



A BILL FOR AN ORDINANCE

RELATING TO SHORT-TERM RENTALS.

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

SECTION 1. Purpose and Intent. The purpose of this ordinance is to better regulate short-term rentals. Short-term Rentals, that is, the use of dwellings in residential districts for stays of less than 30 days, has grown significantly since the City first regulated them in 1989. Clearly, there is a demand for them. The use of social media has increased opportunities for visitors to consider these properties for short-term stays. Based on on-line advertising, there are an estimated 8,000 to 10,000 dwelling units available at any given time on Oahu, far exceeding the number of permitted units as currently provided under the Land Use Ordinance (LUO). Coupled with this expanding industry, the current zoning enforcement tools are outdated, particularly with respect to social media advertising and on-line booking services. In addition, the traditional hotel industry, while not opposed to short-term rentals, asserts that they should be equitably treated with respect to requirements imposed on hotels. Short-term rentals currently are taxed as residential uses, and given the transient use of the properties and the type of rents charged, as much as \$8,000 per night, there is an imbalance in real property tax policy.

Short-term rentals represent economic benefits to the city and state in terms of supportive jobs, tax revenues, and diversification of the visitor accommodations industry. For some residents, they are viewed as important supplemental income, as monthly sources of revenue, or to help qualify for mortgages. Some residents pride themselves on being sensitive landlords or hosts, serving as "ambassadors of aloha." Many like the ability to use the property for their own use at least part of the year, which makes it infeasible to offer the dwellings on a long-term basis.

However, for the neighborhoods that host these uses, they represent negative impacts including unfairly escalating property values, increases in noise at late hours, illegal parking, and increased traffic. There is a concern that homes are not being bought for domiciliary purposes, but as income-producing investments. Residents are generally comfortable with bed and breakfast homes, as there is an on-site resident manager or owner who is responsible for the property and can respond to any problems associated with short-term guests. In contrast, there are strong concerns about "unhosted" transient vacation rentals, particularly when there is a significant number of them in a neighborhood. With significant numbers of absentee owners and constant change in occupants, there is a change in the social patterns of neighborhoods and reduced interactions amongst neighbors, characterized as a decline in the quality of life for residents.



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This ordinance balances the competing views about short-term rentals. It continues to differentiate between bed and breakfast homes and transient vacation units, and provides a permitting system to allow both types of operations to expand under explicit requirements. Explicit requirements and standards will be monitored through an annual renewal process. It also introduces significant penalties for illegal operations and offers a new penalty for advertising illegal operations. Lastly, it proposes a new tiered real property tax classification based on the type of short-term rental operations being conducted, without penalizing adjacent residential property assessments. This ordinance represents a regulatory system that coordinates annual zoning review with annual tax assessments.

SECTION 2. Section 8-7.1, Revised Ordinances of Honolulu 1990, as amended, (“Valuation -Considerations in fixing”), is amended to read as follows:

“Sec. 8-7.1 Valuation - Considerations in fixing.

- (c) (1) Real property shall be classified, upon consideration of its highest and best use, into the following general classes, unless it qualifies for a different class as defined in this section:
 - (A) Residential;
 - (B) Hotel and resort;
 - (C) Commercial;
 - (D) Industrial;
 - (E) Agricultural;
 - (F) Preservation;
 - (G) Public service;
 - (H) Vacant agricultural; ~~and~~
 - (I) Residential A[-];
 - (J) Bed and breakfast home; and
 - (K) Transient vacation unit.

- (i) “Bed and Breakfast Home” shall have the same meaning as defined and permitted under Chapter 21, ROH.

- (k) “Transient Vacation Unit” shall have the same meaning as defined and permitted under Chapter 21, ROH.”



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SECTION 3. Section 8-10.5, Revised Ordinances of Honolulu 1990, as amended, (“Home, lease, lessees defined”), is amended to read as follows:

“Sec. 8-10.5 Home, lease, lessees defined.

(b) The subletting by the taxpayer of not more than [one] two rooms to a tenant shall not affect the exemption provided for by Section 8-10.4.”

SECTION 4. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, as amended, (“Administrative enforcement”), is amended as follows:

“Sec. 21-2.150-2 Administrative enforcement.

In lieu of or in addition to enforcement pursuant to Section 21-2.150-1, if the director determines that any person is violating any provision of this chapter, any rule 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 a written notice of violation and 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.

