REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:
Brandon J.C. Elefante, Chair; Esther Kiaʻāina, Vice-Chair;
Radiant Cordero, Calvin K.Y. Say

ADVANCE COPY

Committee Meeting Held
March 23, 2022

Honorable Tommy Waters
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning and Planning, to which was referred Bill 41 (2021), CD1, entitled:

"A BILL FOR AN ORDINANCE RELATING TO TRANSIENT ACCOMMODATIONS,"

which passed Second Reading on and was the subject of a Public Hearing held at the Council meeting on January 26, 2022, reports as follows:

The purpose of Bill 41 (2021) is to amend the Land Use Ordinance, Chapter 21, Revised Ordinances of Honolulu 1990 ("LUO"), relating to transient accommodations.

Your Committee finds that the Planning Commission, after public hearings held on September 1, 2021, and September 8, 2021, at which testimony was received in support of and in opposition to the proposed LUO amendment, voted (6 ayes, 1 no) at a meeting held on September 29, 2021, to approve the Department of Planning and Permitting's ("DPP") revised draft Bill attached to Departmental Communication 702 (2021), subject to the following recommendations:

1. The Council further discuss the resort-zoned areas;

2. The Council look at the minimum length of short-term rental for enforceability;

3. The Council ensure that any amendments for the Waikiki Special District to rezone the Apartment Precinct or Apartment Mixed Use Subprecinct to the Resort Mixed Use Precinct is in alignment with the Primary Urban Center Development Plan or any other plans that are submitted to the Council; and

4. The DPP perform community engagement with the neighborhood boards.

Your Committee finds that at a public hearing held on January 26, 2022, by the City Council, testimony was received in support of and in opposition to the Bill. Testimony offering comments on the Bill was also received.

In Committee Report No. 8 (2022), which the Council adopted at its meeting on January 26, 2022, your Committee set forth background information on the subject Bill.

At your Committee's meeting on March 23, 2022, Councilmember Tupola, by Council Communication 111 (2022), and Councilmember Kiaʻāina, by Council Communication 112 (2022), submitted proposed additional amendments to the posted proposed CD2 version of the Bill. Councilmember Tupola and Councilmember Kiaʻāina discussed their respective proposed additional amendments.

The DPP Second Deputy Director testified in support of Bill 41, CD2, and requested that additional amendments be made to the Bill, as set forth in Departmental Communication 231 (2022).

The Director of Budget and Fiscal Services responded to questions relating to the Bill's impact on the City's transient accommodation tax ("TAT") collections.

Your Committee discussed the areas in which bed and breakfast homes ("B&Bs") and transient vacation units ("TVUs") are permitted; impacts to parcels within the A-1 Low-Density Apartment Districts and A-2 Medium-Density Apartment Districts in close proximity to Resort Districts; rooms that may be used by transient occupants for sleeping accommodations; registration and renewal fee amounts; parking requirements; and the short-term rental period.

At 12:35 p.m., the Committee convened into Executive Session pursuant to Sections 92-4 and 92-5(a)(4), Hawaii Revised Statutes, to consult with its attorneys on questions and issues pertaining to the powers, duties, privileges, immunities and/or liabilities of the City, the Council, and its committees relating to Bill 41 (2021), CD1, and any amendments thereto.

At your Committee's meeting on March 23, 2022, State House Representative Patrick Pihana Branco; State House Representative Lisa Marten; American Hotel and Lodging Association; HI Good Neighbor; Keep It Kailua; Save Oahu's Neighborhoods; Airbnb; Lanikai Association; Kailua Neighborhood Board; Hawai`i Tourism Authority; Hawai`i Hotel Alliance; Waikiki Improvement Association; and 14 individuals testified in support of the Bill. Oahu Short-Term Rental Alliance; JM 608 LLC; Elite Pacific; Javier Family Rentals; Friends of Kuilima; Coldwell Banker Realty; Damon Key Leong Kupchak Hastert; and 36 individuals testified in opposition to the Bill. Unite Here Local 5 and four individuals offered comments on the Bill.

Your Committee received written testimony in support of the Bill from State Senator Glen Wakai; State House Representative Patrick Pihana Branco; State House Representative Lisa Marten; Diamond Head/Kapahulu/St. Louis Heights Neighborhood Board No. 5; Kailua Neighborhood Board No. 31; Kuliou'ou/Kalani Iki Neighborhood Board No. 2; Hawaii Hotel Alliance; American Hotel & Lodging Association; Park Shore Waikiki; Highgate Hotels Hawaii; Association of Apartment Owners of the Waikiki Sunset;

Land Used Research Foundation of Hawaii (LURF); Hemmy & Associates; Hawaiʻi Lodging & Tourism Association (HLTA); Hawaiʻi Tourism Authority (HTA); American Hotel & Lodging Association (AHLA); Office of Hawaiian Affairs (OHA); Hawaii Hotel Alliance; Waikīkī Improvement Association (WIA); Hawaiʻi Thousand Friends; Hilton Grand Vacations; Prince Waikiki Hotel and Prince Golf Club; Lanikai Community Association; Marriot International; HI Good Neighbor; Hyatt Place Waikiki Beach; Springboard Hospitality; and 442 individuals.

Your Committee received written testimony in opposition to the Bill from the Honolulu Board of Realtors; Elite Pacific; Marine Hawaii Vacations; Beach Villas at Ko Olina; Graham Properties, Inc.; Manaʻo Realty LLC; Expedia Group; Workshop Coworking LLC; Oceans Real Estate; SC Realty LLC; Friend of Kuilima, LLC; Pearlridge Realty Inc.; Kuilima Estates Coalition; Niihau Apartments Association of Apartment Owners; Ola Properties, Inc.; Hawaii Homes and Estates LLC; Sandwich Isles Realty, Inc., Airbnb; and 513 individuals.

Ocean Villas at Turtle Bay; Ala Wai House LLC – Gold Standard Realty LLC; Association of Apartment Owners of Waikiki Banyan; Grassroot Institute of Hawai`i; Captain Cook Real Estate; and 23 individuals submitted comments on the Bill.

Your Committee has prepared a CD2 version of the Bill that makes the following amendments:

A. In SECTION 2 of the bill, amends ROH Section 6-41.1(a)(16) to reduce the renewal fee for nonconforming use certificates ("NUCs") for bed and breakfast homes ("B&Bs") and transient vacation units ("TVUs") to $500 every year (instead of $4,000 every two years).

B. In SECTION 4 of the bill:

1. Deletes proposed new ROH Section 21-2.150-2(b) (relating to persons responsible for Land Use Ordinance violations). Realphabetizes subsequent subsections accordingly.

2. Amends new realphabetized ROH Section 21-2.150-2(b) to delete references to "joint and several" liability (remaining provisions provide that if the director determines that more than one person is liable for a violation, the director may issue one enforcement notice to all responsible persons or separate enforcement notices to persons or groups of persons that are responsible for the violation – each person will be independently liable for the full extent of the violation and responsible for complying with the enforcement notice).

3. Amends realphabetized and renumbered ROH Section 21-2.150-2(e)(3) to impose a single civil fine of up to $10,000 (and up to $10,000 per day the violation persists) for violations relating to B&Bs or TVUs (no increased fine amounts for recurring violations).

C. Adds a new SECTION 5 to the bill, to amend ROH Section 21-2A.10 to:

1. Require hosting platforms to exercise reasonable care to confirm that a B&B or TVU located within the city is lawfully registered, permitted, or otherwise allowed as a B&B or TVU prior to providing booking services; and

2. Require that booking services provided by hosting platforms for hotel units or timeshare units must include an identifying tax map key number for the property on which the hotel unit or timeshare unit is located.

D. Adds a new SECTION 6 to the bill to make conforming amendments to the section references in ROH Section Sec. 21-2A.40. Renumbers subsequent bill SECTIONS accordingly.

E. In renumbered SECTION 7 of the bill, corrects an error in the Table 21-3 ("Master Use Table") by providing that TVUs in the A-1 District are "P/c[3]" (instead of "P/c").

F. In renumbered SECTION 8 of the bill:

1. Amends ROH Section 21-4.110-1(b) to require annual renewal of nonconforming use certificates for TVUs (instead of renewal every even-numbered year);

2. Adds a new ROH Section 21-4.110-1(e) to prohibit transient occupants of TVUs operating under nonconforming use certificates and located within the country, residential, or apartment zoning districts, from parking their vehicles on the public streets in the vicinity of the TVU; and

3. Add a new ROH Section 21-4.110-1(f) to clarify that a nonconforming use certificate for a TVU may be renewed by a new owner, operator, or proprietor of the TVU, so long as the new owner, operator, or proprietor renews the nonconforming use certificate prior to its expiration.

G. In renumbered SECTION 9 of the bill:

1. Amends ROH Section 21-4.110-2(b) to require annual renewal of nonconforming use certificates for B&Bs (instead of renewal every even-numbered year).

2. Adds a new ROH Section 21-4.110-2(f) to provide that for B&Bs operating under nonconforming use certificates in the residential zoning districts:

   a. A maximum of two rooms may be provided to transient occupants for sleeping accommodations, and a maximum of four adult transient occupants may be accommodated at any one time;

   b. One off-street parking space must be provided for each room used for transient occupant sleeping accommodations (in addition to the number of off-street parking spaces required for the dwelling unit); and

   c. Transient occupants are prohibited from parking their vehicles on the public streets in the vicinity of the bed and breakfast home.

3. Adds a new ROH Section 21-4.110-2(g) to provide that for B&Bs operating under nonconforming use certificates in the country or apartment zoning districts:

   a. One off-street parking space must be provided for each room used for transient occupant sleeping accommodations (in addition to the number of off-street parking spaces required for the dwelling unit); and

   b. Transient occupants are prohibited from parking their vehicles on the public streets in the vicinity of the B&B.

