

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, June 1, 2022, at 8:30 a.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihue, on the following:

Bill No. 2856

A BILL FOR AN ORDINANCE AMENDING CHAPTER 11A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO ENVIRONMENTAL IMPACT FEES (*County of Kaua'i Planning Department, Applicant*) (ZA-2022-5)

This Bill proposes to amend Chapter 11A, Kaua'i County Code 1987, as amended, by removing and exempting "multifamily dwelling" from the types of projects subject to a County Environmental Impact Assessment (EIA) fee and adding "multi-family time share unit" and "multi-family transient vacation rental unit" as types of projects that would remain subject to the EIA fee.

Bill No. 2857

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO ADDITIONAL DWELLING UNIT (*County of Kaua'i Planning Department, Applicant*) (ZA-2022-6)

This Bill proposes to amend Chapter 8, Article 15, Kaua'i County Code 1987, as amended, Section 8-15.1(a)(4)(E) and Section 8-15.2(a)(4)(E) of the Comprehensive Zoning Ordinance, entitled "Additional Dwelling Unit on Other Than Residentially Zoned Lots" and "Additional Dwelling Unit on Residentially Zoned Lots", respectively. The purpose of this Bill is to remove the requirement for a lot of record to have direct access to a County standard road, the Subdivision Ordinance, or the "Kaua'i County Planning Commission Road Widening Policy" be applied to the Additional Dwelling Unit Clearance Form process.

Bill No. 2858

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO A PLANNING DEPARTMENT TRANSIENT VACATION RENTAL PROGRAM ACCOUNT (*County of Kaua'i Planning Department, Applicant*) (ZA-2022-7)

This Bill proposes to amend Chapter 8, Kaua'i County Code 1987, as amended, Section 8-17.10 of the Comprehensive Zoning Ordinance, entitled Nonconforming Use Certificates for Single Family Vacation Rentals, by creating a Planning Department Transient Vacation Rental Program Account within Fund 251 for the purposes of annually processing Transient Vacation Non-Conforming Use Certificates (TVNCUCs), contract and purchase Transient Vacation Rental (TVR) enforcement resources and services, receive and attend TVR enforcement and TVR program management trainings and workshops, and support the Office of the County Attorney in litigation efforts against illegal TVR operations' lawsuits against the County Kauai. This Fund will receive up to \$250,000.00 per year from the total amount of TVNCUC renewal fees annually collected.

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OFFICE OF THE COUNTY CLERK COUNTY OF KAUAI

All interested persons who wish to present their comments may do so at the public hearing. Written testimony prior to the hearing would be appreciated. Written testimony can be submitted to the Office of the County Clerk, Council Services Division by mail, facsimile, or via E-mail to counciltestimony@kauai.gov. Copies of these Bills are available at the Office of the County Clerk, Council Services Division.

(The Council Committee or Council may amend these Bills at their subsequent meetings. Meeting notices are posted at least six (6) days in advance at the County Clerk's Office and the public may also testify at any of these meetings.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2856, Bill No. 2857, and Bill No. 2858 were passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on May 4, 2022, by the following vote:

AYES:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
NOES:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i
May 5, 2022

/s/ Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF THE COUNTY CLERK, COUNCIL SERVICES DIVISION AT (808) 241-4188 OR COKCOUNCIL@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

(One publication – The Garden Island – May 12, 2022)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 11A,
KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO
ENVIRONMENTAL IMPACT FEES**

(County of Kaua'i Planning Department, Applicant) (ZA-2022-5)

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

SECTION 1. Findings and Purpose. The Council finds that the County of Kaua'i is currently in a housing crisis with the current housing inventory unable to meet the local demand for housing units.

The Council also finds that residential multi-family developments have been a lower cost method of increasing housing inventory when compared to single-family dwelling units.

The Council also finds that residential multi-family developments are also a specific strategy for increasing housing inventory within the communities' town cores as recommended in the 2018 General Plan

The Council also finds that Chapter 11A of the Kaua'i County Code charges the same Environmental Impact Assessment (EIA) fee for a residential multi-family unit as it does for the hotel and resort units.

The Council further finds that to reduce the barriers of cost for multi-family units, and to encourage the development of residential multi-family units during the housing crisis, it is appropriate to remove the EIA fees for multi-family developments.