(a) Contents of the Notice of Violation. The notice must include at least the following information:

- (1) Date of the notice;
- (2) The name and address of the person noticed;
- (3) The section number of the provision or rule, or the number of the permit that has been violated;
- (4) The nature of the violation; and
- (5) The location and time of the violation.

(b) Contents of Order.

- (1) The 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 \$1,000.00 in the manner, at the place and before the date specified in the order;



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- (D) Pay a civil fine not to exceed \$1,000.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order;
 - (E) Notwithstanding subsections (C) and (D), a person who commits recurring violations of any provision of this chapter relating to the requirements for transient vacation units or bed and breakfast homes shall be subject to increased civil fines as follows: for a first recurring violation, the violator shall pay a civil fine of \$25,000 in the manner, at the place and before the date specified in the order, and shall pay an additional \$25,000 per day for each day in which the violation persists; for a second recurring violation, the violator shall pay a civil fine of \$50,000 in the manner, at the place and before the date specified in the order, and shall pay an additional \$50,000 per day for each day in which the violation persists; for a third recurring violation and each recurring violation thereafter, the violator shall pay a civil fine of \$100,000 in the manner, at the place and before the date specified in the order, and shall pay an additional \$100,000 per day for each day in which the violation persists.
 - (F) Nothing in this section shall preclude the department from seeking any other remedy available by law.
- (2) 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.
- (c) Effect of Order--Right to Appeal. The provisions of the 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 order to the zoning board of appeals as provided in Section 6-1516 of the city charter. However, an appeal to the zoning board of appeals will not stay any provision of the order.
 - (d) Judicial Enforcement 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



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imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.”

- (e) In addition to daily civil fines, notwithstanding any other provision to the contrary, the Director may impose a fine in the amount equal to the total sum collected by the operator from the impermissible rental activity during the period in which they were subject to daily fines.

SECTION 5. Table 21-3, Revised Ordinances of Honolulu 1990, as amended, (“Master Use Table”), is amended by adding “bed and breakfast” homes and “transient vacation units” to the “Dwellings and Lodgings” category as follows:



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SECTION 6. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended, (“Specific Use Development Standards”), is amended by adding a new section for “Bed and breakfast homes and transient vacation units.” To be appropriately numbered by the Revisor of Ordinances and to read as follows:

“Sec. 21-5. Bed and breakfast homes and transient vacation units.

(a) Bed and breakfast homes and transient vacation units shall be permitted in the Resort zones and Resort Mixed Use Precincts. They shall also be permitted in the 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-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community.

(b) In all zoning districts where bed and breakfast homes and transient vacation units are permitted, except for in Resort zones, Resort Mixed Use Precincts, and those allowed in the A-2 medium density apartment zoning district pursuant to Section 21-5. (a), the following requirements and standards shall apply:

- (1) For a bed and breakfast home or transient vacation unit that will be occupied by transient residents for a total of 30 or more days per calendar year, the owner, operator, or proprietor must submit the following information in the initial application:
 - i. Affirmation that the applicant for the bed and breakfast home or transient vacation units is a Natural Person.
 - ii. 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 County of Honolulu.
 - iii. Evidence of having paid State of Hawaii General Excise Taxes (GET) and Transient Accommodations Taxes (TAT).
 - iv. Evidence of a Real Property Tax (RPT) Home Exemption for the subject property.
 - v. An initial fee of \$800 for bed and breakfast homes, and an initial fee of \$1,200 for transient vacation units.



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- vi. Evidence that the use is covered by an insurance carrier for the property.
 - vii. Confirmation that bed and breakfast homes or transient vacation units, as appropriate, are permitted by the Homeowners' or Apartment Owners' Association and/or Condominium Property Regime, if applicable.
 - viii. A floor plan showing the location of all guest rooms for bed and breakfast homes, and all bedrooms for transient vacation units.
- (2) Application renewal requirements. Annually, by August 30, the owner, operator, or proprietor of a bed and breakfast home or transient vacation unit that will be occupied by transient residents for a total of 30 or more days per calendar year must submit to the department:
- i. Affirmation that the applicant for a bed and breakfast home or transient vacation unit is a Natural Person.
 - ii. An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast or transient vacation unit in the City and County of Honolulu.
 - iii. Evidence of having paid State of Hawaii General Excise Taxes (GET) and Transient Accommodations Taxes (TAT).
 - iv. Evidence of a Real Property Tax (RPT) Home Exemption for the subject property.
 - v. A renewal fee of \$200 for bed and breakfast homes, and a renewal fee of \$500 for transient vacation units.
 - vi. Evidence that the use is covered by an insurance carrier for the property.
 - vii. Confirmation that bed and breakfast and transient vacation units are permitted by the Homeowners' or Apartment Owners' Association and/or Condominium Property Regime, if applicable.
 - viii. The renewal of a permit for a bed and breakfast or transient vacation unit shall be granted upon receipt of an application meeting all requirements set forth herein, provided that if complaints from the public indicate that noise created from patrons disturbs residents of the neighborhood in which the premises are located, or where other good cause exists,



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including recurring violations, the Director may deny the renewal application.