4. Adds a new ROH Section 21-4.110-2(h) to clarify that a nonconforming use certificate for a B&B may be renewed by a new owner, operator, or proprietor of the B&B, so long as the new owner, operator, or proprietor renews the nonconforming use certificate prior to its expiration.

H. In renumbered SECTION 10 of the bill:

1. Amends ROH Section 21-5.730(a)(1) and new Figure 21-5.1 to:

   a. Delete the permitting of B&Bs and TVUs in the designated A-2 District situated in the Gold Coast area of the Diamond Head Special District; and

   b. Add the permitting of B&Bs and TVUs in the designated Apartment Precincts of the Waikiki Special District mauka of Kuhio Avenue.

2. Amends new Figure 21-5.2 ("B&B and TVU Permitted Areas – Close Proximity to Ko Olina Resort") to include portions of certain parcels zoned A-1 or A-2 District within 3,500 feet of the Ko Olina Resort.

3. Amends realphabetized ROH Section 21-5.730(b)(1)(B) and realphabetized ROH Section 21-5.730(b)(2)(C) to reference the City transient accommodations tax.

4. Amends realphabetized ROH Section 21-5.730(b)(1)(D) to retain the initial registration fee for a B&B or TVU at $1,000.

5. Amends ROH Section 21-5.730(b)(2)(E) to decrease the annual registration renewal fee for a B&B or TVU to $500 (instead of $2,000).

6. Amends realphabetized ROH Section 21-5.730(b)(3)(B) to allow for transient accommodations in a studio unit where there are no bedrooms. In other units, sleeping accommodations must be provided in bedrooms, or other rooms that are suitable for sleeping accommodations (such as a living room with a sofabed). The total number of adult overnight transient occupants may not exceed two times the number of rooms (instead of bedrooms) provided to transient occupants for sleeping accommodations.

7. Deletes realphabetized ROH Section 21-5.730(b)(3)(D) (former ROH Section 21-5.730(b)(3)(J)), which would have limited the number of B&Bs and TVUs operating in a multifamily dwelling to 50 percent of the total dwelling units.

8. Deletes realphabetized ROH Section 21-5.730(b)(3)(E) (former ROH Section 21-5.730(b)(3)(M)), which would have required B&B or TVU owners or operators to notify property owners within 250 feet that the dwelling unit is being used as a B&B or TVU. Realphabetizes subsequent paragraphs.

9. Amends new realphabetized ROH Section 21-5.730(b)(3)(D) to:

    a. Only require a minimum $1 million per occurrence commercial general liability insurance policy, and delete the supplemental insurance coverage requirements for bodily injury and property damage, personal and advertising injury, and medical and funeral expenses; and

    b. Allow owners or operators to fulfill insurance requirements through coverage offered by a hosting platform; provided the insurance coverage satisfies the minimum insurance requirements.

10. Amends new realphabetized ROH Section 21-5.730(b)(3)(F)(iv) to delete the prohibition against the parking of vehicles in areas other than the designated parking spaces identified in the parking plan, but provide that for B&Bs and TVUs operating pursuant to nonconforming use certificates and located within the country, residential, or apartment zoning districts, the house rules must prohibit transient occupants from parking vehicles on the public streets in the vicinity of the B&B or TVU.

11. Amends new realphabetized ROH Section 21-5.730(b)(3)(F)(viii) to require the informational binder to include a copy of the registration certificate <u>or nonconforming use certificate</u> for the B&B or TVU.

12. Amends ROH Section 21-5.730(c)(2) to clarify that the advertising regulations under subsection (c) apply to advertisements for <u>specifically identified</u> B&Bs or TVUs (not generic advertisements for multifamily dwellings).

13. Amends new ROH Section 21-5.730(c)(2)(B) to prohibit rental units that are not registered as a B&B or TVU, or are not operating as a B&B or TVU pursuant to a nonconforming use certificate, from advertising daily or less than three-month rental rates.

14. At the end of ROH Section 21-5.730(c)(3), deletes the provision stating that "Publishing companies and internet service providers will not be held responsible for the content of advertisements that are created by third parties." (Section 230 of the federal Communication Decency Act of 1996 already provides that online platforms may not be held accountable for user content.)

15. Amends ROH Section 21-5.730(d)(2)(D) to prohibit unpermitted B&Bs or unpermitted TVUs from advertising daily or less than three-month rental rates.

I. In renumbered SECTION 11 of the bill, amends Table 21-9.6(A) to retain the "P/c" designation in the Apartment Precinct column of the B&B entry, and add the "P/c" designation in the Apartment Precinct column of the TVU entry.

J. In renumbered SECTION 12 of the bill:

1. Amends the definition of "rooming" to reference a period of 90 days or more (instead of 30 days or more); and

2. Amends the definition of "transient vacation unit" to clarify that a TVU does not include a B&B, timeshare unit, or hotel unit.

K. In renumbered SECTION 13 of the bill, provides that the DPP Director is required to adopt administrative rules within 180 days after the effective date of that SECTION (instead of the effective date of the ordinance).

L. Adds a new SECTION 14 of the bill to provide that owners or operators of dwelling units (or portions thereof) that, prior to the effective date of the ordinance, were being rented for periods of 30 consecutive days up to 89 consecutive days may continue to rent the dwelling units for such periods (without first having to register as a bed and breakfast home or transient vacation unit) for 180 days after the effective date of the ordinance. After the 180-day period has expired, all owners or operators of dwelling units (or portions thereof) that were being rented for periods of 30 up to 89 consecutive days shall either register the dwelling unit as a

B&B or TVU, or rent the dwelling unit (or portion thereof) only for a periods of 90 consecutive days or more. Renumbers subsequent bill SECTIONS accordingly.

M. In renumbered SECTION 17 of the bill, provides that the annual nonconforming use certificate renewal requirement for TVUs and B&Bs (pursuant to SECTIONS 6 and 7 of the bill, respectively) applies to all renewals after the effective date of the ordinance; provided that nonconforming use certificates that have been renewed prior to the effective date of the ordinance will continue to be effective for the applicable two-year period.

N. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee finds that the Bill, as amended herein, carries out the purpose of the General Plan and Development Plans of the City and is in the best interests of the people of the City and County of Honolulu.

Your Committee on Zoning and Planning is in accord with the intent and purpose of Bill 41 (2021), CD1, as amended herein, and recommends it pass Third Reading in the form attached hereto as Bill 41 (2021), CD2. (Ayes: Elefante, Kiaʻāina – 2; Ayes with reservations: Cordero, Say – 2; Noes: None.)

Respectfully submitted,

Committee Chair

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAI'I

ORDINANCE _____

BILL **41 (2021), CD2**

A BILL FOR AN ORDINANCE

RELATING TO TRANSIENT ACCOMMODATIONS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose. Short-term rentals are disruptive to the character and fabric of our residential neighborhoods; they are inconsistent with the land uses that are intended for our residential zoned areas and increase the price of housing for Oahu's resident population by removing housing stock from the for-sale and long-term rental markets. The City Council finds that any economic benefits of opening-up our residential areas to tourism are far outweighed by the negative impacts to our neighborhoods and local residents.

In 2019, the City passed Ordinance 19-18, allowing a limited number of new bed and breakfast homes and requiring certain short-term rentals to comply with registration requirements, development standards, and other regulations.

The purpose of this ordinance is 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.

SECTION 2. Section 6-41.1, Revised Ordinances of Honolulu 1990 ("Fee schedule"), as amended by Ordinance 20-18, is amended by amending subsection (a) to read as follows:

"(a) The fees set forth in the following schedule for applications under Chapter 21 and for variances therefrom must be paid upon application:

	Type of Application	Fee
(1)	Zone change	[~~$700.00,~~] $700, plus [~~$300.00~~] $300 per acre or major fraction, up to a maximum of [~~$15,000.00~~] $15,000
(2)	Cluster housing	[~~$1,200.00,~~] $1,200, plus [~~$300.00~~] $300 per acre or major fraction, up to a maximum of [~~$15,000.00~~] $15,000

A BILL FOR AN ORDINANCE

(3)	Conditional use permit (major), and conditional use permit (minor) for a meeting facility, day-care facility, or school (elementary, intermediate, or high)	[~~$1,200.00,~~] $1,200, plus [~~$300.00~~] $300 per acre or major fraction, up to a maximum of [~~$15,000.00~~] $15,000
(4)	Major project in special districts and downtown building heights in excess of 350 feet	[~~$1,200.00,~~] $1,200, plus [~~$300.00~~] $300 per acre or major fraction, up to a maximum of [~~$15,000.00~~] $15,000
(5)	Plan review use	[~~$1,200.00,~~] $1,200, plus [~~$300.00~~] $300 per acre or major fraction, up to a maximum of [~~$15,000.00~~] $15,000
(6)	Planned development-housing	[~~$1,200.00,~~] $1,200, plus [~~$300.00~~] $300 per acre or major fraction, up to a maximum of [~~$15,000.00~~] $15,000
(7)	Special districts: establishment of, or amendment to	[~~$1,200.00,~~] $1,200, plus [~~$300.00~~] $300 per acre or major fraction, up to a maximum of [~~$15,000.00~~] $15,000
(8)	Conditional use permit (minor), other than for a meeting facility, day-care facility, or school (elementary, intermediate or high)	[~~$600.00~~] $600
(9)	Existing use	[~~$600.00,~~] $600, plus [~~$150.00~~] $150 per acre or major fraction, up to a maximum of [~~$15,000.00~~] $15,000
(10)	Exempt project in special districts	No permit fee required
(11)	Minor project in special districts	
	(A) Tree removal	[~~$100.00~~] $100 per tree
	(B) Other than tree removal	[~~$600.00~~] $600

