a form as the Council deems advisable.

(2) Within forty-five (45) days of receipt of the appeal, the Council shall set the matter for public hearing and shall give notice thereof to the petitioner and also by one (1) publication in a newspaper of general circulation published within the County at least fifteen (15) days prior to a hearing. After the conclusion of the hearing, the council may affirm, reverse or modify the Planning Commission's decision and may adopt the proposed amendment or any part thereof by a majority vote of the Council in a form as the Council deems advisable.

(g) Enactment By Ordinance.

Enactment of the amendment shall be by ordinance.

(h) Withdrawal.

With the consent of the Planning Commission, any petition for an amendment may be withdrawn upon the written application of the initiator. The Council or the Planning Commission, as the case may be, may, by motion abandon any proceedings for an amendment initiated by its own resolution of intention.

(1) The withdrawal or abandonment may be made only when the proceedings are before the body for consideration, and provided that any hearing of which public notice has been given shall be held.

(i) Denial.

When an amendment initiated by petition is denied by the Planning Commission and no appeal is taken, or is denied by the Council, the amendment or a substantially similar amendment may not be initiated by petition sooner than one (1) year following the denial.

(j) Initiation By Council Or Planning Commission.

Nothing contained in this Chapter shall prohibit the Planning Commission or the Council from initiating zoning changes where the general public interest and welfare are involved. When the amendment is initiated by the Planning Commission or the Council, the public hearing on the amendment may be held at any time.

Sec. 8-3.5 Enforcement, Legal Procedures And Penalties.

(a) Enforcement, Legal Procedures And Penalties.

(1) All departments, officials, and public employees vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Chapter, and shall issue no such permits or licenses for construction, development, uses, activities, subdivisions or other purposes which would be in conflict with the provisions of this Chapter; any such permits or licenses, if issued in conflict with the provisions of this Chapter shall be void.

(2) It shall be the duty of the Planning Commission and Planning Director to enforce the provisions of this Chapter and it shall be the duty of all law enforcement officers of the County of Kauai to enforce this Chapter and all the provisions thereof.

(3) Any person convicted of violating or causing or permitting the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding Two Thousand Dollars (\$2,000). After conviction, a separate offense is committed upon each day during or on which a violation occurs or continues.

(4) Any building or structure or other improvement or development set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Chapter or any use of land contrary to the provisions of this Chapter shall be unlawful and a public nuisance. The County Attorney shall immediately commence an action or proceeding for the abatement, removal, or enjoinder thereof in the manner provided by law, and shall take such other steps, and shall apply to such courts as may have jurisdiction to grant relief that will abate or remove such building, structure, improvement, development or use, and restrain and enjoin any person from setting up, erecting, building, maintaining, or using any such building, structure, improvement or development, or using any property contrary to the provisions of this Chapter.

(5) The remedies provided for in this Article shall be cumulative and not exclusive.

(b) Civil Fines.

(1) If the Director of the Planning Department determines that any person, firm or corporation is not complying with a notice of violation, the Director may have the party responsible for the violation served, by mail or delivery, with an order pursuant to this section. The order may require the party responsible for the violation to do any or all of the following:

(A) Correct the violation within the time specified in the order;

(B) Pay a civil fine not to exceed \$10,000 in the manner, at the place, and before the date specified in the order;

(C) Pay a civil fine up to \$10,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.

(2) The order shall advise the party responsible for the violation that the order shall become final 30 days after the date of its delivery. The order shall also advise that the Director's action may be appealed to the Planning Commission.

(3) The provisions of the order issued by the Director under this section shall become final 30 calendar days after the service of the order. The parties responsible for the violation may appeal the order to the Planning Commission pursuant to its rules. The form of this appeal must conform to the Planning Commission's rules. However, an appeal to the Planning Commission shall not stay any provision of the order.

(4) The Director may institute a civil action in any court of competent jurisdiction for enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the Director need only show that the notice of violation and order were served; that a civil fine was imposed; the amount of the civil fine imposed has not been paid; that either the order has not been appealed or that if appealed, the order was sustained by the Commission and/or any Court action.”

