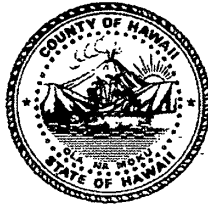


From the office of -  
Council Member  
District 3 - Hilo and Puna



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**SUSAN L.K. LEE LOY**  
25 Aupuni Street, Hilo, Hawai'i 96720

TO: Valerie T. Poindexter, Chair  
and Members of the Hawai'i County Council

FROM:  Sue Lee Loy, Council Member

DATE: June 4, 2018

SUBJECT: Proposed Amendment to Bill No. 108, Draft 2; An Ordinance Amending Chapter 25, Article 1, Article 2, Article 4, and Article 5, of the Hawai'i County Code 1983 (2016 Edition, as amended), Relating to Short-Term Vacation Rentals.

2018 JUN -4 AM 11:38  
COUNTY CLERK  
COUNTY OF HAWAII

Please see below proposed amendments to Bill No. 108, Draft 2. The proposed changes amend **SECTION 2** of the bill by amending "Section 25-4-\_\_\_. Short-term vacation rentals," on pages 1 and 2 of the bill, and also "Section 25-4-\_\_\_ .1. Short-term vacation rental nonconforming use certificate," on pages 2 through 4 of the bill. These changes require the planning director to be notified immediately of any change of ownership, replace references to the "designated contact person" with the "reachable person," refer to existing signage requirements in section 22-2.6 and chapter 3 of the County Code, and make nonsubstantive changes in wording.

The proposed amendment is illustrated below in Ramseyer format with respect to the contents of Bill No. 108, Draft 2; material to be deleted is bracketed and stricken and material to be added is underscored. A copy of the proposed Draft 3 of the bill, is attached.

1. **SECTION 2** of Bill No. 108, Draft 2 is amended by amending "Section 25-4-\_\_\_. Short-term vacation rentals," to read as follows:

**"Section 25-4-\_\_\_. Short-term vacation rentals.**

- (a) Short-term vacation rentals shall be permitted in the:
  - (1) V, CG, and CDH districts;
  - (2) CV district, provided that a use permit is obtained for each use; and
  - (3) General Plan Resort areas and Resort Node, except that RS districts in the General Plan Resort areas and Resort Node shall require a use permit.
- (b) Registration of short-term vacation rentals.
  - (1) Short-term vacation rentals in existence on or before the effective date of this ordinance:
    - (A) Shall register with the planning department if they exist within the following zoning districts:

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Ref. To: P/PC  
Ref. Date JUN 05, 2018

- (i) The V, CG, and CDH; or
    - (ii) The general plan resort areas and resort node, in any district other than RS.
  - (B) The registration form shall be submitted to the planning department no later than one hundred eighty days after the effective date of this ordinance.
  - (2) Any new short-term vacation rental established in a zoning district after the effective date of this ordinance, where such use is permissible pursuant to this section, shall register with the director prior to use of such rental.
  - (3) Owners of short-term vacation rentals shall register by submitting a form to the planning department in a format prescribed by the director. The registration form, at a minimum, shall require:
    - (A) Verification that State of Hawai'i general excise tax and transient accommodations tax licenses are in effect;
    - (B) Certification that the requisite amount of parking pursuant to section 25-4-51, is available; and
    - (C) Submittal of a site plan showing the location of the rooms for rent and requisite parking.
  - (4) Upon change in ownership, the ~~[registration]~~ new owner shall notify the planning director forthwith of the change in ownership and provide contact information for the reachable person. Registration shall automatically continue, subject to termination by the new owner.
  - (5) Any short-term vacation rental that has not lawfully registered within the deadlines set forth in this section shall be considered an unpermitted use and subject to the penalties set forth in this chapter until such time proper registration and compliance with applicable requirements of this section is obtained.
- (c) Standards.
- A short-term vacation rental shall be subject to the following standards:
- (1) The owner or ~~[designated contact]~~ reachable person shall reside in the County of Hawai'i and shall be reachable by guests, neighbors, and County agencies on a twenty-four hour, seven days-per-week basis. The owner shall notify the planning department of any changes to their contact information forthwith.
  - (2) All print and internet advertising of short-term vacation rentals, including listings with a rental service or real estate firm, shall include the registration or nonconforming use certificate number.
  - (3) A copy of the registration or nonconforming use certificate, as well as the ~~[designated contact]~~ reachable person's name and phone number, shall be displayed in the back of the front door of the sleeping quarters.
  - (4) Off-street parking shall meet the requirements set forth in section 25-4-51(a)(8) and applicable parking standards in this chapter.
  - (5) Any commercial signage that advertises a short-term vacation rental shall comply with the requirements of section 22-2.6 and chapter 3 of this Code."