(12)	Waiver	[~~$600.00~~] $600
(13)	Zoning adjustment	
	(A) Sign master plan	[~~$1,200.00~~] $1,200
	(B) Other than for sign master plan	[~~$600.00~~] $600
(14)	Signs estimated value of work	
	(A) $.01 to $500.00	[~~$18.00~~] $18
	(B) $500.01 to $1,000.00	[~~$35.00~~] $35
	(C) $1,000.01 and above	[~~$70.00~~] $70
(15)	Zoning variance	[~~$2,400.00~~] $2,400
(16)	Nonconforming use certificate renewal	[~~$600.00 (2 years)~~] $500
(17)	Minor modifications	
	(A) To approved cluster housing permit; conditional use permit (major); conditional use permit (minor) for a meeting facility, day-care facility, or school (elementary, intermediate, or high); plan review use; planned development-housing permit, planned development-apartment, and planned development-resort; major projects in special districts, and downtown building heights in excess of 350 feet; and zoning adjustment for a sign master plan	[~~$600.00~~] $600

	(B) To conditional use permit (minor) other than for a meeting facility, day-care facility, or school (elementary, intermediate, or high); existing use; exclusive agriculture site approval; minor projects in special districts other than tree removal; agricultural site development plan; waiver; and zoning adjustment for other than for a sign master plan	[~~$300.00~~] $300
	(C) To temporary use approval	[~~$50.00~~] $50
(18)	Agricultural site development plan	[~~$600.00~~] $600
(19)	Planned Development-Apartment and Planned Development-Resort	[~~$15,000.00~~] $15,000
(20)	Written zoning clearance or confirmation, and flood hazard district interpretation	[~~$150.00~~] $150 per request or for each tax map key when multiple parcels are involved; or [~~$300.00~~] $300 per tax map key for requests involving confirmation of nonconforming status
(21)	Temporary use approval	
	(A) For a sales office	[~~$100.00~~] $100
	(B) For other than a sales office	[~~$200.00~~] $200
(22)	Exclusive agriculture site approval	[~~$600.00~~] $600
(23)	Flood variance	[~~$600.00~~] $600
(24)	Zoning district boundary adjustment	[~~$500.00~~] $500
(25)	Appeals to zoning board of appeals	[~~$400.00~~] $400

(26)	Environmental document processing, when the department of planning and permitting is the accepting agency	
	(A) Environmental assessment	[~~$600.00~~] $600
	(B) Environmental impact statement	[~~$1,200.00~~] $1,200
(27)	Reconsideration	[~~$2,400.00~~] $2,400
(28)	Declaratory Ruling	[~~$2,400.00~~] $2,400
(29)	[~~Short-term rental~~] Bed and breakfast home or transient vacation unit advertisement registration	[~~$50.00~~] $50"

SECTION 3. Section 21-1.40, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"**Sec. 21-1.40 Appeals.**

Appeals from the actions of the director in the administration of the provisions of the LUO shall be to the zoning board of appeals as provided by Section 6-1516 of the charter. Appeals [~~shall~~] must be filed within 30 days [~~of~~] after the mailing or service of the director's decision. For the purposes of this section:

(a) For actions of the director that are not required to be served by registered or certified mail, the date of mailing or service is the date on which the director's action is placed into the United States Postal Service mail.

(b) For actions of the director that are served by registered or certified mail, the date of mailing or service is the date on which the registered or certified mail is received, as indicated by the return receipt for the mailing or other records of the United States Postal Service.

(c) For actions of the director that are served by physical delivery to a person or a person's residence, place of employment, or usual place of business, the date of service is the date of delivery, as established by an acknowledgment of service signed by the person taking delivery of the director's action or a sworn declaration made by the person responsible for effecting the service of the director's action by physical delivery.

(d) For actions of the director that are served by physical posting of a copy of the action on the property where the violation has occurred, the date of the service is the date of posting, as established by a sworn declaration made by the person responsible for effecting the service of the director's action by physical posting.

(e) For actions of the director that are served by publication, the date of service is the date on which the last required publication is made.

(f) For actions of the director that are delivered by facsimile, email, or other means of electronic transmission, the date of service is the date on which the action is transmitted to the correct email address, facsimile number, or other electronic address for the person served, as established by a facsimile receipt, email receipt, email response that acknowledges receipt of the email, or other reasonable proof of the successful transmission of electronic delivery to the addressee.

(g) For persons who submit a written request to receive notice of a director's action concerning a particular project, property, or applicant prior to the director's action being issued, the date of service will be determined in accordance with subsections (a) through (f).

(h) For persons who submit a written request to receive notice of a director's action concerning a particular project, property, or applicant after the director's action has been issued, the date of service is the earlier of date on which the director's action was served in accordance with subsections (a) through (f), or the date on which the director's action was served on the person requesting notice of the director's action in accordance with subsections (a) through (f)."

SECTION 4. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"**Sec. 21-2.150-2 Administrative enforcement.**

(a) Enforcement authority. In lieu of or in addition to seeking criminal enforcement pursuant to Section 21-2.150-1, [~~if the director determines that any person is violating any provision of~~] the director may seek enforcement against any person violating this chapter, [~~any rule~~] rules adopted [~~thereunder or any permit issued pursuant thereto, the director may have the person served, by registered or certified mail, restricted delivery, return receipt requested, or by hand delivery with~~] by the director to administer this chapter, and the conditions of any permits

or approvals granted under this chapter by issuing a written notice of violation and notice of order pursuant to this section. [~~However, if the whereabouts of such person is unknown and cannot be ascertained by the director in the exercise of reasonable diligence and the director provides an affidavit to that effect, then a notice of violation and order may be served by publication once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.~~]

(b) Liability. If the director determines that more than one person is liable for a violation, the director may issue one enforcement notice to all responsible persons or separate enforcement notices to persons or groups of persons that are responsible for the violation. Each person will be independently liable for the full extent of the violation and responsible for complying with the enforcement notice.

(c) Service of enforcement notices issued by the director.

(1) The director may serve an enforcement notice issued pursuant to this section by registered or certified mail, with return receipt requested, addressed to the last known address of each violator identified in the enforcement action, or by delivering a copy of the enforcement notice to the violator in person.

(2) The director also may serve an enforcement notice issued pursuant to this section by leaving a copy of the enforcement notice at the violator's residence, place of employment, or usual place of business, or by physically posting a copy of the enforcement notice in a prominent location on the property in a conspicuous manner that is likely to be discovered; provided that due diligence was used in attempting to serve the person personally or by registered or certified mail.

(3) If the director is not able to serve the enforcement notice by any of the methods described in subdivisions (1) and (2), the director may serve the enforcement notice on one or more violators by publishing a copy of the order once each week for two consecutive weeks in a daily or weekly publication that is in general circulation within the City.

Where one or more violators identified in an enforcement notice have the same mailing address, place of residence, place of employment, or usual place of business, the delivery of one copy of the enforcement notice to that place shall

be effective service upon all violators named in the enforcement notice that may be served at the place the enforcement notice has been delivered.

[~~(b)~~](d) Contents of the [~~Notice of Violation. The~~] notice of violation. In addition to any other information or requirements deemed appropriate by the director, the notice of violation must include [~~at least~~] the following information:

(1) Date of the notice of violation;

(2) The name [~~and address~~] of the person noticed;

(3) The address or location of the violation;

[~~(3)~~](4) The [~~section number of the provision or rule, or the number of the permit~~] specific ordinance, rule, or condition that has been violated;

[~~(4)~~](5) [~~The nature~~] A concise description of the violation; [~~and~~

~~(5) The location and time of the violation.~~]

(6) A statement of the actions that are necessary to correct the violation;

(7) A requirement that the violator correct the violation by a specified date;

(8) A statement of the penalties that will be imposed if the violation is not corrected by the deadline for correction established pursuant to subdivision (7); and

(9) A requirement that the violator send a written notice to the director reporting the correction of the violation when the violator believes the violation has been corrected.

[~~(c)~~](e) Contents of [~~Order.~~] the notice of order. If the violation is not corrected by the date specified in the notice of violation, the director may issue a notice of order imposing penalties for failure to correct a violation.

(1) In addition to any other information or requirements deemed appropriate by the director, the notice of order must include a copy of the applicable notice of violation issued by the director for the violation.

[~~(1)~~](2) The notice of order may require the person to do any or all of the following:

(A) Cease and desist from the violation;

(B) Correct the violation at the person's own expense before a date specified in the order;

(C) Pay a civil fine not to exceed [~~$1,000~~] $5,000 in the manner, at the place, and before the date specified in the order; and

(D) Pay a civil fine not to exceed $5,000 per day for each day in which the violation persists beyond the date specified in paragraph (C), in the manner and at the time and place specified in the order.

[~~(2)~~](3) Notwithstanding the civil fines specified in subdivision [~~(1)(C) and (D),~~] (2)(C) and (D), if the violation is a violation of any provision of this chapter relating to the requirements for transient vacation units or bed and breakfast homes, then, in addition to the requirements in subdivision [~~(1)(A) and (B),~~] (2)(A) and (B), the order may require a person to do any or all of the following:

(A) [~~For the initial violation: (i)~~] Pay a civil fine [of ~~$1,000,~~] not to exceed $10,000 in the manner, at the place, and before the date specified in the order; and

[~~(ii)~~](B) Pay a civil fine [~~of $5,000~~] not to exceed $10,000 per day for each day in which the violation persists beyond the date specified in [~~subparagraph (i),~~] paragraph (A) in the manner and at the time and place specified in the order.