The purpose of this ordinance is to amend the Kaua'i County Code 1987, as amended, to remove the EIA fees for multi-family residential developments.

SECTION 2. Chapter 11A, Environmental Impact Assessment On Land Development, Kaua'i County Code 1987, as amended, is hereby amended by amending Sec. 11A-1.3, Imposition, to read as follows:

"A fee is hereby assessed upon each new subdivision and the construction of each new hotel, motel, [multifamily dwelling,] multi-family time share unit, multi-family transient vacation rental unit, commercial and industrial facility within the County."

SECTION 3. Chapter 11A, Environmental Impact Assessment On Land Development, Kaua'i County Code 1987, as amended, is hereby amended by amending Sec. 11A-2.2, Applicability; Assessment, to read as follows:

"The provisions of this Chapter shall apply to:

(a) An existing building approved prior to the effective date of the Ordinance codified in this Chapter when such building is enlarged or altered to increase the number of dwelling units in the case of subdivisions, hotels,

motels [and multifamily developments], multi-family time share units, multi-family transient vacation rental units, or increase the gross building area in the case of commercial and industrial developments.

(b) An existing building approved prior to the effective date of the Ordinance codified in this Chapter when such building is demolished and a new building is constructed in its place. This Chapter shall apply only to any additional dwelling units built in the case of subdivisions, hotels, [motels and multifamily developments] motels, multi-family time share units, multi-family transient vacation rental units, or the gross building area increased in the case of commercial and industrial developments.

(c) Land and building subdivisions for single-family residential purposes consisting of the first six (6) lots or units shall be assessed two hundred fifty dollars (\$250.00) per lot or unit. One (1) lot or unit shall be exempt from assessment. Subdivision of all lots or units subsequent to the initial six (6) shall be assessed the full fee applicable to the lots or units as provided in Subsection (d) of this Section, regardless of the change in ownership of the lot or unit assessed since the first assessment.

(d) Land and building subdivisions for single-family residential purposes consisting of more than six (6) lots or units shall be assessed five hundred dollars (\$500.00) per lot or unit. One (1) lot or unit shall be exempt from assessment.

(e) Each new hotel, motel [and multifamily dwelling unit] multi-family time share unit, and multi-family transient vacation rental unit shall be assessed one thousand dollars (\$1,000.00) per unit.

(f) Each new commercial development shall be assessed one hundred dollars (\$100.00) per the minimum number of parking stalls serving that development as required by the Comprehensive Zoning Ordinance.

(g) Each new industrial building shall be assessed twenty-five cents (\$0.25) per square foot of gross building area.

(h) Any development consisting of more than one (1) use (i.e., hotel development containing commercial building area or combined commercial and industrial building areas) shall be assessed a separate fee for each such use as provided hereinabove and shall not be assessed only according to the predominant use.”

SECTION 4. If any provision of this Ordinance or application thereof to any person, persons, or circumstance 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 5. 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, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 6. This Ordinance shall take effect upon its approval.

INTRODUCED BY:



MASON K. CHOCK
(By Request)

DATE OF INTRODUCTION:

May 4, 2022

Līhu'e, Kaua'i, Hawai'i


V:\BILLS\2020-2022 TERM\2022-193 EIA Multi Family Exemption MC_AMK_mn.docx

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2856, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on May 4, 2022, by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i
May 4, 2022


Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO ADDITIONAL DWELLING UNIT**

(County of Kaua'i Planning Department, Applicant) (ZA-2022-6)

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

SECTION 1. Findings and Purpose. The Kaua'i County Council is currently in a housing crisis with the current housing inventory unable to meet the local demand for housing units.

The Council also finds that the Additional Dwelling Unit (ADU) program has resulted in over 1,000 units built within our urban and rural cores, and many more within this area still qualify for ADUs to be constructed in the future.

The Council also finds that the Additional Dwelling Unit standards for road widening under Kaua'i County Code (KCC) Section 8-15.1(a)(4)(E) extends the time it takes to get an ADU Clearance Form by at least two to three months.

The Council also finds that while the original intent of the requirement for a road widening agreement was to ensure non-standard roadways be brought up to County standards, there have been no substandard roads brought into conformity through ADU associated road widening agreements.

