



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813-3077

COMMITTEE ON ZONING AND PLANNING

Voting Members:

Brandon J.C Elefante, Chair
Esther Kia'aina, Vice Chair
Radiant Cordero
Calvin K.Y. Say

AGENDA

SPECIAL MEETING
COUNCIL MULTI-PURPOSE ROOM
ROOM 205, HONOLULU HALE
THURSDAY, JANUARY 20, 2022
9:00 A.M.

PUBLIC PARTICIPATION AND TESTIMONY

Pursuant to Act 220, Session Laws of Hawaii 2021, and Governor David Ige's Emergency Proclamation Related to Sunshine Law In-Person Meetings, issued on December 29, 2021, in order to allow public participation in a manner consistent with safe practices, this meeting will be conducted as a remote meeting by interactive conference technology, with the following procedures in effect for the meeting:

VIEWING THE MEETING AND RESTRICTIONS ON ENTRY

Members of the public will not be allowed into the meeting room, but may view the meeting on a live broadcast. The meeting will be viewable: (1) by internet live streaming through olelo.org and (2) by televised live broadcast on Olelo TV Channel 54.

After the meeting, the meeting will be viewable on demand at <https://www.honolulucitycouncil.tv/>. Copies of older meeting videos may be requested by calling the City Clerk's Office at (808) 768-5822; charges may apply.

Some Councilmembers and presenters may be participating in the meeting by interactive conference technology from remote locations.

ORAL TESTIMONY

Oral testimony will be permitted on all items on the agenda, subject to the following restrictions:

1. Persons may submit oral testimony remotely through the Zoom video conferencing platform. To participate, persons should visit www.zoom.us, click "Join," enter meeting ID **98283806262**, and complete the registration process. Registrants will receive an email that contains links and information on joining the meeting by either phone or video conference. Zoom testifiers are strongly encouraged to register at

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

least 24 hours before the start of the meeting. Remote testimony will be taken at the start of the agenda and then closed.

2. To audio conference on the day of the meeting, call **+1-253-215-8782**, enter ID **98283806262**, and Passcode **904641**.
3. Each speaker may not have anyone else read their statement and is limited to a one-minute presentation.

WRITTEN TESTIMONY

Written testimony may be faxed to (808) 768-3826, transmitted via the internet at <http://www.honolulu.gov/ccl-testimony-form.html>, or mailed to Office of the City Clerk, Attention: Information Section, 530 South King Street, Room 100, Honolulu, HI 96813. If submitted, written testimonies, including the testifier's address, email address, and phone number, will be available to the public at <https://hnlidoc.ehawaii.gov>. Written testimony will not be accepted in person at the meeting.

Should you have any questions, please call (808) 768-3801 or send an email to quehara@honolulu.gov.

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MATERIALS AVAILABLE FOR INSPECTION

Meeting materials ("*board packet*" under HRS Section 92-7.5) are accessible at <https://hnlidoc.ehawaii.gov/hnlidoc/browse/agendas> by clicking on the appropriate Committee meeting.

Accommodations are available upon request to persons with disabilities. Please call (808) 768-3801 or send an email to quehara@honolulu.gov at least three working days prior to the meeting.

FOR ACTION

1. **BILL 41 (2021) – LUO AMENDMENT RELATING TO TRANSIENT ACCOMMODATIONS.** Amending Chapter 21, Revised Ordinances of Honolulu 1990, as amended (the Land Use Ordinance) relating to transient accommodations. To better protect the City's residential neighborhoods and housing stock from the negative impacts of short-term rentals by providing a more comprehensive approach to the regulation of transient accommodations within the City and creating additional sources of funding for the administration and enforcement of the City's short-term rental and transient accommodations laws. (Transmitted by Communication D-702 [2021], A, B, C, D and E) (Bill passed First Reading on 11/10/21) (Current deadline for Council action: 5/13/22)

PROPOSED CD1 TO BILL 41 (2021) (Submitted by Councilmember Elefante) – The CD1 (OCS2022-0023/1/11/2022 4:16 PM) makes the following amendments:

PART I. BRIEF SUMMARY BY SUBJECT MATTER

The **PROPOSED CD1** includes some of the amendments recommended by the DPP in the proposed CD1 transmitted by Departmental Communication 734 (2021), and others proposed by the Zoning and Planning Committee Chair. An overview of the key amendments by subject matter follows.