[~~(B) For a recurring violation:~~

~~(i) Pay a civil fine of $10,000 in the manner, at the place, and before the date specified in the order; and~~

~~(ii) Pay a civil fine of $10,000 for each day in which the violation persists beyond the date specified in subparagraph (i), in the manner and at the time and place specified in the order.~~]

[~~(3)~~](4) The order must advise the person that the order will become final 30 days after the date of its mailing or delivery. The order must also advise that the director's action may be appealed to the zoning board of appeals.

[~~(d)~~](f) Effect of [~~Order--Right to Appeal.~~] the notice of order—right to appeal. The provisions of the notice of order issued by the director under this section will become final 30 days after the date of the mailing or delivery of the order. The person may appeal the notice of order to the zoning board of appeals as provided in Charter Section 6-1516[~~. However,~~] and Section 21-1.40; provided that an appeal to the zoning board of appeals will not stay any provision of the notice of order.

[~~(e)~~](g) Judicial [~~Enforcement of Order.~~] enforcement of the notice of order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.

[~~(f)~~](h) Notwithstanding any other provision to the contrary, in addition to daily civil fines, the director may impose a fine in an amount equal to the total sum received by the owner, operator, or proprietor of a bed and breakfast home or transient vacation unit from any impermissible rental activity during the period in which the owner, operator, or proprietor was subject to daily fines.

[~~(g)~~](i) Nothing in this section shall preclude the director from seeking any other remedy available by law."

SECTION 5. Section 21-2A.10, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"**Sec. 21-2A.10 Booking Services.**

(a) It is unlawful for a person acting as, or on behalf of, a hosting platform to provide and collect, or receive a fee for, booking services in connection with any bed and breakfast home or transient vacation unit located within the city if such bed and breakfast home or transient vacation unit is not lawfully registered, permitted, or otherwise allowed as a bed and breakfast home or transient vacation unit pursuant to this chapter at the time the bed and breakfast home or transient vacation unit is booked. A hosting platform shall exercise reasonable care to

confirm that a bed and breakfast home or transient vacation unit located within the city is lawfully registered, permitted, or otherwise allowed as a bed and breakfast home or transient vacation unit prior to providing, and collecting or receiving a fee for, booking services.

(b) Hosting platforms shall not collect or receive a fee, directly or indirectly through an agent or intermediary, for facilitating or providing services ancillary to a bed and breakfast home or transient vacation unit in the city that is not lawfully registered, permitted, or otherwise allowed pursuant to this chapter, including, but not limited to, insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit.

(c) Booking services provided by hosting platforms for hotel units or timeshare units must include an identifying tax map key number for the property on which the hotel unit or timeshare unit is located."

SECTION 6. Section 21-2A.40, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"**Sec. 21-2A.40 Penalties.**

If the director determines that a hosting platform is violating any provision of this article, notwithstanding the civil fines specified in Section [~~21-2.150-2(c)(1)(C) and 21-2.150-2(c)(1)(D),~~] 21-2.150-2(e)(2)(C) and (D), the violator is subject to a civil fine of not less than $1,000 and not more than $10,000 for each day that the violation continues.

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SECTION 7. Table 21-3, Revised Ordinances of Honolulu 1990 ("Master Use Table"), as amended by Ordinance 20-41, is amended by:

A. Amending the "Dwellings and Lodgings" category to revise the "bed and breakfast homes" and "transient vacation units" entries to read as follows:

"TABLE 21-3
MASTER USE TABLE

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

KEY: Ac = Special accessory use subject to standards in Article 5
Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
C = Conditional Use Permit-major subject to standards in Article 5; public hearing required
P = Permitted use
P/c = Permitted use subject to standards in Article 5
PRU = Plan Review Use

	ZONING DISTRICTS																				
USES (Note: Certain uses are defined in Article 10.)	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1
DWELLINGS AND LODGINGS																					
Bed and breakfast homes			[~~P/c~~[3]]	[~~P/c~~[3]]	[~~P/c~~[3]]	[~~P/c~~[3]]	P/c[3]	P/c[3]	[~~P/c~~[3]]	[~~P/c~~[3]]	[~~P/c~~[3]]	[~~P/c~~[3]]	P/c[3]			[~~P/c~~[3]]	[~~P/c~~[3]]				
Transient vacation units							[~~P/c~~] P/c[3]	P/c[3]					P/c[3]								

"

B. Amending the footnotes to read as follows:

"**Notes:**

Where a proposed use is not specifically listed above, the director shall review the proposed use and, based on its characteristics and its similarity to the uses listed above, shall determine the regulatory requirements for that use.

[1] Commercial use subject to special density controls (see Table 21-3.3 and Section 21-3.90-1(c)(4)).

[2] Commercial use subject to special density controls (see Table 21-3.5 and Section 21-3.140-1(c))

[3] Notwithstanding any contrary provisions in this chapter, bed and breakfast homes and transient vacation units [~~are prohibited and may not operate without a~~] that do not have a valid nonconforming use certificate or registration certificate are not permitted in areas where the applicable development plan or sustainable communities plan prohibits [~~or does not permit~~] the establishment of new bed and breakfast homes or transient vacation units[~~.~~]; provided that bed and breakfast homes or transient vacation units may renew valid registration certificates that were initially issued prior to an amendment to the applicable development plan or sustainable communities plan that prohibits bed and breakfast homes or transient vacation units in the plan area."

SECTION 8. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"**Sec. 21-4.110-1 [~~Nonconforming use certificates for transient vacation units.~~] Transient vacation units—Nonconforming use certificates.**

(a) The purpose of this section is to permit certain transient vacation units that have been in operation since prior to October 22, 1986, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a transient vacation unit who [~~holds~~] held a valid nonconforming use certificate issued pursuant to this section on August 1, 2019.

(b) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:

(1) [~~between~~] Between September 1, 2000 and October 15, 2000; then

(2) [~~between~~] Between September 1 and October 15 of every [~~even-numbered~~] year thereafter.

Each application to renew [~~shall~~] must include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during [~~each~~] the calendar year covered by the nonconforming use certificate being renewed and [~~that~~] (ii) there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during [~~each~~] such year [~~and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy~~]. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 35 days of transient occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

(c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. 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 common area instead.

(d) The following additional provisions [~~of Section 21-5.730(c) shall~~] apply to [~~advertisements for~~] transient vacation units operating under a nonconforming use certificate pursuant to this section[~~.~~]:

(1) Section 21-5.730(b)(3) relating to restrictions and standards; and

(2) Section 21-5.730(c) relating to advertisements.

(e) In addition to the requirements in subsection (d), for transient vacation units operating under a nonconforming use certificate pursuant to this section that are located within the country, residential, or apartment zoning districts, transient occupants are prohibited from parking their vehicles on the public streets in the vicinity of the transient vacation unit.

(f) A nonconforming use certificate for a transient vacation unit that has been issued and renewed pursuant to this section may be renewed by a new owner, operator, or proprietor of the transient vacation unit, so long as the new owner, operator, or proprietor renews the nonconforming use certificate prior to its expiration."

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SECTION 9. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"**Sec. 21-4.110-2 Bed and breakfast homes—Nonconforming use certificates.**

(a) The purpose of this section is to permit certain bed and breakfast homes that have been in operation since prior to December 28, 1989, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a bed and breakfast home who holds a valid nonconforming use certificate issued pursuant to this section on August 1, 2019.

(b) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:

(1) [~~between~~] Between September 1, 2000 and October 15, 2000; then

(2) [~~between~~] Between September 1 and October 15 of every [~~even-numbered~~] year thereafter.

Each application to renew [~~shall~~] must include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for [~~each~~] the calendar year covered by the nonconforming use certificate being renewed and [~~that~~] (ii) there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during [~~each~~] such year [~~and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy~~]. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 28 days of bed and breakfast occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

(c) Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.

[~~(d) Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:~~

~~(1) Detached dwellings used as bed and breakfast homes shall be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.~~

~~(2) No more than two guest rooms shall be rented to guests, and the maximum number of guests permitted within the bed and breakfast home at any one time shall be four.~~

~~(3) There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.~~

~~(4) One off-street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.~~

~~(5) The provisions of Section 21-5.730(c) shall apply to advertisements for the bed and breakfast home.~~]

[~~(e)~~](d) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises.

(e) The following additional provisions apply to bed and breakfast homes operating under a nonconforming use certificate pursuant to this section:

(1) Section 21-5.730(b)(3) relating to restrictions and standards; and

(2) Section 21-5.730(c) relating to advertisements.

(f) In addition to the requirements in subsection (e), bed and breakfast homes operating under a nonconforming use certificate pursuant to this section that are located within the residential zoning districts are subject to the following:

(1) A maximum of two rooms may be provided to transient occupants for sleeping accommodations, and a maximum of four adult transient occupants may be accommodated at any one time; and

(2) One off-street parking space must be provided for each room used for transient occupant sleeping accommodations, in addition to the number of off-street parking spaces required for the dwelling unit.

(3) Transient occupants are prohibited from parking their vehicles on the public streets in the vicinity of the bed and breakfast home.

(g) In addition to the requirements in subsections (e) and (f), bed and breakfast homes operating under a nonconforming use certificate pursuant to this section that are located within the country or apartment zoning districts are subject to the following:

(1) One off-street parking space must be provided for each room used for transient occupant sleeping accommodations, in addition to the number of off-street parking spaces required for the dwelling unit; and

(2) Transient occupants are prohibited from parking their vehicles on the public streets in the vicinity of the bed and breakfast home.

