



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. Findings and Purpose. The purpose of this ordinance is to better regulate short-term rentals. Short-term rentals, which are the use of residential dwellings for stays of less than 30 days, have grown significantly since being first regulated by the City in 1989. The use of social media has increased opportunities for visitors to consider short-term rentals during their stay on Oahu. Based on on-line advertising, there are an estimated 8,000 to 10,000 short-term rentals available at any given time on Oahu, far exceeding the number of permitted units as currently provided under the Land Use Ordinance. Current Land Use Ordinance enforcement tools are outdated and not effective in regulating the expanding short-term rental industry, particularly with respect to social media advertising and online booking services. In addition, the hotel industry, while not opposed to short-term rentals, takes the position that requirements imposed on hotels should equally apply to short-term rentals. Short-term rentals are currently classified as "residential" for real property tax purposes. The high rents that may be charged for short-term rentals, which may be as much as \$8,000 per night, result in an imbalance in real property tax policy.

Short-term rentals represent economic benefits to the City and State in terms of jobs, tax revenues, and diversification of the visitor accommodations industry. For some residents, short-term rentals are viewed as important supplemental income, serving as sources of revenue, and enabling homeowners to qualify for mortgages. Some residents pride themselves on being sensitive landlords or hosts, serving as "ambassadors of aloha." Many residents desire to use the dwelling for their own use for portions of the year, so they are not able to offer the dwelling for rental on a long-term basis.

However, neighborhoods may be negatively impacted by the presence of short-term rentals, including escalating real property values, increased noise, illegal parking, and increased traffic. There is a concern that homes are being purchased as income-producing investments rather than for domiciliary purposes. Residents are generally comfortable with bed and breakfast homes because an on-site resident manager or owner is responsible for the bed and breakfast home, and can respond to any problems associated with short-term guests. In contrast, residents generally voice strong concerns about "unhosted" transient vacation units, particularly when a significant number of transient vacation units are located in the same neighborhood. Significant numbers of absentee owners and constant change in occupancy may change the social



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patterns of neighborhoods and reduce interactions among neighbors, resulting in a decline in the quality of life for residents.

This ordinance is intended to balance competing views associated with short-term rentals. It continues to differentiate between bed and breakfast homes and transient vacation units, and provides a registration system to allow bed and breakfast homes to operate under express regulatory standards and requirements, which will be monitored through an annual registration renewal process. This ordinance also includes significant penalties for illegally operating a short-term rental, and for advertising an illegal short-term rental. In addition, this ordinance regulates hosting platforms to increase transparency and accountability for hosting platforms providing booking services for bed and breakfast homes and transient vacation units located within the City.

SECTION 2. Section 8-10.5, Revised Ordinances of Honolulu 1990 ("Home, lease, lessees defined"), is amended by amending subsection (b) to read as follows:

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

SECTION 3. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-2.150-2 Administrative enforcement.

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

(1) Date of the notice;



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- (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)](c) 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]~~ \$1,000 in the manner, at the place and before the date specified in the order; and
 - (D) Pay a civil fine not to exceed ~~[\$1,000]~~ \$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) Notwithstanding the civil fines specified in subdivision (1)(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 requirements in subdivision (1)(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, in the manner, at the place and before the date specified in the order; and
 - (ii) Pay a civil fine of \$5,000 per day 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.



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(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.

~~[(2)]~~(3) 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.

~~[(e)]~~(d) 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 Charter 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)]~~(e) 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 imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.

(f) 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) Nothing in this section shall preclude the director from seeking any other remedy available by law."



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SECTION 4. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-3 to read as follows:

"Sec. 21-2.150-3 Depository of fees and civil penalties relating to bed and breakfast homes or transient vacation units.

Notwithstanding any other ordinance to the contrary, payments of fees and civil penalties relating to bed and breakfast homes or transient vacation units shall be deposited into a special account of the general fund, to be appropriately named by the department of budget and fiscal services, and used by the department of planning and permitting for expenses related to the enforcement of the provisions of this chapter relating to bed and breakfast homes and transient vacation units."

SECTION 5. Chapter 21, Revised Ordinances of Honolulu 1990 ("Land Use Ordinance"), is amended by adding a new Article 2A to read as follows:

"Article 2A. Hosting Platforms

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.
- (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.



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Sec. 21-2A.20 Registration.

- (a) It is unlawful for any hosting platform to provide booking services to owners or operators of bed and breakfast homes or transient vacation units located within the city without first registering with the department. In order to register, a hosting platform shall provide a hosting platform registration statement to the director, in a form prescribed by the director, pay a registration fee of \$100, and agree in writing:
- (1) To obtain written consent from all owners or operators of bed and breakfast homes or transient vacation units located within the city for the disclosure of the information required under Section 21-2A.30; and
 - (2) To furnish such information to the city in accordance with Section 21-2A.30.
- (b) A hosting platform may cancel its registration under this section by delivering written notice of cancellation to the director. The director may cancel a hosting platform's registration under this section for cause, including any violation of this article, by delivering written notice of cancellation to the hosting platform no later than 90 days prior to the effective date of cancellation. Nothing in this section relieves the owner or operator of a bed and breakfast home or transient vacation unit located within the city from the requirements set forth in Section 21-5.____.

