



A BILL FOR AN ORDINANCE

RELATING TO CONDOMINIUMS.

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

SECTION 1. Findings and Purpose.

The Council finds that tourism is Hawaii's largest industry, generating \$14.3 billion in direct dollars for the local economy in 2012. The Council further finds that the visitor industry provides jobs for over 150,000 Hawaii residents. For fiscal year 2014, it is projected that the City will collect \$41 million from the transient accommodations tax. \$41 million is approximately 1.57 percent of the City's operating resources.

Many hotel owners and operators in the City are in the process of, or are considering, converting all or part of their properties from tourist hotels to residential condominium units not used as transient hotel guest rooms, timeshares, stock cooperatives or community apartments. These and future conversion projects threaten the tourism industry in the City. Already, Honolulu has a deficit of rooms compared to competitor cities like Las Vegas, San Francisco, San Diego or Anaheim. As a result, Honolulu attracts fewer and smaller conventions every year than those cities. Further reduction in guest room availability through conversion of tourist hotels to non-hotel condominiums and other residential uses will exacerbate this trend.

The Council also finds that many tourist hotels converted to residential use will retain hotel amenities such as restaurants, room service and room cleaning similar to the amenities provided prior to the conversion. Incumbent workers already have invaluable knowledge and experience necessary for providing such services and have invested substantial parts of their lives working at these properties. Where substantially similar services and amenities will be provided, the owners and operators of the converted tourist hotels have a responsibility to minimize the impact of the conversion on their existing workforce by ensuring that they will have a reasonable opportunity to keep their jobs after conversion.

The purpose of this ordinance is to protect the existing stock of tourist hotel guest rooms; to assure a sufficient number of tourist hotel guest rooms to meet the needs of transient guests; to assure that a sufficient number of tourist hotel guest rooms are available to attract convention business; to limit the number of tourist hotel conversion projects that will have a significant, negative impact on guest room availability; and to generally regulate conversions of tourist hotels to non-hotel condominiums, stock cooperatives and community apartments.



A BILL FOR AN ORDINANCE

SECTION 2. The Revised Ordinances of Honolulu 1990, as amended, is amending by adding a new chapter to be appropriately designated by the revisor of ordinances and to read as follows:

"Chapter _____

CONDOMINIUM CONVERSION OF TOURIST HOTELS

Article 1. General Provisions

Sec. ___-1.1 Applicability.

The provisions of this section shall apply to all applications as to which the Commission has not issued a final public report on the date this section becomes effective.

Sec. ___-1.2 Definitions.

The terms used in this section are defined in Section 21-10.1 of the ROH, except the following definitions shall apply to this chapter:

"Conversion project, tourist hotel" means a proposal for conversion, in whole or in part, of a building, or portion of a building, used as a tourist hotel as of December 31, 2012 and containing 100 or more guest rooms, to condominium units not used as transient hotel guest rooms, or to time share units, community apartment project, or stock cooperative through approval of a tract or parcel map.

"Commission" means the real estate commission of the state department of commerce and consumer affairs.

"Employee" means any person employed at a tourist hotel, including but not limited to reception, reservation, bell, door and parking employees; accounting and sales employees; restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; nonprofessional health care employees; maintenance employees; gardeners; waste management employees; and clerical employees. The term "employee" shall not include a person who is a managerial employee.

"Guest room" means any habitable room except a kitchen, designed or used for occupancy by one or more persons and not in a dwelling unit, but the term "guest room"



A BILL FOR AN ORDINANCE

shall not include any condominium units not used as transient hotel guest rooms or any unit in a time share plan, community apartment project or stock cooperative.

"Operator" means any person who owns and/or operates a tourist hotel, and any subcontractor or tenant thereof providing services for guests or residents.

"Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust association, or other entity that may employ or enter into other contracts.

"Total number of guest rooms" means the number of guest rooms as of December 31, 2012 or, if greater, the number of guest rooms at the time of application.

"Tourist hotel" means a hotel, as defined in Section 21-10.1 of the ROH, intended or designated for commercial tourist use that provides accommodation to transient guests. For these purposes "tourist hotel" includes not only the part of an operation providing guest rooms, but also any contracted, leased, subcontracted or sublet food, beverage or retail facilities on the same parcel.

Sec. __-1.3 Application requirements.

- (a) A tourist hotel conversion project shall comply with HRS 514A, the provisions of this section and other applicable state laws and local ordinances. A conversion project is deemed a major permit within the meaning of Section 21-2.40-2.
- (b) In addition to the information required by other sections of ROH, the following information shall be submitted to the department at the time of filing for a major permit:
 - (1) The names and addresses of all operators of the tourist hotel proposed to be converted; and
 - (2) Building plans or other documents containing the following information pertaining to the project as proposed, certified as to accuracy by a licensed engineer or architect:
 - (A) The total number of guest rooms in the tourist hotel; and
 - (B) The number of guest rooms remaining in the tourist hotel after conversion.



A BILL FOR AN ORDINANCE

- (c) The department shall not accept an application for approval of a permit for a tourist hotel conversion project without adequate evidence from the applicant that each employee of the operator has received the written notice required by Section __-1.4.

Sec. __-1.4 Notification of proposed tourist hotel conversion.

Each employee of a tourist hotel conversion project subject to this section shall be given 120 days written notice of intention to convert. Such written notice shall contain notice of the employees' transition period employment rights, as set forth in Section __-2.2.

Sec. __-1.5 Hotel conversion permit approval.