The Council also finds that removing Section 8-15.1(a)(4)(E) will remove this unnecessary two to three month delay in the ADU clearance form process.

The purpose of this Ordinance is to amend the Comprehensive Zoning Ordinance to remove the requirement for a lot of record to have direct access to a County standard road or have the Subdivision Ordinance or the "Kaua'i County Planning Commission Road Widening Policy" be applied to the ADU clearance form process.

SECTION 2. Chapter 8, Article 15, Kaua'i County Code 1987, as amended, is hereby amended by amending Sec. 8-15.1, to read as follows:

"Sec. 8-15.1 Additional Dwelling Unit on Other Than Residentially Zoned Lots.

(a) Additional Dwelling Unit. Notwithstanding other provisions to the contrary, for any lot where only one (1) single family residential dwelling or farm dwelling is a generally permitted use or is allowed through a Use Permit, one (1) additional single family residential dwelling unit (attached or detached) or farm dwelling may be developed, provided:

(1) All applicable County requirements, not inconsistent with Sec. 46-4(c), Hawai'i Revised Statutes and the County's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were rezoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the Residential District requirement.

(2) The provisions of this Subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standard and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

[(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.]

(5) Facilities clearance may be obtained prior to application for Building Permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the Building Permit application. Where complete plans and specifications are submitted for Building Permit application processing, the submission of the facilities clearance form shall be attached with the Building Permit and processed concurrently.

(6) Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any lot.

(b) Expiration. Subsection (a) of this Section is hereby repealed December 31, 2006. No Building Permit shall be granted for an additional dwelling unit under Subsection (a) after such repeal date, except as provided in Subsection (d).

(c) Upon expiration of Subsection (a), any additional dwelling unit built pursuant to a valid Building Permit obtained under Subsection (a) shall thereafter be considered a conforming structure and use, notwithstanding Article 13 of the Comprehensive Zoning Ordinance relating to nonconforming structures and uses.

(d) Notwithstanding the expiration of Subsection (a), and subject to compliance with all applicable legal requirements and conditions, a Building Permit for an additional dwelling unit shall be granted for a lot in existence as of December 31, 2006 which, up to December 31, 2006, was eligible to apply for an additional dwelling unit under Subsection (a) and for which an ADU Facilities Clearance Form is certified as complete by the Planning Director as of June 15, 2007, or for which an ADU Facilities Clearance form was signed by the authorized employees of all agencies or departments listed in the ADU Facilities Clearance Form and submitted with a Building Permit application prior to November 22, 2006, provided that:

(1) The term "lot in existence as of December 31, 2006," as used in Subsection (d) shall not apply to any lot created by the relocation of a kuleana lot by consolidation and resubdivision pursuant to the provisions of Chapter 9, Kaua'i County Code 1987, as amended ("Subdivision Ordinance"), where such consolidation and resubdivision occurs after December 31, 2006.

(2) All applicable County requirements not inconsistent with Sec. 46-4(c), Hawai'i Revised Statutes, and the County's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were rezoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the Residential District requirement.

(3) The provisions of this Subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district, or where additional dwelling units are specifically prohibited by zoning ordinance.

(4) For lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into an additional dwelling unit, but no additional guest house may be constructed.

(5) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewerred areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water (including, but not limited to, source, transmission, and storage lines/facilities) shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

[(E) The lot must have direct access to a street which has an all-weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all-weather surface at the time of application for a Building Permit, there exists funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy" (as may be amended from time to time), for those roads which are considered substandard.]

(6) An ADU Facilities Clearance Form as prescribed by the Planning Director shall be completed prior to application for a Building Permit and shall be submitted with the Building Permit application. Completion of the ADU Facilities Clearance Form shall not guarantee the issuance of a Building Permit. All requirements and conditions on the completed ADU Facilities Clearance Form shall be met prior to issuance of a Building Permit based on legal requirements at the time of Building Permit issuance. The Planning Director shall certify the ADU Facilities Clearance Form as complete, only if every signature blank on the Form has been signed by the respective department or agency, and the applicant has signed an affidavit prescribed by the Planning Director verifying: (A) that there is no restriction or covenant applicable in any deed, lease, or other recorded document which prohibits the construction or placement of an additional dwelling unit on the applicable lot; and (B) that the applicant understands that completion of an ADU Facilities Clearance Form does not guarantee or vest any right to a Building Permit, and that all conditions and requirements in existence at the time of Building Permit application shall be met before a Building Permit can be issued. The Planning Department shall keep a record of all ADU Facilities Clearance Forms that are issued and shall retain the original affidavits and the original ADU Facilities Clearance Forms that are certified as complete by the Department.