(h) A nonconforming use certificate for a bed and breakfast home that has been issued and renewed pursuant to this section may be renewed by a new owner, operator, or proprietor of the bed and breakfast home, so long as the new owner, operator, or proprietor renews the nonconforming use certificate prior to its expiration."

SECTION 10. Section 21-5.730, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"**Sec. 21-5.730 Bed and breakfast homes and transient vacation units.**

(a) Bed and breakfast homes and transient vacation units are permitted in the [~~A-1 low-density apartment zoning district and A-2 medium-density apartment zoning district provided:~~

~~(1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and~~

~~(2) The resort district and the A-1 or A-2 district, as applicable, were rezoned pursuant to the same zone change application as part of a master-planned resort community.~~] following areas:

(1) The areas located within the Apartment Precinct of the Waikiki Special District mauka of Kuhio Avenue, as designated in Figure 21-5.1;

(2) The areas located within the A-1 low-density apartment zoning district and the A-2 medium-density apartment zoning district situated in close proximity to the Ko Olina Resort, as designated in Figure 21-5.2; and

(3) The area located within the A-1 low-density apartment zoning district situated in close proximity to the Turtle Bay Resort, as designated in Figure 21-5.3.

A BILL FOR AN ORDINANCE

Figure 21-5.1
Bed and Breakfast Homes and Transient Vacation Units
Permitted Areas – Waikiki Special District Mauka of Kuhio Avenue

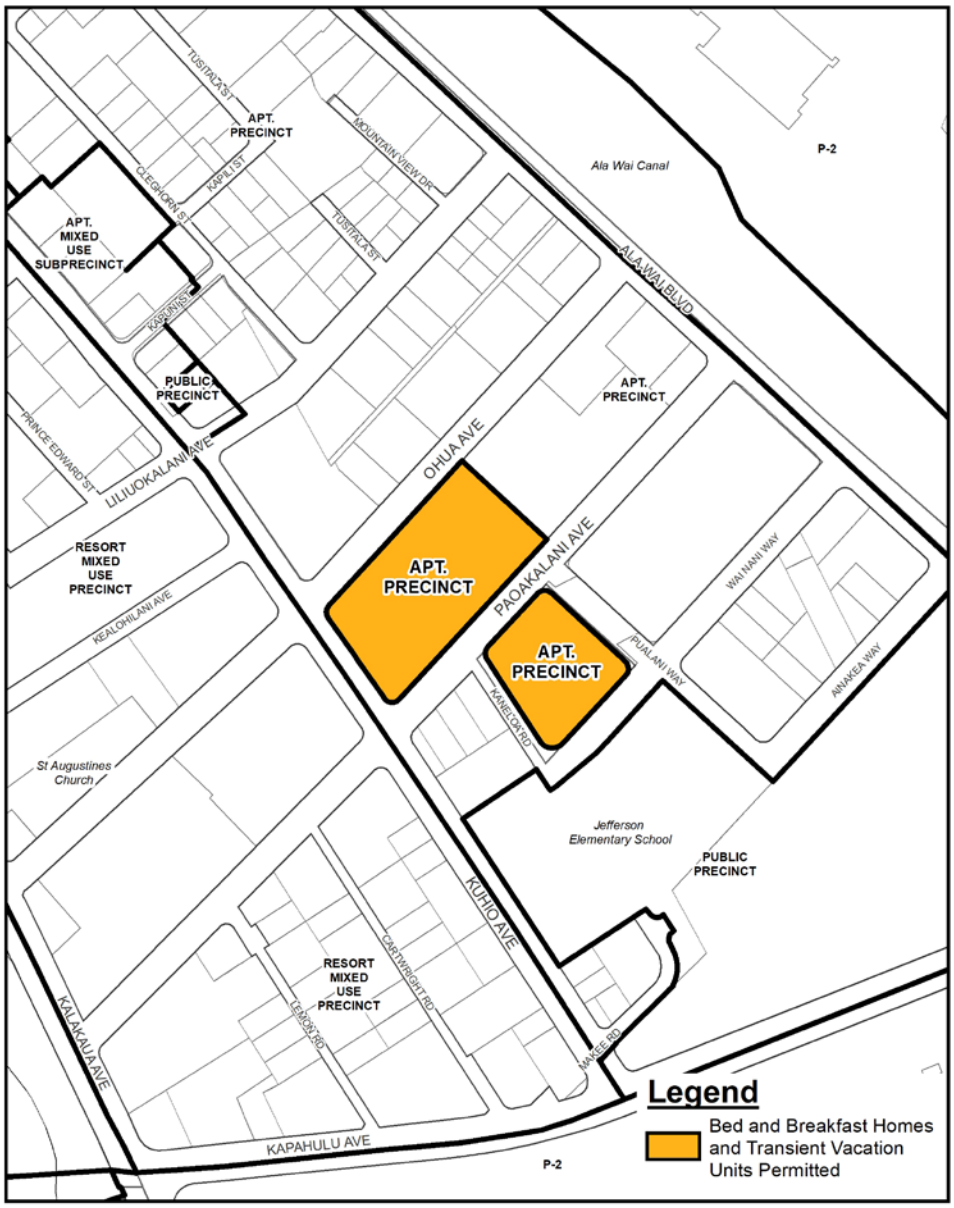

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Figure 21-5.2
Bed and Breakfast Homes and Transient Vacation Units
Permitted Areas – Close Proximity to the Ko Olina Resort

