

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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March 23, 2022

The Honorable Brandon Elefante, Chair  
and Members  
Committee on Zoning and Planning  
Honolulu City Council  
530 South King Street, Room 205  
Honolulu, Hawaii 96813

Dear Chair Elefante and Councilmembers:

SUBJECT: Bill 41 (2021), CD 2 Land Use Ordinance (LUO) Amendments  
Relating to Transient Accommodations

We appreciate your consideration of the Administration proposed amendments to the LUO to address short term vacation rentals on Oahu.

The COVID-19 pandemic allowed neighborhoods across O'ahu to experience life without transient accommodations being actively used by tourists. This pause in business activity in our residential communities allowed residents to appreciate how disruptive Bed and Breakfasts (B&Bs) and Short Term Vacation Rentals (STRs) were to residential neighborhoods. After listening to residents in communities across O'ahu, Mayor Blangiardi decided it was time to take back our neighborhoods, which is the impetus for Bill No. 41. The objective is to stop any expansion of B&Bs and STRs into residential zoned neighborhoods while allowing for B&Bs and STRs in or near selective Resort zoned areas where there is sufficient infrastructure to support additional visitors. We firmly believe the amendments in the proposed CD2 accomplish these objectives and they have been vetted with the Corporation Counsel. We support the proposed CD2 with the following proposed amendments:

We strongly recommend the Council define "transient accommodation" in Section 11 of the bill as occupancy for less than 180 consecutive days. The 180-day minimum stay is consistent with the State of Hawaii's definition of "transient accommodation" provided in Chapter 237D, Hawaii Revised Statutes. The 180-day timeframe would also limit illegal STR owners to two (2) rental periods each year. Under the current 30-day minimum, illegal STR owners essentially have twelve (12) rental periods per year although, in practice, many STR owners advertise for rental periods of a minimum 30 days but actually rent for less than 30 days.

Additionally, we suggest language be included that would preclude a renter of a unit for the minimum period from sub-renting/sub-leasing the unit out multiple times over the 180 period. We understand this practice of sub-renting/sub-leasing has occurred in other cities as a means to circumvent the minimum rental periods.

Table 21-9.6(A) in Section 11 of the bill removes P/c use for B&Bs and TVUs in the apartment precinct. This is not consistent with Figure 21-5.1 in Section 9 of the bill, allowing B&Bs and TVUs in marked portions of the Apartment precinct. This inconsistency should be resolved by footnoting the table or removing figure 21-5.1.

We respectfully request that Section 21-2.150-2(b), ROH, of Section 4 of the bill be deleted in its entirety as the Department of Planning and Permitting (DPP) respectfully requests additional time to evaluate the application and implications of this subsection.

In Section 9 of the proposed bill, ROH Section 21-5.730(c)(2) is amended to state, "Advertisements for *specifically* identified bed and breakfast homes and transient vacation units, or for the lease or rental of other specifically identified dwelling units..." "*Specifically* identified B&Bs and TVUs" is redundant because the section applies to all 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." We believe these revisions could allow illegal operators to dodge advertising restrictions by simply failing to publish their address. We don't believe there is any reason to provide a carve-out for "generic advertisements for multifamily dwellings."

Also in Section 9 of the bill, Section 21-5.730(b)(3)(B), ROH, is amended to allow for transient accommodation 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 sofa bed). 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.

The housing code and building code have development standards for "sleeping rooms" and "sleeping areas." Limiting rentals to bedrooms was intended to ensure that rooms that do not meet these standards are not rented for sleeping accommodations. By allowing sleeping accommodations to be provided in "other rooms that are suitable for sleeping accommodation such as a living room with a sofa bed", this section conflicts with the housing and building codes.

Also in Section 9 of the bill, ROH Section 21-5.730(c)(3) is amended with the deletion of the provision 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.) Title 47, Section 230 of the U.S. Code (commonly referred to as the Communications Decency Act or CDA) protects online service providers and users from actions against them based on third-party content; it states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." This provision immunizes short-term rental platforms from civil and criminal liability based on information published on their platforms by third-party users (i.e., individuals advertising rentals).



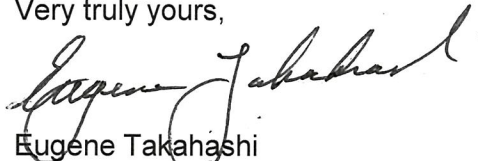
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The City is not able to hold STR platforms liable for the content of advertisements posted by their users because the CDA preempts conflicting state and local laws. In order to avoid federal preemption of the advertising restrictions in Bill 41, Section 8 of Bill 41 states that "[p]ublishing companies and internet service providers will not be held responsible for the content of advertisements that are created by third parties." Removing this language from Bill 41 may result in two negative consequences. First, STR platforms may bring legal challenges against the measure based on its facial noncompliance with the CDA. And secondly, the public may expect DPP to enforce Bill 41's advertising restrictions against STR Platforms. Based on these concerns, we recommend retention of these provisions.

The DPP is in strong support of Bill No. 41, CD2, and respectfully requests this Committee consider including our proposed amendments to the CD2.

Should you have any questions, please contact me at (808)768-8000.

Very truly yours,



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APPROVED BY:



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