2. **SECTION 2** of Bill No. 108, Draft 2 is amended by amending subsections (e) and (f) of “Section 25-4-\_\_\_\_.1. Short-term vacation rental nonconforming use certificate,” to read as follows:

“(e) Good neighbor policy. The owner or [~~designated contact~~] reachable person shall be responsible to ensure that activities taking place within the short-term vacation rental conform to the character of the existing neighborhood in which the rental is located.

At a minimum, the following shall be prominently displayed within the dwelling unit and recited in the rental agreement signed by the tenant:

- (1) Quiet hours shall be from 9:00 p.m. to 8:00 a.m., during which time the noise from the short-term vacation rental shall not unreasonably disturb adjacent neighbors.
- (2) Sound that is audible beyond the property boundaries during non-quiet hours shall not be more excessive than would be otherwise associated with a residential area.
- (3) Amplified sound that is audible beyond the property boundaries of the short-term vacation rental is prohibited.
- (4) Guest vehicles shall be parked in the designated onsite parking area.

(f) Annual renewal. Nonconforming use certificates must be renewed every year on or before the expiration date indicated on the certificate. At the time of renewal the applicant shall pay a renewal fee of \$500 to the director of finance. Renewal of a nonconforming use certificate shall be denied if the director finds that the short-term vacation rental use has been abandoned pursuant to section 25-4-62. Renewal may be denied if the director verifies any of the following:

- (1) The applicant has violated provisions of this section or other pertinent laws;
- (2) The owner is delinquent in payment of County taxes, fees, fines, or penalties assessed in relation to the short-term vacation rental;
- (3) The owner or [~~designated contact~~] reachable person has not been reachable; or
- (4) Police reports or verified neighbor complaints of noise and other disturbances relating to the short-term vacation rental operations.”

SL/ps

**AN ORDINANCE AMENDING CHAPTER 25, ARTICLE 1, ARTICLE 2, ARTICLE 4, AND ARTICLE 5, OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO SHORT-TERM VACATION RENTALS.**

**BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:**

**SECTION 1.** Findings and Purpose. The short-term rental of residential units, as an alternative to traditional resort and hotel accommodations, is an emerging trend in the visitor industry that continues to grow in popularity.

The purpose of this ordinance is to manage the impacts of these short-term vacation rentals by: 1) defining where this use will be allowed; 2) establishing provisions and standards to regulate this use; and 3) providing an avenue for an existing use deemed to be improper by this ordinance, to apply for a nonconforming use certificate that would allow them to continue to operate in a non-permitted district.