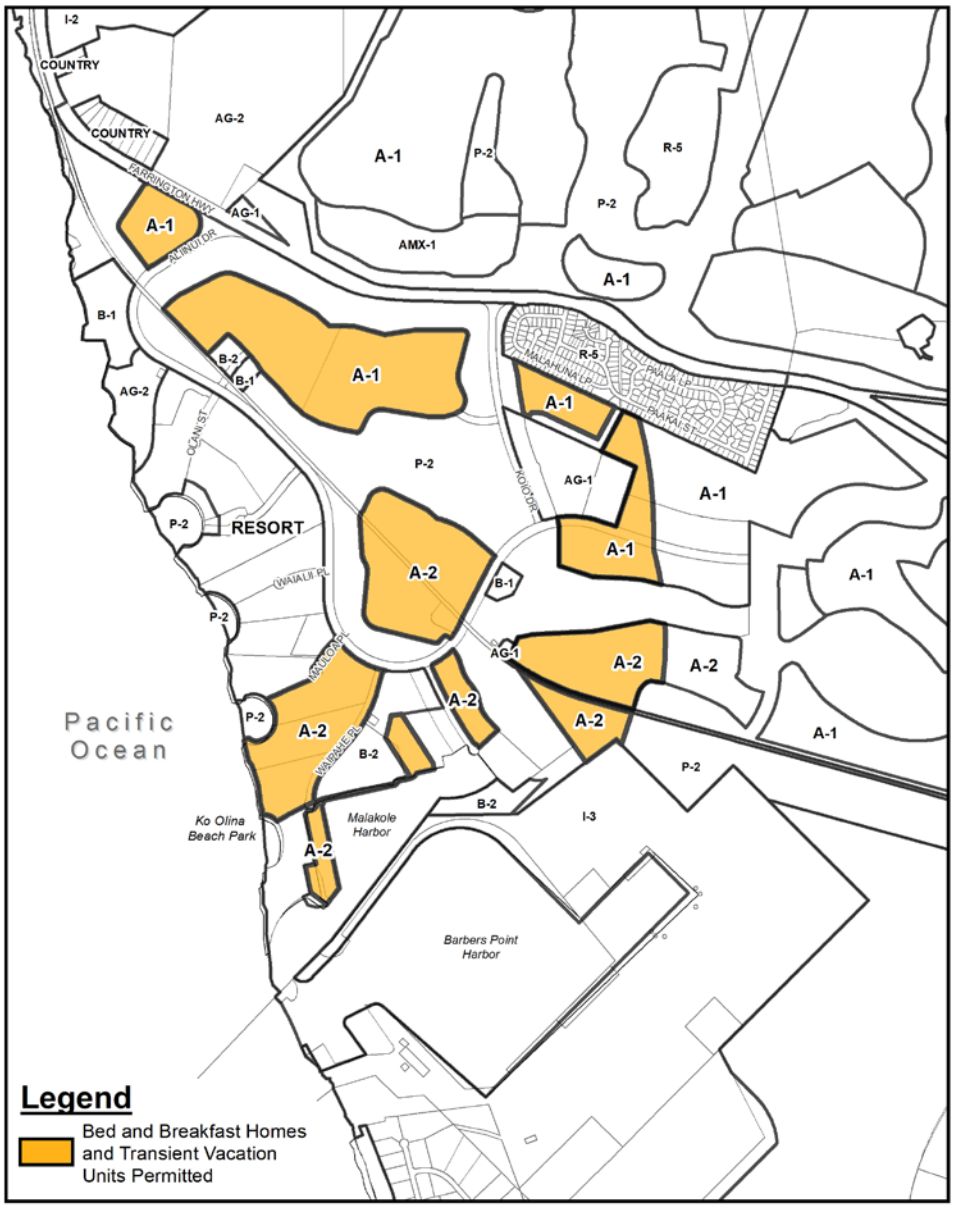

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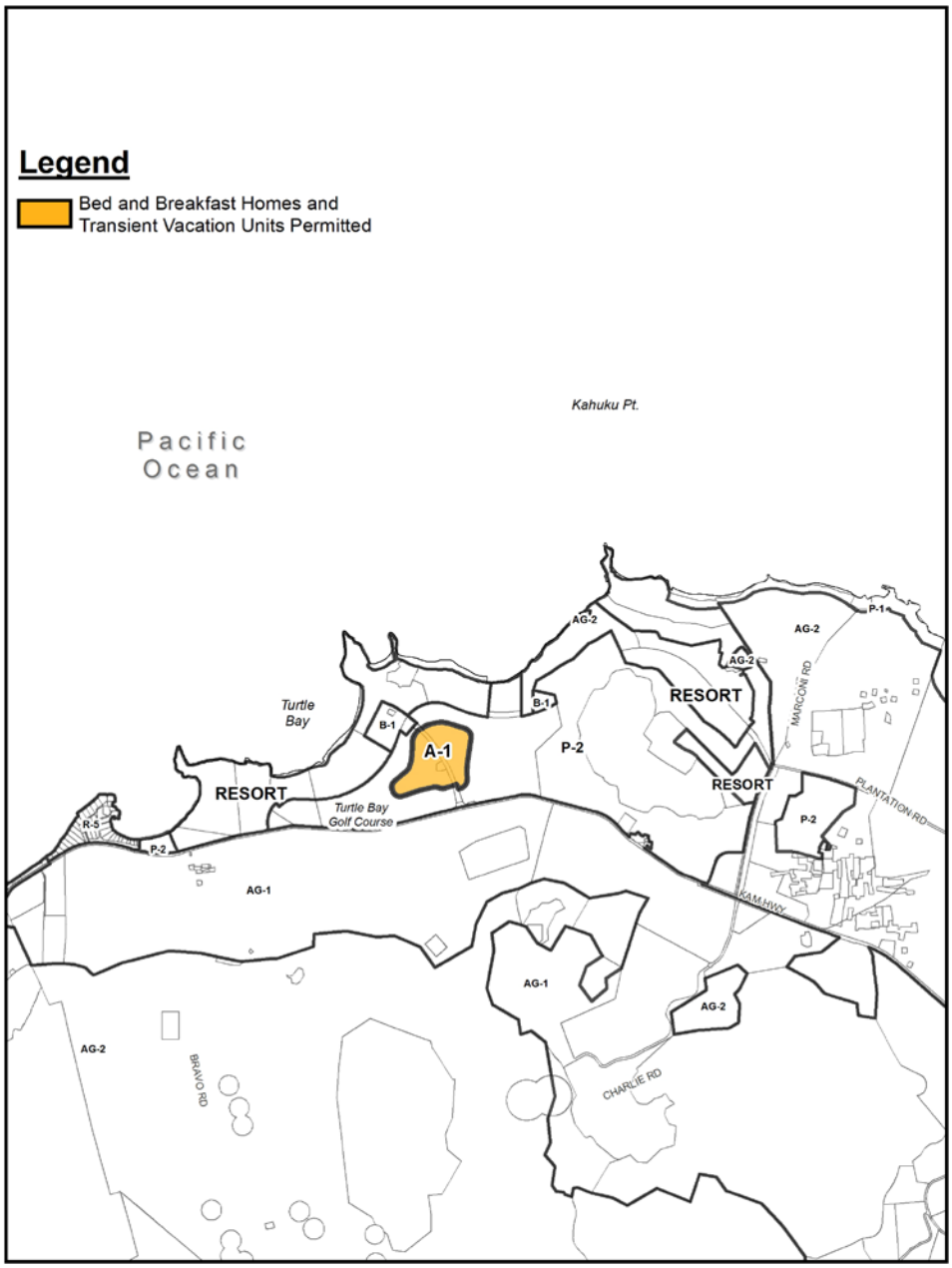
Figure 21-5.3
Bed and Breakfast Homes and Transient Vacation Units
Permitted Areas – Close Proximity to the Turtle Bay Resort



(b) [~~In all zoning districts where bed and breakfast homes are permitted, except for the resort district, resort mixed use precinct of the Waikiki special district, and the A-1 low-density apartment district and A-2 medium-density apartment district pursuant to subsection (a), and except as otherwise provided in subdivision (6), the~~] The following standards and requirements apply to bed and breakfast homes and transient vacation units; provided that bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2, or transient vacation units operating under a valid nonconforming use certificate pursuant to Section 21-4.110-1 need only comply with subdivision (3):

(1) Registration requirements. The owner or operator of a bed and breakfast home[~~, including for purposes of this subdivision the trustee of a revocable trust that owns the subject property,~~] or transient vacation unit shall register the bed and breakfast home or transient vacation unit with the department on a form prescribed by the department, and [~~shall~~] submit the following in the initial application for registration:

[~~(A) Affirmation that the applicant of the bed and breakfast home is a natural person;~~

~~(B) Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;~~]

(A) A title report for the subject property that has been issued or updated within 30 days prior to its submission, and identifies all persons owning an interest in the property;

[~~(C)~~](B) A valid current State of Hawaii general excise tax license and transient accommodations tax license, and city transient accommodations tax license for the subject property;

[~~(D)~~](C) [~~Evidence~~] For a bed and breakfast home, evidence of a real property tax home exemption for the subject property, and evidence that the applicant has a minimum 50 percent ownership interest in the subject property;

[~~(E)~~](D) An initial registration fee of $1,000 for the bed and breakfast home[~~;~~] or transient vacation unit;

[~~(F)~~](E) Evidence that the use as a bed and breakfast home or transient vacation unit is covered by an insurance carrier for the subject property[~~;~~] pursuant to subdivision (3)(D);

[~~(G)~~](F) Confirmation that the bed and breakfast home or transient vacation unit is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules;

[~~(H) An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city;~~

~~(I) A floor plan showing the location of guest rooms for a bed and breakfast home;~~

~~(J) For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, is currently dedicated for a specific agricultural use pursuant to Section 8-7.3; and~~]

(G) The informational binder required under subdivision (3)(F); provided that a copy of a registration certificate need not be included;

[~~(K)~~](H) Evidence that a dwelling unit proposed for use as a bed and breakfast home[~~:~~] or transient vacation unit:

(i) Is not an affordable unit subject to income restrictions;

(ii) Did not receive housing or rental assistance subsidies; and

(iii) Was not subject to an eviction within the last 12 months.

Registration will be effective for a period of one year beginning on the date a certificate of registration is issued by the department, and must be renewed annually prior to expiration.

(2) Registration renewal requirements. Annually, [~~by August 30,~~] no earlier than three months prior to the expiration of the registration certificate, the owner or operator of a bed and breakfast home[~~, including for purposes of~~

~~this subdivision the trustee of a revocable trust that owns the subject property,~~] or transient vacation unit shall renew the registration certificate for a bed and breakfast home or transient vacation unit with the department on a form prescribed by the department, and submit to the department[~~:~~] the following in the registration renewal application:

[~~(A) Affirmation that the applicant for the bed and breakfast home is a natural person;~~

~~(B) Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;~~]

~~(C) Evidence of having paid State of Hawaii general excise taxes and transient accommodations taxes for the subject property;~~]

~~(D) Evidence~~] (A) For a bed and breakfast home, evidence of a real property tax home exemption for the subject property;

(B) A tax clearance certificate issued by the department of budget and fiscal services certifying that real property taxes were assessed at the rates required by Section 8-7.1 and paid in full during the preceding tax year;

(C) A tax clearance certificate issued by the State Department of Taxation certifying the payment of State of Hawaii general excise taxes and transient accommodations taxes, and a tax clearance certificate issued by the department of budget and fiscal services certifying the payment of city transient accommodations taxes, for the subject property during the previous tax year;

(D) If there has been any change in ownership of the subject property, an updated title report that has been issued within 30 days prior to the submission of the renewal application to the department;

(E) A renewal fee of [~~$2,000~~] $500 for the bed and breakfast home[~~;~~] or transient vacation unit;

(F) Evidence that the use as a bed and breakfast home or transient vacation unit is covered by an insurance carrier for the property[~~;~~] pursuant to subdivision (3)(D); and

(G) Confirmation that the bed and breakfast home or transient vacation unit is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules[~~;~~].

[~~(H) An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city; and~~

~~(I) For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, is currently dedicated for a specific agricultural use pursuant to Section 8-7.3.~~

[~~The renewal of a registration for a bed and breakfast home will be granted upon receipt of an application meeting all requirements set forth in this section; provided that if~~] The director may deny renewal of a registration if: (i) the owner or operator receives one or more notices of order for violation of this subsection within a one year period; (ii) the owner or operator demonstrates an inability to operate a bed and breakfast home or transient vacation unit without causing significant negative impacts to the surrounding community, including but not limited to instances where complaints from the public indicate that noise or other nuisances created by guests disturbs residents of the neighborhood in which the bed and breakfast home or transient vacation unit is located[~~,~~]; or (iii) where other good cause exists[~~, the director may deny~~] for denial of the renewal application.