- (a) The department shall disapprove a permit for a tourist hotel conversion project if it finds that the cumulative effect of tourist hotel conversion projects (past, present and future) on hotel room availability in the city will be significant and negative.
- (b) The department shall presume a significant, negative cumulative effect on hotel room availability in the city if it finds: (1) as a result of the tourist hotel conversion project, the total number of guest rooms in the tourist hotel will be reduced by more than 20 percent; or (2) the reduction in total guest rooms in the tourist hotel resulting from the proposed tourist hotel conversion project, when combined with reductions in the total number of guest rooms resulting from any previous tourist hotel conversions affecting the same tourist hotel, will reduce the total number of guest rooms by more than 20 percent.
- (c) The department may approve a tentative map or preliminary parcel map for a tourist hotel conversion project despite a presumption of significant effect under subsection (b) of this section if it finds (1) that the subdivider or operator would face practical difficulties or unnecessary hardships inconsistent with the general purposes or intent of this section were the tentative map or preliminary parcel map be disapproved; (2) that there are special circumstances applicable to the subject tourist hotel such as financial viability, size, occupancy rate, location, or surroundings that do not apply generally to other tourist hotels in the city; and (3) that the approval of the tentative map or preliminary parcel map will not be materially detrimental to the public welfare.



A BILL FOR AN ORDINANCE

Article 2. Transition Period Employment—Hotels

Sec. __-2.1 Definitions.

The following definitions shall apply to this article:

"Change of ownership in a tourist hotel" means the sale, transfer, or assignment of all or any part of the right, title, or interest in a tourist hotel or substantially all of the assets used in such operation, or a change in the form of ownership in the tourist hotel of a person.

"Conversion of a tourist hotel" means the approval of a final map for a tourist hotel conversion project.

"Date of reopening" means the date on which one or more condominium units not used as transient hotel guest rooms, or units in a timeshare, stock cooperative or community apartment project created through a tourist hotel conversion project become available for occupancy, or the first date of operation after a change of ownership in a tourist hotel.

"Operator" means any person who owns and/or operates a tourist hotel, and any subcontractor or tenant thereof providing services for guests or residents.

"Prior employer" means any person who operated a tourist hotel which is being sold or has been sold in any part to another person, and any subcontractor or tenant thereof providing services for guests.

Sec. __-2.2 Transition period employment.

- (a) After conversion of a tourist hotel or change in ownership of a tourist hotel, the operator(s) shall retain or rehire, for at least 90 days commencing with the date of reopening, employees who have been employed by the operator, in the case of a tourist hotel conversion project, or by the prior employer, in the case of a change of ownership in a tourist hotel, for more than a total 12 months in the three years preceding the date of reopening. During such 90-day period, employees so retained or rehired shall be employed under terms and conditions established by the operator or as required by law. Nothing herein shall be construed to require the operator to retain or rehire supervisory employees in positions of a supervisory nature.



A BILL FOR AN ORDINANCE

- (b) If at any time the operator determines that fewer employees are required to perform services than were required to perform substantially similar services under the prior employer, the operator shall not be precluded from laying off employees, but the operator shall maintain a preferential hiring list of eligible covered employees not retained or rehired by the operator for a period of one year commencing with the date of reopening, from which the operator shall hire any additional employees.
- (c) During such 90-day period the operator shall not discharge without just cause an employee retained or rehired under this section.
- (d) At the end of such 90-day period, the operator shall perform a written performance evaluation for each employee retained or rehired pursuant to this article. If the employee's performance during such 90-day period is satisfactory, the operator shall offer the employee continued employment under the terms and conditions established by the operator or as required by law.

Sec. ___-2.3 Enforcement.

- (a) The city shall have the right to demand from any operator subject to this section documentation of the name, date of hire, and job classification of all employees covered by Section ___-2.2.
- (b) An employee who has been discharged in violation of the provisions of this section may bring an action against the operator and may be awarded:
 - (1) Back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:
 - (A) The average regular rate of pay received by the employee during the last 3 years of the employee's employment in the same occupation classification; or
 - (B) The final regular rate received by the employee.
 - (2) Costs of benefits the operator would have incurred for the employee under the operator's benefit plans.
 - (3) If the employee is a prevailing party in such legal action, the court shall award reasonable attorney's fees and expenses of suit.



A BILL FOR AN ORDINANCE

(c) Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

Sec. __-2.4 Coexistence with other available relief for specific deprivations of protected rights.

This article shall not be construed to limit an employee's right to bring legal action for wrongful termination.

Sec. __-2.5 Promulgation of implementing rules.

The council shall by resolution designate a department or office which shall promulgate rules for implementation of this chapter and otherwise coordinate administration of the requirements of this article.

Sec. __-2.6 Waiver.

The provisions of this chapter may not be waived by an individual employee, but may be waived by a valid collective bargaining agreement covering employees of the tourist hotel but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms and refers to this chapter. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this ordinance.

Article 3. Severability

Sec. __-3.1 General provisions.

If any section or any portion of a section of this chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining sections and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this chapter."



A BILL FOR AN ORDINANCE

SECTION 3. This ordinance shall take effect upon approval.

INTRODUCED BY:

Roy Menor

Mamala

BTSS

DATE OF INTRODUCTION:

MAR 4 2014

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu

802 HQ J-SAMJMS
C & C OF HONOLULU
CITY CLERK
RECEIVED

FILED
MAR 04 2014
PURSUANT TO ROH Sec. 1-2.4