(7) The applicant shall obtain a re-certification from the Planning Department certifying that applicant has met the requirements set forth in Sec. 8-15.1(d)(6). A regulatory fee of Two Hundred Fifty Dollars (\$250.00) shall be charged upon registration for a re-certification. If the applicant fails to obtain a re-certification by June 30, 2017, the entitlement to the additional dwelling unit shall be deemed terminated and no building permit shall be issued for the additional dwelling unit. The Planning Director shall notify the applicant in writing that the entitlement to the additional dwelling unit has been terminated. The applicant may appeal the termination to the Planning Commission in accordance with the Rules of Practice and Procedure of the Planning Commission.

(8) Where a regulatory fee has been paid, the fee payment shall be deposited to the "ADU Re-certification Fund." There is hereby established and created a fund to be known as the "ADU Re-certification Fund." The fees collected pursuant to this subsection are hereby deemed appropriated upon receipt, and may be expended by the Department of Planning for the hiring of persons employed on a fee, contract, or piecework basis, or independent contractors to assist in conducting inspections. The maximum number of persons that may be hired with these fees shall be determined by the Budget Ordinance. The fees may also be expended for materials, supplies, and equipment that facilitate inspections, and for payment of overtime to conduct inspections.

(9) Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any lot.

(10) Notwithstanding any law to the contrary:

(A) it is the applicant's responsibility to resolve any outstanding conditions with the respective governmental agencies; and

(B) new assessments may be applicable to the property that is the subject of the ADU Facilities Clearance Form."

SECTION 3. Chapter 8, Article 15, Kaua'i County Code 1987, as amended, is hereby amended by amending Sec. 8-15.2, to read as follows:

"Sec. 8-15.2 Additional Dwelling Unit on Residentially Zoned Lots.

(a) Notwithstanding other provisions to the contrary, for any residentially zoned lot where only one single family residential dwelling is

permitted, one (1) additional single family residential dwelling unit (attached or detached) may be developed, provided:

(1) All applicable County requirements, not inconsistent with Sec. 46-4(c), Hawai'i Revised Statutes and the County's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(2) The provisions of this Subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For residentially zoned lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewerred areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

[(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.]

(5) Facilities clearance may be obtained prior to application for Building Permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the Building Permit application. Where complete plans and specifications are submitted for Building Permit application processing, the submission of the Facilities Clearance Form will be attached with the Building Permit and processed concurrently.

(6) Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any residential lot. The provisions of this Section shall be subject to the provisions of Chapter 22, Kaua'i County Code 1987, as amended, Section 22-28. Limiting or Prohibiting Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses."

SECTION 4. If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 5. 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, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 6. This Ordinance shall take effect upon approval.

Introduced by:



MASON K. CHOCK
(By Request)

DATE OF INTRODUCTION:

May 4, 2022

Lihue, Kaua'i, Hawai'i

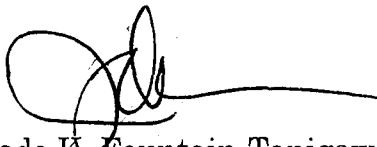
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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2857, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on May 4, 2022, by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL - 7,
AGAINST PASSAGE:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i
May 4, 2022


Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO
A PLANNING DEPARTMENT TRANSIENT VACATION RENTAL
PROGRAM ACCOUNT**

(County of Kaua'i Planning Department, Applicant) (ZA-2022-7)

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

SECTION 1. Findings and purpose. The Kaua'i County Council finds that the County of Kaua'i has a comprehensive zoning policy for transient vacation rental (TVR) management within Section 8-17 of the Kaua'i County Code 1987, as amended, that establishes the following:

1. The outright permissible use of TVRs within the Visitor Destination Area (VDA);
2. A prohibition on TVRs operating outside of the VDA;
3. The program and regulations for establishing and renewing Transient Vacation Non-Conforming Use Certificates (TVNCUCs) for legally non-conforming TVRs located outside of the VDA;
4. Enforcement regulations and processes for the Planning Department to enforce against illegal TVR operations.