(3) Restrictions and Standards. Bed and breakfast homes and transient vacation units must operate in accordance with the following restrictions and standards:

[~~(A) Dwelling units in detached dwellings used as bed and breakfast homes must be occupied by a family, and renters of any room in the detached dwelling other than the bed and breakfast home guests are not permitted;~~

~~(B) No more than two guest rooms in a bed and breakfast home may be rented to guests, and a maximum of four guests are permitted within the bed and breakfast home at any one time;~~

~~(C)~~](A) Functioning smoke and carbon monoxide detectors must be installed in each transient occupant bedroom[~~;~~] and each hallway connected to a transient occupant bedroom;

[~~(D) House rules, including quiet hours between 10:00 p.m. and 8:00 a.m., and emergency contact information for the owner or operator must be provided to all guests and posted in conspicuous locations;~~

~~(E) When any guest room in a bed and breakfast home is being rented to guests, the owner or operator shall remain on the premises during quiet hours;~~]

[~~(F)~~](B) Occupancy limits and sleeping arrangements are as follows:

(i) All overnight transient occupants must be registered with the owner or operator of the bed and breakfast home or transient vacation unit;

(ii) Except for studio units, sleeping accommodations for all transient occupants must be provided in bedrooms or other rooms that are suitable for sleeping accommodations (such as a living room with a sofabed). No more than two adults may sleep in each allowable room in which sleeping accommodations are provided;

(iii) The total number of adult overnight transient occupants may not exceed two times the number of rooms provided to transient occupants for sleeping accommodations; and

(iv) The owner or operator shall maintain a current two-year registry setting forth the names and telephone numbers of all [~~guests~~] transient occupants and the dates of their respective stays;

[~~(G)~~](C) [~~No exterior~~] Exterior signage indicating that [~~shows the~~] a dwelling unit is used as a bed and breakfast home or transient vacation unit is [~~allowed;~~] prohibited;

[~~(H) Registration as a bed and breakfast home is not transferable, and shall not run with the land;~~

~~(I) Development Plan Area Density Limit. Excluding bed and breakfast homes and transient vacation units in the resort district, resort mixed use precinct of the Waikiki special district, and the A-1 low-density apartment district and A-2 medium-density apartment district pursuant to subsection (a), where there is no limit on the number of bed and breakfast homes and transient vacation units allowed, the number of bed and breakfast homes and transient vacation units permitted in each development plan area is limited to no more than one half of one percent of the total number of dwelling units in that development plan area. The total number of dwelling units in a development plan area will be based on the latest figures from the U.S. Census data. Where the initial number of bed and breakfast home applications for a development plan area exceeds the one half of one percent limitation, acceptance of applications will be selected on a lottery basis. When renewal applications fall below the one half of one percent limitation, new applications will be accepted on a lottery basis. The director shall adopt rules pursuant to HRS Chapter 91 to implement and administer the lottery;~~

~~(J) Multifamily Dwelling Density Limit. Excluding multifamily dwellings in the resort district, resort mixed use precinct of the Waikiki special district, and the A-1 low-density apartment district and A-2 medium-density apartment district pursuant to subsection (a), unless otherwise specified in apartment bylaws, covenants, or correspondence from a homeowners association, apartment owners association, or condominium property regime, the total number of bed and breakfast homes and transient vacation units must not exceed 50 percent of the total dwelling units in a multifamily dwelling;~~

~~(K) If a bed and breakfast home is located in the AG-2 general agricultural district, the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, must be currently dedicated for a specific agricultural use pursuant to Section 8-7.3;~~

~~(L) A bed and breakfast home must not be located within a 1,000-foot radius of another bed and breakfast home or a transient vacation unit; provided that this spacing requirement:~~

~~(i) Does not apply as between (1) bed and breakfast homes and transient vacation units in the resort district, resort mixed use precinct of the Waikiki special district, or the A-1 low-density apartment district or A-2 medium-density apartment district pursuant to subsection (a), and (2) bed and breakfast homes located outside of those zoning districts and precincts; and~~

~~(ii) Does not preclude the continued operation of bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2; and~~

~~(M) The owner or operator shall provide occupants of dwelling units within 250 feet of the dwelling unit used as a bed and breakfast home with a phone number that must be answered 24 hours a day, to call in complaints regarding the bed and breakfast home. The owner or operator shall keep a log of all complaints received during the applicable registration period, and submit the log with each registration renewal application, and at any other time upon the request of the director. The log must include the name, phone number, and address of the complainant, date of the complaint, date the complaint was resolved, and how the complaint was resolved.~~

~~(N)~~](D) Insurance coverage required. The owner or operator must maintain a minimum of $1,000,000 per occurrence in commercial general liability insurance at all times. Owners or operators may fulfill insurance requirements through coverage offered by a hosting platform; provided the insurance coverage satisfies the minimum requirements of this paragraph;

(E) Gatherings restricted. The property on which a bed and breakfast home or transient vacation unit is located may not be used for gatherings of ten or more individuals who are not registered as overnight transient occupants at the bed and breakfast home or transient vacation unit; and

(F) Informational binder required. The owner or operator shall create a binder that must be placed and maintained in a conspicuous location within the bed and breakfast home or transient vacation unit at all times. The binder must provide guidance to transient occupants on being respectful of neighbors and responding to emergencies. The binder must be made available for inspection by the department upon request. At a minimum, the binder must include the following documents and information:

(i) A floor plan of the dwelling unit used as a bed and breakfast home or transient vacation, identifying the location of all transient occupant bedrooms, the maximum occupancy of each bedroom, and the location of all fire exits;

(ii) Parking plan:

(aa) For bed and breakfast homes and transient vacation units that are not located in a multifamily dwelling, a parking plan identifying the location and number of parking stalls available to persons associated with the bed and breakfast home or transient vacation unit (such as owners, transient occupants, visitors, or service providers); the parking plan must include illustrations, drawn to scale, showing the size of designated parking spaces, their location on the zoning lot, and which spaces may be occupied by vehicles of the transient occupants; or

(bb) For bed and breakfast homes or transient vacation units located in a multifamily dwelling, a parking plan identifying the location and number of parking stalls within the multifamily dwelling that may be used by persons associated with the bed and breakfast home or transient vacation unit; the parking plan may be provided in narrative form without illustrations or graphics;

(iii) Instructions for trash collection and disposal, including the dates and times of scheduled trash collections;

(iv) A copy of the house rules for the bed and breakfast home or transient vacation unit, which must impose quiet hours between 10:00 p.m. and 7:00 a.m., and for bed and breakfast homes and transient vacation units operating pursuant to nonconforming use certificates and located within the country, residential, or apartment zoning districts, the house rules must prohibit transient occupants from parking vehicles on the public streets in the vicinity of the bed and breakfast home or transient vacation unit;

(v) A list of emergency contacts, which must include a 24-hour telephone number for the owner or operator of the bed and breakfast home or transient vacation unit, the 911 emergency telephone number, and the website address for the Hawaii Emergency Management Agency;

(vi) A copy of the certificate of insurance for the bed and breakfast home or transient vacation unit;

(vii) Copies of the general excise and transient accommodations tax licenses for the bed and breakfast home or transient vacation unit; and

(viii) A copy of the registration certificate or nonconforming use certificate for the bed and breakfast home or transient vacation unit.

(4) Upon reasonable notice, any bed and breakfast home or transient vacation unit must be made available for inspection by the department.

(5) The violation of any provision of this subsection will be grounds for administrative fines and nonrenewal unless corrected before the renewal deadline. Recurring or multiple violations will result in denial of renewal requests.

[~~(6) This subsection does not apply to bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2.~~]

[~~(7)~~](6) The director may revoke a registration at any time by issuing a notice of revocation under the following circumstances:

(A) [~~Recurring violations of the standards and requirements for bed and breakfast homes in Section 21-5.730(b);~~] The owner or operator receives more than two notices of order within a one year period for violation of this subsection;

(B) [~~Complaints~~] The owner or operator demonstrates an inability to operate a bed and breakfast home or transient vacation unit without causing significant negative impacts to the surrounding community; including but not limited to instances where complaints from the public indicate that noise or other nuisances created by [~~guests~~] transient occupants disturbs residents of the neighborhood in which the bed and breakfast home or transient vacation unit is located; or

(C) The director determines that good cause exists for revocation of the registration.

(7) Registration as a bed and breakfast home or transient vacation unit is not transferable, and shall not run with the land.

(c) Advertisements.

(1) Definitions. As used in this subsection[~~:~~], unless the context otherwise requires:

"Advertisement" means [~~any form of communication, promotion, or solicitation, including but not limited to electronic media, direct mail, newspapers, magazines, flyers, handbills, television commercials, radio commercials, signage, e-mail, internet websites, text messages, verbal communications, or similar displays, intended or used to induce, encourage, or persuade the public to enter into a contract for the use or occupancy of a bed and breakfast home or transient vacation unit.~~] the display or transmission of any communication that may cause a reasonable person to understand that a dwelling unit or portion thereof is available for rent. Advertisements include but are not limited to written and spoken words, emails, text messages, electronic and hard copy publications, flyers, handbills, signs, websites, and expressive images.

"Person" means a [~~judicial~~] legal person or a natural person, [~~and includes businesses, companies,~~] consisting of individuals and all types of business and legal entities, including but not limited to associations, nonprofit

organizations, [~~firms,~~] trusts, estates, partnerships, corporations, and limited liability companies[~~, and individuals~~].

(2) Prohibition. Advertisements for [~~all~~] specifically identified bed and breakfast homes and transient vacation units, or for the lease or rental of other specifically identified dwelling units where the advertisement may reasonably be read as being an advertisement for the lease or rental of a bed and breakfast home or transient vacation unit, are subject to this subsection.

(A) It is unlawful for any person to advertise or cause the advertisement of a bed and breakfast home or transient vacation unit without including in the advertisement[~~:~~

~~(i) A~~] a current registration certificate number obtained pursuant to this section, or a nonconforming use certificate number obtained pursuant to Section 21-4.110-1 or Section 21-4.110-2[~~; or~~], and a tax map key number for the property on which the bed and breakfast home or transient vacation unit is located.

[~~(ii) For bed and breakfast homes or transient vacation units located in the resort district, apartment precinct or resort mixed use precinct of the Waikiki special district, or in the A-1 low-density apartment district or A-2 medium-density apartment district pursuant to subsection (a), the street address, including, if applicable, any apartment unit number, for that bed and breakfast home or transient vacation unit.~~]

(B) It is unlawful for any person to advertise or cause the advertisement of a dwelling unit that is not a registered bed and breakfast home or transient vacation unit pursuant to this section or is not operating under a nonconforming use certificate pursuant to Section 21-4.110-1 or Section 21-4.110-2, for a term of less than 90 consecutive days. Any advertisement for the rental of a dwelling unit that is not a registered bed and breakfast home or transient vacation unit or is not operating pursuant to a nonconforming use certificate as aforesaid may not include daily or less than three-month rental rates, and must include the following statement: "This property may not be rented for less than 90 consecutive days.