**SECTION 2.** Chapter 25, article 4, division 1, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended by adding the following new sections to be appropriately designated and to read as follows:

**"Section 25-4- . Short-term vacation rentals.**

- (a) Short-term vacation rentals shall be permitted in the:
- (1) V, CG, and CDH districts;
  - (2) CV district, provided that a use permit is obtained for each use; and
  - (3) General Plan Resort areas and Resort Node, except that RS districts in the General Plan Resort areas and Resort Node shall require a use permit.
- (b) Registration of short-term vacation rentals.
- (1) Short-term vacation rentals in existence on or before the effective date of this ordinance:
    - (A) Shall register with the planning department if they exist within the following zoning districts:
      - (i) The V, CG, and CDH; or
      - (ii) The general plan resort areas and resort node, in any district other than RS.
    - (B) The registration form shall be submitted to the planning department no later than one hundred eighty days after the effective date of this ordinance.
  - (2) Any new short-term vacation rental established in a zoning district after the effective date of this ordinance, where such use is permissible pursuant to this section, shall register with the director prior to use of such rental.
  - (3) Owners of short-term vacation rentals shall register by submitting a form to the planning department in a format prescribed by the director.

The registration form, at a minimum, shall require:

    - (A) Verification that State of Hawai'i general excise tax and transient accommodations tax licenses are in effect;
    - (B) Certification that the requisite amount of parking pursuant to section 25-4-51, is available; and

(C) Submittal of a site plan showing the location of the rooms for rent and requisite parking.

- (4) Upon change in ownership, the new owner shall notify the planning director forthwith of the change in ownership and provide contact information for the reachable person. Registration shall automatically continue, subject to termination by the new owner.
- (5) Any short-term vacation rental that has not lawfully registered within the deadlines set forth in this section shall be considered an unpermitted use and subject to the penalties set forth in this chapter until such time proper registration and compliance with applicable requirements of this section is obtained.

(c) Standards.

A short-term vacation rental shall be subject to the following standards:

- (1) The owner or reachable person shall reside in the County of Hawai'i and shall be reachable by guests, neighbors, and County agencies on a twenty-four hour, seven days-per-week basis. The owner shall notify the planning department of any changes to their contact information forthwith.
- (2) All print and internet advertising of short-term vacation rentals, including listings with a rental service or real estate firm, shall include the registration or nonconforming use certificate number.
- (3) A copy of the registration or nonconforming use certificate, as well as the reachable person's name and phone number, shall be displayed in the back of the front door of the sleeping quarters.
- (4) Off-street parking shall meet the requirements set forth in section 25-4-51(a)(8) and applicable parking standards in this chapter.
- (5) Any commercial signage that advertises a short-term vacation rental shall comply with the requirements of section 22-2.6 and chapter 3 of this Code.

**Section 25-4- .1. Short-term vacation rental nonconforming use certificate.**

- (a) The owner of any short-term vacation rental which operated outside of a permitted zoning district prior to July 20, 2018 shall submit an application for a nonconforming use certificate to the director no later than one hundred eighty days after the effective date of this ordinance.
- (b) Prior Use. The applicant seeking a short-term vacation rental nonconforming use certificate shall have the burden of proof in establishing that the property was in use prior to July 20, 2018. Evidence of such use prior to July 20, 2018 may include tax documents for the relevant time period, including: State of Hawai'i general excise tax filings; transient accommodations tax filings; and federal and State of Hawai'i income tax returns. Other reliable information may also be provided. Based on the evidence submitted, the director shall determine whether to issue a short-term vacation rental nonconforming use certificate for the short-term vacation rental.