1. Real Property Tax ("RPT"). Deletes provisions relating to RPT classifications for bed and breakfast homes ("B&Bs") and transient vacation units ("TVUs"). A new bill will be introduced to allow separate consideration of these proposals. Deletes revisions to ROH Section 21-2.150-3 ("Depository of fees and civil penalties relating to bed and breakfast homes or transient vacation units"), which would have required that beginning in the 2022 tax year, up to \$3.125 million in RPT collected annually from properties in the B&B or hotel and resort tax classifications be deposited into the special account.
2. Hotels. Deletes provisions relating to hotels.
3. Hosting Platforms. Deletes the repeal of ROH Chapter 21, Article 2A ("Hosting Platforms").
4. Appeals. Retains amendments to ROH Section 21-1.40 ("Appeals"), which would clarify the applicable date of mailing or service for various notification methods.

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

5. Administrative Enforcement. Deletes the repeal and replacement of ROH Section 21-2.150-2 ("Administrative enforcement"), and instead amends Section 21-2.150-2 to incorporate provisions relating to persons liable for LUO violations, joint and several liability, methods for the service of enforcement notices, information required in a notice of violation, information required in a notice of order, and an increase in the initial civil fine amount to up to \$5,000. For violations relating to B&Bs or TVUs, provides for maximum fines and increases the initial civil fine amount to up to \$5,000.
6. Master Use Table. In Table 21-3 ("Master Use Table"), retains the elimination of B&Bs as a permitted use (subject to LUO Article 5) in the AG-2, Country, R-20, R-10, R-7.5, R-5, R-3.5, A-3, BMX-3, and BMX-4 Districts. Restores the permitting of B&Bs and TVUs (subject to LUO Article 5) in the Resort District (proposed for deletion in the original bill). Retains but clarifies amendments to footnote 3 of the Master Use Table.
7. Permitted Uses in the Waikiki Special District. In Table 21-9.6(A) ("Waikiki Special District Precinct Permitted Uses and Structures") retains the elimination of B&Bs as a permitted use (subject to LUO Article 5) in the Apartment Precinct. Restores the permitting of B&Bs and TVUs (subject to LUO Article 5) in the Resort Mixed Use Precinct (proposed for deletion in the original bill). Deletes proposed amendments to the hotel entry in the Table.
8. Nonconforming Use Certificates ("NUCs"). Amends ROH Section 21-4.110-1 (NUCs for TVUs) and Section 21-4.110-2 (NUCs for B&Bs) to require B&Bs and TVUs with NUCs to comply with the restrictions and standards in ROH Section 21-5.730(b)(3). Increases the fee for renewal of NUCs for B&Bs and TVUs from \$600 every two years to \$4,000 every two years.
9. Regulation of Bed and Breakfast Homes and Transient Vacation Units. Deletes the repeal and replacement of ROH Section 21-5.730 ("Bed and breakfast homes and transient vacation units"), and instead amends Section 21-5.730 to:
 - a. Delete provisions that permitted B&Bs and TVUs in certain A-1 and A-2 Districts, and instead permits B&Bs and TVUs in designated A-1 and A-2 Districts in the Gold Coast area of the Diamond Head Special District, in close proximity to the Koolina Resort (revised from

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

the proposal in the original bill), and in close proximity to the Turtle Bay Resort. Incorporates corresponding Exhibits as Figures.