- (3) Restrictions and Standards. Bed and breakfast homes and transient vacation units that will be occupied by transient residents for a total of 30 or more days per calendar year must operate in accordance with the following restrictions and standards:
- i. Detached dwellings used as bed and breakfast homes shall be occupied by a family. Roomers shall not be permitted in bed and breakfast homes.
 - ii. No more than two guest rooms in a bed and breakfast home 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.
 - iii. Functioning smoke and carbon monoxide detectors must be installed in each bedroom.
 - iv. House rules, including quiet hours between 10:00 p.m. and 8:00 a.m. and emergency contact information must be provided to all guests and posted in conspicuous locations.
 - v. The owner shall provide the name and telephone number of an Oahu-based property manager to the residents of all adjoining properties.
 - vi. The owner shall maintain a current two-year registry setting forth the names and telephone numbers of all guests and the dates of their respective stays.
 - vii. There shall be no exterior sign that shows the dwelling unit is used as a bed and breakfast home or transient vacation unit.
 - viii. Approval for bed and breakfast home or transient vacation unit is not transferable, and shall not run with the land.
 - ix. Density Limit. Excluding Resort zones, Resort Mixed Use and Apartment Precincts, and those allowed in the A-2 medium density apartment zoning district where the number of transient vacation units are not limited, there shall be no more than one percent of the total number of dwelling units in each development plan area allowed as transient vacation units and bed and breakfast homes. The total number of dwelling units shall be based on the latest figures from the U.S. Census data. Where the initial number of applications exceed this number, acceptance shall be selected on a lottery



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basis. When renewal applications fall below the one percent, new applications can be accepted on a lottery basis.

Unless otherwise specified in apartment bylaws, covenants, or correspondence from a Homeowners' or Apartment Owners' Association and/or Condominium Property Regime, the total number of bed and breakfast homes or transient vacation units shall not exceed 50 percent of the units in a multifamily dwelling.

- (4) Dwelling units to be used as bed and breakfast homes or transient vacation units for a total of less than 30 days per calendar year may obtain a registration for limited short-term rentals. Applicants shall annually file a registration form with the department acknowledging that rental is limited to less than 30 days per calendar year. The filing fee shall be \$50.00. The application may be filed with the department at any time.
- (5) Advertisements for any bed and breakfast home and transient vacation unit must comply with Section 40-____, ROH, regardless of the number of days it is used for transient accommodations.
- (6) Upon reasonable notice, any bed and breakfast home and transient vacation unit must be made available for inspection.

SECTION 7. Section 21-5.640, Revised Ordinances of Honolulu 1990, as amended, ("Time sharing and transient vacation units"), is amended as follows:

"Sec. 21-5.640 Time sharing [~~and transient vacation~~] units.

Time sharing [~~and transient vacation~~] units shall be permitted in the A-2 medium density apartment zoning district provided:

- (a) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
- (b) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community."



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SECTION 8. Table 21-6.1, Revised Ordinances of Honolulu 1990, as amended, (“Off-street Parking Requirements”), is amended by adding a new use for “Bed and breakfast homes, transient vacation units” to read as follows:

“Table 21-6.1 Off-street Parking Requirements	
Use ¹	Requirement ²
COMMERCE AND BUSINESS	
Automotive and boat parts and services, but not storage and repair; automobile and boat sales and rentals; catering establishments; dance or music schools; financial institutions; home improvement centers, laboratories (medical or research); medical clinics; offices, other than herein specified; personal services; photographic processing; photography studios; plant nurseries; retail establishments other than herein specified; and veterinary establishments	1 per 400 square feet
<u>Bed and breakfast homes, transient vacation units⁷</u>	<u>1 per bedroom</u>
Bowling alleys	3 per alley
Business services	1 per 500 square feet
Convenience stores; and sales; food and grocery stores (including neighborhood grocery stores)	1 per 300 square feet
Data processing facilities	1 per 800 square feet
Drive-thru facilities (window or machine)	5 stacking spaces
Eating and drinking establishments (including bars, nightclubs, taverns, cabarets, and dance halls)	1 per 300 square feet, provided the total floor area of all eating and drinking establishments comprises 50 percent or more of the floor area developed on the zoning lot. Otherwise, 1 per 400 square feet, including outdoor dining areas
Laundromats, cleaners: coin operated	1 per 2 washing machines
Mobile commercial establishments: 3 or more	5 per vehicle
Sales: appliance, household and office furniture; machinery; and plumbing and heating supply	1 per 900 square feet
Self-storage facilities	1 per 2,000 square feet
Shopping centers ³	1 per 300 square feet
Skating rinks	1 for each 4 skaters of the rink’s maximum capacity or 1 per 1,500 square feet of skating surface, whichever is greater