- (c) Agricultural lands. A short-term vacation rental nonconforming use certificate may be issued for single-family dwellings on lots existing before June 4, 1976 located in the State land use agricultural district.
- (d) Display. Current short-term vacation rental nonconforming use certificates shall be displayed in a conspicuous place on the premises that is readily visible to an inspector. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous, readily visible common area instead.
- (e) Good neighbor policy. The owner or reachable person shall be responsible to ensure that activities taking place within the short-term vacation rental conform to the character of the existing neighborhood in which the rental is located. At a minimum, the following shall be prominently displayed within the dwelling unit and recited in the rental agreement signed by the tenant:
- (1) Quiet hours shall be from 9:00 p.m. to 8:00 a.m., during which time the noise from the short-term vacation rental shall not unreasonably disturb adjacent neighbors.
  - (2) Sound that is audible beyond the property boundaries during non-quiet hours shall not be more excessive than would be otherwise associated with a residential area.
  - (3) Amplified sound that is audible beyond the property boundaries of the short-term vacation rental is prohibited.
  - (4) Guest vehicles shall be parked in the designated onsite parking area.
- (f) Annual renewal. Nonconforming use certificates must be renewed every year on or before the expiration date indicated on the certificate. At the time of renewal the applicant shall pay a renewal fee of \$500 to the director of finance. Renewal of a nonconforming use certificate shall be denied if the director finds that the short-term vacation rental use has been abandoned pursuant to section 25-4-62. Renewal may be denied if the director verifies any of the following:
- (1) The applicant has violated provisions of this section or other pertinent laws;
  - (2) The owner is delinquent in payment of County taxes, fees, fines, or penalties assessed in relation to the short-term vacation rental;
  - (3) The owner or reachable person has not been reachable; or
  - (4) Police reports or verified neighbor complaints of noise and other disturbances relating to the short-term vacation rental operations.
- (g) The decision by the director to deny renewal of a nonconforming use certificate shall require written notice to the property owner.
- (h) Appeal. Within thirty days after the receipt of the notice, the owner may appeal to the board of appeals as provided by section 6-9.2, County Charter and sections 25-2-20 through 25-2-24.

**Section 25-4- .2. Prima facie evidence; short-term vacation rentals.**

Advertising of any sort that offers a property as a short-term vacation rental shall constitute prima facie evidence that a short-term vacation rental is operating on that property. The burden of proof shall be on the owner or operator to establish either that the property is not being used as a short-term vacation rental or that it is being used for such purpose legally.

**Section 25-4- .3. Enforcement.**

If any short-term vacation rental is found to be operating unlawfully, enforcement shall be pursuant to section 25-2-35.

**Section 25-4- .4 Short-term vacation rental enforcement account.**

- (a) Pursuant to section 10-12, Hawai'i County Charter, a special fund to be known as the "short-term vacation rental enforcement fund" is created. This fund shall be administered by the director.
- (b) The purpose of the fund is to support efforts to enforce the County's short-term vacation rental law.
- (c) This account shall be funded by fees collected in connection with nonconforming use certificate renewal applications.
- (d) The funds in this account shall be utilized to pay for expenses that facilitate enforcement of the County's short-term vacation rental enforcement law."

**SECTION 3.** Chapter 25, article 1, section 25-1-5, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended by adding new definitions to be appropriately inserted and to read as follows:

"Reachable" means being able to answer the telephone at all times, being able to be physically present at the short-term vacation rental within one hour following a request by a guest, a neighbor, or a County agency."

"Short-term vacation rental" means a dwelling unit of which the owner or operator does not reside on the building site, that has no more than five bedrooms for rent on the building site, and is rented for a period of thirty consecutive days or less. This definition shall not apply to the short-term use of an owner's primary residence as defined under the Internal Revenue Code."

**SECTION 4.** Chapter 25, article 2, division 3, section 25-2-30, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

**"Section 25-2-30. Violations.**

Any approval or permit issued pursuant to the provisions of this chapter shall comply with all applicable requirements of this chapter. Failure to comply with any provision of this chapter, any rule adopted pursuant to this chapter, or with conditions imposed as part of any approval [or], permit, [including variances] or variance from the provisions of this chapter, shall constitute a violation of this chapter."