- b. Make the standards and requirements apply to TVUs (as well as B&Bs), except for the home exemption requirement.
- c. Delete provisions that require an applicant for a B&B or TVU registration or registration renewal to be a natural person who does not own more than one short-term rental in the City, and to submit an affidavit to that effect.
- d. Add requirements that registration applications include a title report, and registration renewal applications include an updated title report if ownership of the B&B or TVU has changed.
- e. Clarify the circumstances under which the DPP Director may deny a registration renewal application or revoke a registration.
- f. Delete requirements that are no longer applicable, including provisions relating to Development Plan area density limits, dedication requirements for B&Bs in the AG-2 District, the 1,000-foot spacing requirement between B&Bs and TVUs, and the requirement that the owner or operator of a B&B remain on the premises during quiet hours.
- g. Provide that private restrictions on B&Bs and TVUs established in multifamily dwelling governing documents will be subject to private enforcement.
- h. Add provisions relating to minimum insurance requirements, gathering restrictions, and the provision of an informational binder for guests.
- i. Require advertisements to include the tax map key number of the B&B or TVU (in addition to the registration or NUC number). Any advertisement for the lease or rental of a dwelling unit that does not have a registration or NUC number, but may reasonably be read as being an advertisement for the lease or rental of a bed and breakfast home or transient vacation unit must include a statement that the property may not be rented for less than 90 consecutive days.

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

- j. For advertising violations that are not corrected within seven days after receipt of a notice of violation, provide for an initial civil fine not to exceed \$5,000, and a fine not to exceed \$10,000 for each day thereafter that the advertisement is on public display.
- 10. 90-Day Requirement. Amends the definitions of B&B and TVU to mean dwelling units that are rented for periods of less than 90 days (instead of 180 days), excluding month-to-month holdover tenancies. Adds definitions of "Transient accommodations" and "Transient occupant."
- 11. Administrative Rules. Requires the DPP Director to adopt administrative rules to implement the ordinance within 180 days after the effective date of the ordinance.
- 12. Effective Date. Provides that the ordinance takes effect 180 days after its approval; provided that SECTION 11 of the ordinance (relating to administrative rules) takes effect upon its approval.

PART II. DETAILED SUMMARY BY BILL SECTION

The PROPOSED CD1 makes the following amendments, which are listed by bill SECTION:

- A. Deletes SECTION 2 of the bill, relating to the real property tax classifications for bed and breakfast homes ("B&Bs") and transient vacation units ("TVUs"). A new bill will be introduced to allow separate consideration of these proposals.
- B. Adds a new SECTION 2 of the bill to increase the fee for renewal of nonconforming use certificates ("NUCs") for B&Bs and TVUs from \$600 every two years to \$4,000 every two years.
- C. Deletes SECTION 3 of the bill, which would have repealed ROH Chapter 21, Article 2A ("Hosting Platforms"). Renumbers subsequent bill SECTIONS.
- D. Deletes:
 - 1. Former SECTION 5 of the bill, which would have repealed ROH Section 21-2.150-2 ("Administrative enforcement"); and

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

2. Former SECTION 6 of the bill, which would have added a new ROH Section 21-2.150-2.
- E. Adds a new SECTION 4 of the bill to amend ROH Section 21-2.150-2 ("Administrative enforcement") as follows:
1. Adds a new subsection (b) to specify the persons liable for LUO violations;
 2. Adds a new subsection (c) to provide for joint and several liability;
 3. Adds a new subsection (d) to specify the methods that may be used to serve enforcement notices issued by the DPP Director;
 4. Realphabetizes subsequent subsections;
 5. In realphabetized subsection (e), provides that the notice of violation must also include the address or location of the violation, a concise description of the violation, a statement of the actions that are necessary to correct the violation, a requirement that the violator correct the violation by a specified date, a statement of the penalties that will be imposed if the violation is not corrected, and a requirement that the violator notify the DPP Director when the violation has been corrected; and
 6. In realphabetized subsection (f), provides that the notice of order must also include a copy of the applicable notice of violation, and increases the initial civil fine amount to up to \$5,000 (instead of up to \$1,000). For violations relating to B&Bs or TVUs, provides for maximum fines and increases the initial civil fine amount to up to \$5,000 (instead of \$1,000).
- Renumbers subsequent bill SECTIONS.
- F. Deletes former SECTION 7 of the bill, which would have amended ROH Section 21-2.150-3 to require that beginning in the 2022 tax year, up to \$3.125 million in real property taxes collected annually for the B&B or hotel and resort tax classifications be deposited into the special account for B&Bs and TVUs and used for administration and enforcement purposes. Renumbers subsequent bill SECTIONS.