SECTION 5. Chapter 8, Article 17, of the Kaua'i County Code 1987, as amended, shall be 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 March 7, 2008 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 operated outside of a Visitor Destination Area prior to March 7, 2008 shall 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 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 March 7, 2008, 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 March 7, 2008, 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 Hawai'i Revised Statutes shall be made within sixty (60) days of August 16, 2010. If an operator as defined under Section 8-17.10(c) fails to apply for a nonconforming use certificate within sixty (60) days of August 16, 2010, then the Planning Director shall assess an administrative late application processing fee of Fifteen Hundred (\$1,500.00) Dollars at filing. A nonconforming use certificate may be issued for a single-family transient vacation rental located on land 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 which specifically permits a vacation rental 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 Hawai'i 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 August 16, 2010. 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. 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.

(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 August 16, 2010 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 August 16, 2010 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 annually on the date of issuance of the nonconforming use certificate.

(1) Each application to renew shall include proof that there is a currently valid State of Hawai'i general excise tax license and transient accommodations tax license for the Nonconforming use and shall be received by the Department prior to the expiration date of a held non-conforming use certificate. Failure to meet this 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 this 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 an annual renewal fee of [One Hundred Fifty Dollars (\$150.00)] Five Hundred Dollars (\$500.00) which shall be deposited into the County General Fund.”

SECTION 6. Chapter 8, Article 27, Section 27.8 of the Kauai County Code 1987, as amended, shall be amended to include a new subsection (e) to read as follows:

“(e) Fees. A non-refundable processing fee of \$100.00 shall accompany a request for determination.”

SECTION 7. Chapter 9, Article 3, Section 3.2 of the Kauai County Code 1987, as amended, shall be amended as follows:

“Sec. 9-3.2 Application For Approval Of Preliminary Subdivision Maps.

(a) A preliminary subdivision map may be filed by the owner of the property sought to be subdivided, or by any person duly authorized by the owner. The preliminary subdivision map, wherever feasible, shall be filed together with one (1) application for the required zoning permit, as provided in the Comprehensive Zoning Ordinance, and two (2) applications, if any, for necessary use permits and variance permits, as provided in the Comprehensive Zoning Ordinance. Information required in the applications may be shown in the preliminary subdivision map, and the Planning Commission, to the extent feasible, shall act upon the preliminary subdivision map and all applications simultaneously.

(b) Filing Fees. Each subdivider at the time of filing the preliminary subdivision map shall pay a non-refundable fee of [Three Dollars (\$3.00)] Sixteen Dollars and Fifty Cents (\$16.50) for each lot shown on the preliminary subdivision map[.] and a processing fee of Three Hundred Dollars (\$300.00), except that filing and processing fees shall be exempted as follows:

(1) A subdivision for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 9-3.2(b), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A subdivision for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 9-3.2(b), provided such projects conform to applicable provisions of the County's affordable housing program."

SECTION 8. If any provision of this Ordinance or 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 9. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance material for inclusion in the Kauai County Code 1987, as amended, the brackets, bracketed material and underscoring shall not be included. The County Clerk shall also be authorized to codify any relevant changes to Ordinance 935, pursuant to this Ordinance and reissue Ordinance 935 as a complete document.

SECTION 10. This Ordinance shall take effect upon its approval.

Introduced by: /s/ NADINE K. NAKAMURA
(By Request)

DATE OF INTRODUCTION:

May 22, 2013

Līhu'e, Kaua'i, Hawai'i.

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2483, Draft 1, which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on July 17, 2013, by the following vote:


FOR ADOPTION:	Bynum, Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL - 7,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i
July 18, 2013



Ricky Watanabe
County Clerk, County of Kaua'i

ATTEST:



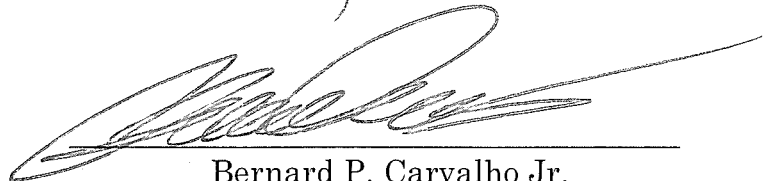
Jay Furfaro
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

July 18, 2013

Approved this 23 day of

July, 2013.



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