These priorities comprise the Planning Department's TVR program that operates to restrict the proliferation of vacation rentals in residential and other areas outside of the VDA, which have historically caused significant and negative impacts to residential neighborhoods and agricultural lands.

The Council finds that through pro-active monitoring of the world wide web for illegal TVR operation advertisements, decisive enforcement actions, and partnerships with Airbnb and Expedia, the County of Kaua'i Planning Department has brought the number of illegal TVRs operating on Kauai down from an estimated one thousand five hundred (1,500) operations in 2017 to an estimated less than fifty (50) operations today.

The Council finds that to maintain this low level of illegal TVR activity, annual processing of TVNCUCs is necessary, continuous monitoring and action against any new illegal TVR operations are necessary, real-time awareness to shifts and changes in the regional and global TVR industry and its corresponding platforms and venues is necessary, TVR enforcement resources and trainings are necessary, and illegal TVR litigation will continue to need to be addressed.

The Council finds that there are currently four hundred twenty (420) legally non-conforming TVRs that are annually renewed through the TVNCUC program. The renewal fee for each of these non-conforming TVRs is \$750.00 per year and requires ongoing permit processing, compliance review, and monitoring throughout the year. The Department's review and monitoring of TVNCUCs often result in litigation and generates most of the Planning Department's recent TVR enforcement litigation cases.

The purpose of this Ordinance is to amend the Comprehensive Zoning Ordinance to create a Planning Department Transient Vacation Rental Program Account within Fund 251 for the purposes of annually processing TVNCUCs, contract and purchase TVR enforcement resources and services, receive and attend TVR enforcement and TVR program management trainings and workshops, and support the Office of the County Attorney in litigation efforts against illegal TVR operations' lawsuits against the County Kauai. This Fund will receive up to \$250,000.00 per year from the total amount of TVNCUC renewal fees annually collected.

SECTION 2. Chapter 8, Section 8-17.10, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 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

(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 Subsection (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 one thousand five hundred dollars (\$1,500.00) 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, Sec. 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 Subsection (c).

(B) An application for a Special Permit pursuant to Hawai'i Revised Statutes Sec. 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 Sec. 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: (i) 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 Kauai's Department of Finance Real Property Tax Division Agricultural Dedication Program Rules; (ii) 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 (iii) 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 Kauai'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 Nonconforming 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 H.R.S. 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 Nonconforming 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 Subsection (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 one thousand five hundred dollars (\$1,500.00) 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 Nonconforming Use Certificate. 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.

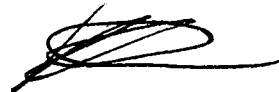
(3) The applicant shall pay an annual renewal fee of seven hundred fifty dollars (\$750.00) [which shall be deposited into the County General Fund]. There is hereby established and created an account to be known as the "Planning Department Transient Vacation Rental Program Account" within Fund 251. Up to \$250,000 of these renewal fees shall be deposited into this account annually. The remaining balance shall be deposited into the County General Fund annually. The fees collected pursuant to this Section are hereby deemed appropriated upon receipt and may be expended to retain/hire part time employees and/or independent contractors to assist in the review and renewals of Nonconforming Use Certificates annually and also to enforcement of the Comprehensive Zoning Ordinance and other Codes, Statutes, or regulations the Planning Department has the authority to enforce. The fees may also be expended for materials, supplies, education, training, and legal representation, and equipment that facilitates inspection and enforcement of Nonconforming Use Certificates and/or violations. The fees collected shall not lapse at the close of the fiscal year."

SECTION 3. If any provision of this Ordinance or application thereof to any person, persons, or circumstance 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 4. 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, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This Ordinance shall take effect upon its approval.

Introduced by:



MASON K. CHOCK
(By Request)

DATE OF INTRODUCTION:

May 4, 2022

Līhu'e, Kaua'i, Hawai'i

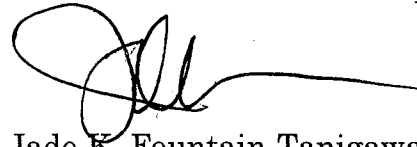
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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2858, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on May 4, 2022, by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i
May 4, 2022



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i