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

- G. In renumbered SECTION 5 (former SECTION 8) of the bill:
 - 1. Amends Table 21-3 ("Master Use Table") to restore B&Bs and TVUs as permitted uses (subject to standards in LUO Article 5) in the Resort District (proposed for deletion in the original bill); and
 - 2. Amends the footnotes to clarify that B&Bs and TVUs may renew valid registration certificates that were initially issued prior to an amendment to the applicable development plan or sustainable communities plan that prohibits B&Bs or TVUs in any plan area (incorporated from former SECTION 9 of the bill).
- H. In renumbered SECTION 6 (former SECTION 10) of the bill, amends ROH Section 21-4.110-1 ("Nonconforming use certificates for transient vacation units") to revise the section title to read "Transient vacation units—Nonconforming use certificates" (for purposes of conformity), and require TVUs operating under NUCs to comply with the restrictions and standards of ROH Section 21-5.730(b)(3).
- I. In renumbered SECTION 7 (former SECTION 11) of the bill, amends ROH Section 21-4.110-2 ("Bed and breakfast homes – Nonconforming use certificates") to require B&Bs operating under NUCs to comply with the restrictions and standards in ROH Section 21-5.730(b)(3).
- J. Deletes:
 - 1. Former SECTION 12 of the bill, which would have repealed ROH Section 21-5.360 ("Hotels");
 - 2. Former SECTION 13 of the bill, which would have added a new ROH Section 21-5.360 ("Hotels and hotel units");
 - 3. Former SECTION 14 of the bill, which would have added a new ROH Section 21-5.360.1 ("Condominium hotels"); and
 - 4. Former SECTION 15 of the bill, which would have added a new ROH Section 21-5.360.2 ("Specialty hotels").

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

K. Deletes:

1. Former SECTION 16 of the bill, which would have repealed ROH Section 21-5.370 ("Bed and breakfast homes and transient vacation units");
2. Former SECTION 17 of the bill, which would have added a new ROH Section 21-5.730.1 ("Bed and breakfast homes and transient vacation units");
3. Former SECTION 18 of the bill, which would have added a new ROH Section 21-5.730.2 ("Registration, eligibility, application, renewal and revocation");
4. Former SECTION 19 of the bill, which would have added a new ROH Section 21-5.730.3 ("Use and development standards for bed and breakfast homes and transient vacation units");
5. Former SECTION 20 of the bill, which would have added a new ROH Section 21-5.730.4 ("Advertisements, regulation, and prohibitions"); and
6. Former SECTION 21 of the bill, which would have added a new ROH Section 21-5.730.5 ("Violations, complaint, response, and enforcement").

Renumbers subsequent bill SECTIONS.

L. Adds a new SECTION 8 of the bill to amend ROH Section 21-5.730 as follows:

1. In subsection (a), relating to B&Bs and TVUs permitted in certain areas:
 - a. Deletes provisions that allowed B&Bs and TVUs in the A-1 and A-2 Districts if they are within 3,500 feet of a Resort District of greater than 50 contiguous acres, and were rezoned under the same zone change application as part of a master-planned resort community.