Notes:

1. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements.
2. All references to square feet refer to floor area.
3. Parking standards for individual uses shall prevail if they are not part of a commercial use that meets the definition of “shopping center.”
4. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements for the BMX-4 district.
5. All references to square feet refer to floor area.



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- 6. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements for the Waikiki special district.
- 7. Excluding transient vacation units and bed and breakfast homes in Resort zones, the Resort Mixed Use and Apartment Precinct, and those identified in section 21-5.640.

SECTION 9. Table 21-9.6(A), Revised Ordinances of Honolulu 1990, as amended, ("Waikiki Special District Precinct Permitted Uses and Structures") is amended by adding new uses, "Bed and breakfast homes" and "Transient vacation units" 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
<u>Bed and Breakfast Homes</u>	<u>P</u>	<u>P</u>	
<u>Transient Vacation Units</u>	<u>P</u>	P"	

SECTION 10. Chapter 40, Revised Ordinances of Honolulu 1990, as amended, "Prohibited Activities in the City" is amended by adding a new Section for "Advertisement of Short-term Rentals." To be appropriately numbered by the Revisor of Ordinances and to read as follows:

"Sec. 40-_____ Advertisement of Short-term Rentals.

Sec. 40-_____.1 Definitions.

As used in this article:

"Advertisement" means any sign, banner, pictorial statement, broadcast in English or any other language, used to publicize or offer for accommodation any dwelling unit or lodging unit, or portion thereof, or any other permanent or temporary habitable space within the City and County of Honolulu as a transient vacation unit or bed and breakfast home.

"Bed and breakfast home" shall have the same meaning as under Section 21-10.1, ROH.



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“Person” includes businesses, non-profit organizations, firms, partnerships, corporations, and individuals.

“Transient vacation unit” shall have the same meaning as under Section 21-10.1, ROH.

Sec. 40- .2 Prohibition.

- (a) It is unlawful for any person to cause the advertisement of a bed and breakfast home or transient vacation unit without including a current registration number obtained as required by Section 21-5. .
- (b) Upon receiving a notice of violation, the advertisement shall be removed within seven days. If not removed within seven days, a fine shall be levied for each day the advertisement is on public display, as provided in subsection 4 herein.
- (c) The existence of an advertisement will be prima facie evidence of a bed and breakfast home or a transient vacation unit being operated at the listed address. The burden of proof shall be on the property owner to establish otherwise that the subject property is not being used as a transient vacation unit or bed and breakfast home, or that the advertisement was placed without the property owner’s knowledge or consent.

Sec 40- 3 Exceptions.

- (a) Legally established hotels, whether owned by one person, or owned individually as unit owners, but operating as a hotel as defined by Section 21, Article 10, ROH are exempt from this advertising restriction.
- (b) Legally established time-sharing units, as provided under subsection 21-5.640 are exempt from this advertising restriction.
- (c) Legally established short-term rentals in Resort zones, Resort Mixed Use Precincts, and those allowed in the A-2 medium density apartment zoning district where the number of transient vacation units are not limited are exempt from this advertising restriction.



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- (d) Legally established long-term rental units are exempt from this advertising restriction. All advertisements associated with long-term rentals shall specify a rental duration that exceeds 30 days.

Sec 40- 4. Citations-Penalties.

Any person who violates any of the provisions of this article shall be fined not less than \$25,000.00 and not more than \$50,000.00 for each day that the advertisement is on public display beyond seven days from receiving a notice of violation. Landowners, agents, or any other person associated with the property shall be liable for each violation, whether or not they are named in the advertisement."



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SECTION 11. 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 12. This ordinance shall take effect on November 1, 2019.

INTRODUCED BY:

[Handwritten signature]

(br)

DATE OF INTRODUCTION:

NOV 15 2018

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