Rental prices will not be reduced or adjusted based on the number of days the rental is actually used or occupied."

[~~(B)~~](C) Within seven days after receipt of a notice of violation[~~,~~] of paragraph (A) or (B), the owner or operator of a [~~bed and breakfast home or a transient vacation unit~~] dwelling unit shall remove, or cause the removal of, the advertisement identified in the notice, including[~~, without limitation,~~] but not limited to any advertisement made through a hosting platform. If the advertisement is not removed within seven days after receipt of the notice of violation, [~~a fine of not less than $1,000 and not more than $10,000 per day will be levied against the owner or operator associated with the bed and breakfast home or transient vacation unit,~~] the following civil fines will be levied against the owner or operator of the dwelling unit:

(i) An initial fine not to exceed $5,000; and

(ii) A fine not to exceed $10,000 for each day thereafter that the advertisement is on public display [~~beyond seven days from the date the notice of violation is received~~].

[~~(C)~~](D) The existence of an advertisement that is unlawful under paragraph (A) or (B) will be prima facie evidence that a bed and breakfast home or a transient vacation unit is being operated at the listed address. The burden of proof is on the owner of the subject real property to establish that the property is not being used as a bed and breakfast home or transient vacation unit, or that the advertisement was placed without the property owner's knowledge or consent.

(3) Exemptions. The following are exempt from the provisions of this subsection.

(A) Legally established hotels, whether owned by one person, or owned individually as unit owners but operating as a hotel as defined in [~~Chapter 21, Article 10.~~] Section 21-10.1; and

(B) Legally established time-sharing units, as provided in Section 21-5.640.

[~~(C) Legally established dwelling units that are rented for periods of 30 consecutive days or more at any one time.~~]

(d) Unpermitted bed and breakfast homes or unpermitted transient vacation units.

(1) Definitions. As used in this subsection[~~:~~], unless the context otherwise requires:

"Unpermitted bed and breakfast home" means a bed and breakfast home that is not:

[~~(A) Located in the resort district, resort mixed use precinct of the Waikiki special district, or A-1 low-density apartment district or A-2 medium-density apartment district pursuant to subsection (a);~~

~~(B)~~](A) Operating under a valid nonconforming use certificate pursuant to Section 21-4.110-2; or

[~~(C)~~](B) Validly registered under this section.

"Unpermitted transient vacation unit" means a transient vacation unit that is not:

[~~(A) Located in the resort district, resort mixed use precinct of the Waikiki special district, or A-1 low-density apartment district or A-2 medium-density apartment district pursuant to subsection (a); or~~

~~(B)~~](A) Operating under a valid nonconforming use certificate pursuant to Section 21-4.110-1[.]; or

(B) Validly registered under this section.

(2) It is unlawful for any owner or operator of an unpermitted bed and breakfast home or unpermitted transient vacation unit, or the owner or operator's agent or representative to:

(A) Rent, offer to rent, or enter into a rental agreement to rent an unpermitted bed and breakfast home or unpermitted transient vacation unit for fewer than [~~30~~] 90 consecutive days;

(B) Rent, offer to rent, or enter into a rental agreement to rent an unpermitted bed and breakfast home or unpermitted transient vacation unit, where such rental, offer, or rental agreement limits actual occupancy of the premises to a period of less than the full stated rental period, or conditions the right to occupy the rented premises for the full stated rental period on the payment of additional consideration;

(C) Set aside or exclusively reserve an unpermitted bed and breakfast home or unpermitted transient vacation unit for rental or occupancy for a period of [~~30~~] 90 consecutive days or more, but limit actual occupancy of the premises to a period of less than the full stated rental period, or condition the right to occupy the rented premises for the full stated rental period on the payment of additional consideration; or

(D) Advertise, solicit, offer, or knowingly provide rental of an unpermitted bed and breakfast home or unpermitted transient vacation unit to transient occupants for less than [~~30~~] 90 consecutive days. An advertisement for an unpermitted bed and breakfast home or unpermitted transient vacation unit that includes daily or less than three-month rental rates will be deemed to be in violation of this paragraph.

(e) Any person may submit a written complaint to the director reporting a violation of the provisions of this section regarding bed and breakfast homes and transient vacation units.

(1) A complaint reporting a suspected violation of the provisions of this section must:

(A) Identify the address of the bed and breakfast home or transient vacation unit that is the subject of the suspected violation[~~;~~], including the apartment or unit number of the dwelling unit if it is located in a multifamily dwelling;

(B) State all of the facts that cause the complainant to believe that a violation has occurred;

(C) Identify the provisions of this section that the complainant believes are being violated; and

(D) Provide the complainant's name and a mailing address where the director may [~~mail a response~~] respond to the complaint.

(2) Within 30 days after receiving a written complaint reporting a violation of the provisions of this section, the director [~~must~~] shall provide a written response to the complainant either:

(A) Declining jurisdiction over the complaint, in which case the complainant may pursue judicial relief pursuant to HRS Section 46-4(b);

(B) Entering a finding of no violation, which [~~will be appealable~~] may be appealed to the zoning board of appeals pursuant to Charter Section 6-1516; or

(C) Advising the complainant that the director has initiated an investigation of the complaint.

(f) The provisions of this section do not terminate or supersede private restrictive covenants or other restrictions that prohibit the use of real property as a bed and breakfast home or transient vacation unit."

SECTION 11. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended by amending the "transient vacation units" entry to read as follows:

"

Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures			
Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
Bed and breakfast homes	P/c	P/c	
Transient vacation units	P/c	P/c	

"

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SECTION 12. Section 21-10.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definitions of "bed and breakfast home," "rooming," and "transient vacation unit," and adding new definitions of "transient accommodation" and "transient occupant" to read as follows:

""Bed and breakfast home" means a use in which overnight accommodations are advertised, solicited, offered, or provided, or a combination of any of the foregoing, to [~~guests~~] transient occupants, for compensation, for periods of less than [~~30~~] 90 consecutive days, in the same [~~detached~~] dwelling [~~as that~~] unit occupied by an owner, lessee, operator, or proprietor of the [~~detached~~] dwelling[~~.~~] unit. For purposes of this definition[~~, compensation~~]:

(1) Compensation includes[~~,~~] but is not limited to[~~,~~] monetary payment, services, or labor of [~~guests.~~] transient occupants; and

(2) Month-to-month holdover tenancies resulting from the expiration of long-term leases of 90 consecutive days or more are excluded."

""Rooming" means a use accessory to the principal use of a dwelling unit in which overnight accommodations are provided to persons ("roomers") for compensation for periods of [~~30~~] 90 consecutive days or more in the same dwelling unit as that occupied by an owner, lessee, operator, or proprietor of the dwelling unit."

""Transient vacation unit" means a dwelling unit or lodging unit that is advertised, solicited, offered, or provided, or a combination of any of the foregoing, for compensation to transient occupants for less than [~~30~~] 90 consecutive days, other than a bed and breakfast home[~~.~~], timeshare unit, or hotel unit. For purposes of this definition[~~, compensation~~]:

(1) Compensation includes[~~,~~] but is not limited to[~~,~~] monetary payment, services, or labor of transient occupants[.]; and

(2) Month-to-month holdover tenancies resulting from the expiration of long-term leases of 90 consecutive days or more are excluded."

""Transient accommodation" means living accommodations that are offered or made available to transient occupants for less than 90 consecutive days."

""Transient occupant" means 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."

SECTION 13. Administrative Rules. Within 180 days after the effective date of this SECTION, the Director of Planning and Permitting shall adopt administrative rules in accordance with HRS Chapter 91 for the implementation, administration, and enforcement of this ordinance.

SECTION 14. Owners or operators of dwelling units (or portions thereof) that, prior to the effective date of this ordinance, were being rented for periods of 30 consecutive days up to 89 consecutive days may continue to rent the dwelling units for such periods (without first having to register as a bed and breakfast home or transient vacation unit) for 180 days after the effective date of this ordinance. After the 180-day period has expired, all owners or operators of dwelling units (or portions thereof) that were being rented for periods of 30 consecutive days up to 89 consecutive days shall either register the dwelling unit as a bed and breakfast home or transient vacation unit, or thereafter rent the dwelling unit (or portion thereof) only for periods of 90 consecutive days or more.

SECTION 15. Ordinance material to be repealed is bracketed and stricken. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.

SECTION 16. Severability. If any provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that may be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 17. This ordinance takes effect 180 days after its approval; provided that:

1. In SECTION 8 of this ordinance, the annual renewal requirement for nonconforming use certificates for transient vacation units in ROH Section 21-4.110-1 applies to all renewals after the effective date of this ordinance; provided that nonconforming use certificates that have been renewed prior to the effective date of this ordinance will continue to be effective for the applicable two-year period; and

2. In SECTION 9 of this ordinance, the annual renewal requirement for nonconforming use certificates for bed and breakfast homes in ROH

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Section 21-4.110-2 applies to all renewals after the effective date of this ordinance; provided that nonconforming use certificates that have been renewed prior to the effective date of this ordinance will continue to be effective for the applicable two-year period; and

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3. SECTION 13 of this ordinance takes effect upon its approval.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

October 19, 2021
Honolulu, Hawaiʻi

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20__ .

RICK BLANGIARDI, Mayor
City and County of Honolulu