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

- b. Adds provisions permitting B&Bs and TVUs in a designated A-2 District in the Gold Coast area of the Diamond Head Special District; designated A-1 and A-2 Districts in close proximity to the Koolina Resort; and a designated A-1 District in close proximity to the Turtle Bay Resort.
 - c. Adds corresponding Figures 21-5.1, 21-5.2, and 21-5.3 (former Exhibits A, B, and C, but does not include former Exhibit D because B&Bs and TVUs are already permitted in the Makaha Resort District). In Figure 21-5.2, does not permit B&Bs and TVUs in: A-1 Districts mauka of Farrington Highway, and the A-1 and A-2 Districts on the right side of the figure.
2. In subsection (b), relating to the standards and requirements for B&Bs and TVUs:
- a. Throughout subsection (b), adds that the standards and requirements applicable to B&Bs also apply to TVUs, except that the home exemption requirement only applies to B&Bs.
 - b. Deletes the exceptions for B&Bs and TVUs in the Resort District, certain A-1 and A-2 Districts, and the Resort Mixed Use Precinct of the Waikiki Special District. Provides that the only part of subsection 21-5.730(b) that B&Bs and TVUs operating under NUCs need to comply with is subsection (b)(3).
 - c. Deletes provisions that require an applicant for a B&B or TVU registration or registration renewal to be a natural person who does not own more than one short-term rental in the City, and to submit an affidavit to that effect.
 - d. Adds a requirement that registration applications include a title report issued within 30 days prior to submission.
 - e. Deletes registration and registration renewal requirements for B&Bs located in the AG-2 District (no longer applicable).
 - f. Adds a requirement that registration applications include a copy of the required informational binder.

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

- g. Adds provisions specifying that registration will be effective for a period of one year and must be renewed annually prior to expiration.
- h. Adds a requirement that registration renewal applications be submitted no earlier than three months prior to the expiration date.
- i. Clarifies that registration renewal applications must include tax clearance certificates certifying payment of real property taxes, general excise taxes ("GET"), and transient accommodations taxes ("TAT").
- j. Adds a requirement that registration renewal applications include an updated title report if there has been any change in ownership of the subject property.
- k. Clarifies the circumstances pursuant to which the DPP Director may deny a renewal application.
- l. Deletes the requirement that the owner or operator of a B&B that is being rented remain on the premises during quiet hours.
- m. Amends the occupancy provisions to require registration of all transient occupants, limit sleeping accommodations to no more than two adults in each bedroom, and restrict the total number of transient occupants to two times the number of bedrooms provided.
- n. Deletes various provisions that are no longer applicable relating to Development Plan area density limits, dedication requirements for B&Bs in the AG-2 District, and the 1,000-foot spacing requirement between B&Bs and TVUs.
- o. Amends the multifamily dwelling density limit (50 percent of the total dwelling units in a multifamily dwelling) to provide that private restrictions on B&Bs and TVUs established in multifamily dwelling governing documents will be privately enforced.

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

- p. Adds a requirement for a minimum of \$1 million in commercial general liability insurance coverage for the B&B or TVU.
 - q. Adds provisions restricting gatherings of 10 or more individuals who are not registered as overnight transient occupants at the B&B or TVU.
 - r. Adds a requirement that an informational binder be provided to transient occupants. The binder must include a floor plan, parking plan, trash collection and disposal instructions, house rules (including quiet hours between 10 p.m. and 7 a.m.), emergency contacts, copies of the registration certificate and certificate of insurance, and copies of the GET and TAT licenses.
 - s. Clarifies the circumstances under which the DPP Director may revoke a registration certificate.
3. In subsection (c), relating to advertising requirements:
- a. Clarifies the definitions of "Advertisement" and "Person."
 - b. Requires advertisements to include the tax map key number of the B&B or TVU (in addition to the registration or NUC number). Any advertisement for the lease or rental of a dwelling unit that does not have a registration or NUC number, but may reasonably be read as being an advertisement for the lease or rental of a bed and breakfast home or transient vacation unit must include a statement that the property may not be rented for less than 90 consecutive days.
 - c. For advertising violations that are not corrected within seven days after receipt of a notice of violation, provides for an initial civil fine not to exceed \$5,000, and a fine not to exceed \$10,000 for each day thereafter that the advertisement is on public display (instead of a civil fine of not less than \$1,000 and not more than \$10,000 for each day the advertisement is on public display beyond the seven-day correction period).