**SECTION 5.** Chapter 25, article 2, division 6, section 25-2-61, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (a) to read as follows:

- “(a) The following uses shall be permitted within designated County zoning districts only if a use permit is obtained for the use from the commission:
- (1) Bed and breakfast establishments in RS, RA, FA, and A districts, provided that the property is within the state land use urban district.
  - (2) Crematoriums, funeral homes, funeral services and mortuaries in RS, RD, RM, RCX, RA, FA, A and V districts.
  - (3) Churches, temples and synagogues, including meeting facilities for churches, temples, synagogues and other such institutions, in RS, RD, RM, RA, FA and A districts; provided that a minimum building site area of ten thousand square feet is required within the RS, RD, RM, and RA districts.
  - (4) Day care centers in RS, RD, RM, RA, FA and A districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, and RA districts.
  - (5) Golf courses and related golf course uses including golf driving ranges, golf maintenance buildings, and golf club houses in the RS, RD, RM, RCX, RA, FA, A, V, CG, CV, and O districts, provided that the property is within the state land use urban or rural district. Golf courses and golf driving ranges shall not be permitted within the state land use agricultural district unless approved by the County before July 1, 2005.
  - (6) Group living facilities that exceed the criteria in subsection 25-1-5(b), paragraph (b) of the definition of “group living facility” in the RS, RD, RM, RCX, RA, FA, A, CN, CG, CV, and V districts.
  - (7) Hospitals, sanitariums, old age, convalescent, nursing and rest homes, and other similar uses devoted to the care or treatment of the aged, the sick, or the infirm in the RS, RD, RM, RCX, RA, FA, A, and V districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, RCX and RA districts.
  - (8) Major outdoor amusement and recreation facilities in RS, RD, RM, RCX, RA, A, CN, CG, CV, MCX, ML, MG and O districts.
  - (9) Schools in RS, RD, RM, RA, FA, A, V, MCX, ML, and MG districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, and RA districts.
  - (10) Short-term vacation rentals in the RS district in the general plan resort and resort node and in the CV district.
  - (11) Telecommunication antennas and towers in RS, RD, RM, RCX, RA, FA, A, IA and O districts.
  - ~~[(11)]~~(12) Yacht harbors and boating facilities in the RS, RD, RM, RCX, RA, V, CG, CV, MCX, ML, MG and O districts.
  - ~~[(12)]~~(13) Wind energy facilities in the O district; provided that the property is within the state land use agricultural district.
  - ~~[(13)]~~(14) Other unusual and reasonable uses which are not specifically permitted in any zoning district with the approval of the director and the concurrence of the council by resolution.”

**SECTION 6.** Chapter 25, article 5, division 1, section 25-5-3, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (b) to read as follows:

- “(b) In addition to those uses permitted under subsection (a) above, the following uses may be permitted in the RS district, provided that a use permit is issued for each use:
- (1) Bed and breakfast establishments as permitted under section 25-4-7.
  - (2) Care homes.
  - (3) Churches, temples and synagogues.
  - (4) Crematoriums, funeral homes, funeral services, and mortuaries.
  - (5) Day care centers.
  - (6) Golf courses and related golf course uses, including golf driving ranges, golf maintenance buildings and golf club houses, provided that the property is within the state land use urban or rural district. Golf courses and golf driving ranges shall not be permitted within the state land use agricultural district unless approved by the County before July 1, 2005.
  - (7) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.
  - (8) Major outdoor amusement and recreation facilities.
  - (9) Schools.
  - (10) Short-term vacation rentals in the general plan resort and resort node.
  - (11) Telecommunication antennas and towers.
  - ~~[(11)]~~(12) Yacht harbors and boating facilities.”

**SECTION 7.** Chapter 25, article 5, division 12, section 25-5-122, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (b) to read as follows:

- “(b) In addition to those uses permitted under subsection (a) above, the following uses may be permitted in the CV district, provided that a use permit is issued for each use:
- (1) Golf courses and related golf course uses, including golf driving ranges, golf maintenance buildings and golf club houses, provided that the property is within the state land use urban or rural district. Golf courses and golf driving ranges shall not be permitted within the state land use agricultural district unless approved by the County before July 1, 2005.
  - (2) Major outdoor amusement and recreation facilities.
  - (3) Short-term vacation rentals.
  - (4) Yacht harbors and boating facilities.”

**SECTION 8.** Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

**SECTION 9.** Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**SECTION 10.** This ordinance shall take effect upon approval.