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

- d. Deletes the exemption for legally established dwelling units that are rented for 30 consecutive days or more, since dwelling units that are rented for periods that exceed the short-term rental period are by definition not short-term rentals.
 - e. Adds a provision stating that publishing companies and internet service providers will not be held responsible for the content of advertisements created by third parties.
4. In subsection (d), relating to unpermitted B&Bs and TVUs:
- a. In the definitions of unpermitted B&Bs and TVUs, deletes provisions excluding B&Bs and TVUs in the Resort District, certain A-1 and A-2 Districts, and the Resort Mixed Use Precinct of the Waikiki Special District. Adds an exclusion for validly registered B&Bs and TVUs.
 - b. Provides that it is unlawful to rent an unpermitted B&B or TVU for fewer than 90 consecutive days (instead of 30 consecutive days).
5. In subsection (e), relating to written complaints, adds that the complaint must include the complainant's name and mailing address, and the apartment or unit number of the suspect B&B or TVU if it is located in a multifamily dwelling.
6. Adds a new subsection (f) to provide that the provisions of the section do not terminate or supersede private restrictive covenants.

Renumbers subsequent bill SECTIONS.

- M. In renumbered SECTION 9 (former SECTION 22) of the bill, revises Table 21-9.6(A) ("Waikiki Special District Precinct Permitted Uses and Structures") to:
- 1. Restore B&Bs and TVUs (subject to the standards in LUO Article 5) as permitted uses in the Resort Mixed Use Precinct (proposed for deletion in the original bill);
 - 2. Delete proposed amendments to the hotel entry; and

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

3. Retain the elimination of B&Bs as a permitted use in the Apartment Precinct.
- N. Deletes former SECTION 23 of the bill, which would have deleted the definitions of "Booking service" and "Hosting platform." Renumbers subsequent bill SECTIONS.
- O. In renumbered SECTION 10 of the bill (former SECTION 24):
1. Amends the definitions of "Bed and breakfast home" and "Transient vacation unit" to mean dwelling units that are rented for periods of less than 90 days (instead of 180 days), and exclude month-to-month holdover tenancies;
 2. Deletes proposed amendments to the definition of hotel; and
 3. Adds new definitions for:

"Transient accommodations," meaning accommodations for stays of less than 90 days; and

"Transient occupant," meaning any person who rents a lodging or dwelling unit (or portion thereof) for less than 90 consecutive days, and whose permanent address for legal purposes is not the lodging or dwelling unit being rented.
- P. Deletes former SECTION 25 of the bill, which would have added new definitions of "Condominium hotel" and "Hotel unit."
- Q. Adds a new SECTION 11 of the bill to require the DPP Director to adopt administrative rules to implement the ordinance within 180 days after the effective date of the ordinance. Renumbers subsequent bill SECTIONS.
- R. In renumbered SECTION 14 (former SECTION 28) of the bill, provides that the ordinance takes effect 180 days after its approval; provided that SECTION 11 of the ordinance (relating to administrative rules) takes effect upon its approval.
- S. Makes miscellaneous technical and nonsubstantive amendments.

Committee on Zoning and Planning Special Meeting Agenda
Thursday, January 20, 2022

Related communications:

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| <u>CC-394 (2021)</u> | Disclosure of Interest Statement, submitted by Councilmember Elefante. |
| <u>CC-395 (2021)</u> | Disclosure of Interest Statement, submitted by Councilmember Elefante. |
| <u>CC-397 (2021)</u> | Disclosure of Interest Statement, submitted by Councilmember Elefante. |
| <u>D-734 (2021)</u> | Department of Planning and Permitting, transmitting a proposed CD1 for Bill 41 (2021), relating to transient accommodations. |

BRANDON J.C. ELEFANTE, Chair
Committee on Zoning and Planning