Sec. 21-2A.30 Reporting.

- (a) Subject to applicable laws, all hosting platforms registered pursuant to Section 21-2A.20 shall report to the director on a monthly basis, on the date and in the electronic format specified by the director, for each bed and breakfast home and transient vacation unit located within the city for which the hosting platform provided booking services in the preceding month. The report must include:
- (1) The names of the persons responsible for each listing;
 - (2) The address of each listing;
 - (3) The transient accommodations tax identification number of the owner or operator of the bed and breakfast home or transient vacation unit;
 - (4) The length of stay for each listing; and



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- (5) The price paid for each stay.
- (b) The director may disclose such information to the appropriate state or city officials to ensure compliance with this article, state tax laws, and county tax ordinances, and any applicable land use laws and ordinances.

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), a 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 6. Table 21-3, Revised Ordinances of Honolulu 1990 ("Master Use Table"), is amended by:

- A. Amending the "Dwellings and Lodgings" category to add a "bed and breakfast homes" entry and revise the "transient vacation units" entry 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	
<u>Bed and breakfast homes</u>			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] P/c ³									



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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 valid nonconforming use certificate in areas where the applicable development plan or sustainable communities plan prohibits or does not permit new bed and breakfast homes or transient vacation units."

SECTION 7. 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.

(a) The purpose of this section is to ~~[treat]~~ permit certain transient vacation units ~~[which] that~~ have been in operation since prior to October 22, 1986, ~~[as nonconforming uses and to allow them]~~ 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 a valid nonconforming use certificate issued pursuant to this section on the effective date of this ordinance.

~~[(b) The owner, operator, or proprietor of any transient vacation unit which is operating in an area where such use is not expressly permitted by this chapter shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.~~



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~~(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.]~~

~~(e)~~(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 September 1, 2000 and October 15, 2000; then
- (2) between September 1 and October 15 of every even-numbered year thereafter.

Each application to renew shall 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 calendar year covered by the nonconforming use certificate being renewed and that 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.

~~(e)~~(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 provisions of Section 21-5. (c) shall apply to advertisements for transient vacation units operating under a nonconforming use certificate pursuant to this section."



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SECTION 8. 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 [~~prohibit bed and breakfast homes, while permitting~~] permit certain bed and breakfast homes [~~which~~] 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 the effective date of this ordinance.
- ~~[(b) The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence of a bed and breakfast home as of December 28, 1989 may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.~~
- ~~[(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use, but shall be treated as an illegal use.]~~
- ~~[(d)](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 September 1, 2000 and October 15, 2000; then
 - (2) between September 1 and October 15 of every even-numbered year thereafter.



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Each application to renew shall 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 calendar year covered by the nonconforming use certificate being renewed and that 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.

~~[(e)](c)[Except those bed and breakfast homes which are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts.]~~ Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.

~~[(f)](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. (c) shall apply to advertisements for the bed and breakfast home.



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~~[(g)]~~(e) 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."

SECTION 9. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990 ("Specific Use Development Standards"), is amended by adding a new section to be appropriately designated 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 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.
- (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 following standards and requirements apply:
- (1) 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, shall register the bed and breakfast home with 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;



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- (C) A valid current State of Hawaii general excise tax license and transient accommodations tax license for the subject property;
- (D) 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) An initial fee of \$1,000 for the bed and breakfast home;
- (F) Evidence that the use as a bed and breakfast home is covered by an insurance carrier for the subject property;
- (G) Confirmation that the bed and breakfast home 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
- (K) Evidence that a dwelling unit proposed for use as a bed and breakfast home:
 - (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.



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- (2) Registration renewal requirements. Annually, by August 30, 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, shall submit to the department:
- (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 of a real property tax home exemption for the subject property;
 - (E) A renewal fee of \$2,000 for the bed and breakfast home;
 - (F) Evidence that the use as a bed and breakfast home is covered by an insurance carrier for the property;
 - (G) Confirmation that the bed and breakfast home 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.



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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 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 is located, or where other good cause exists, the director may deny the renewal application.

- (3) Restrictions and Standards. Bed and breakfast homes 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) Functioning smoke and carbon monoxide detectors must be installed in each 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) The owner or operator shall maintain a current two-year registry setting forth the names and telephone numbers of all guests and the dates of their respective stays;
 - (G) No exterior signage that shows the dwelling unit is used as a bed and breakfast home is allowed;
 - (H) Registration as a bed and breakfast home is not transferable, and shall not run with the land;



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- (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;



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- (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.
- (4) Upon reasonable notice, any bed and breakfast home 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.



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- (7) The director may revoke a registration at any time under the following circumstances:
- (A) Recurring violations of the standards and requirements for bed and breakfast homes in Section 21-5. (b);
 - (B) 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 is located; or
 - (C) The director determines that good cause exists for revocation of the registration.
- (c) Advertisements.
- (1) Definitions. As used in this subsection:
- "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.
- "Person" means a judicial person or a natural person, and includes businesses, companies, associations, non-profit organizations, firms, partnerships, corporations, limited liability companies, and individuals.
- (2) Prohibition. Advertisements for all bed and breakfast homes and transient vacation units 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 current registration number obtained pursuant to this section, or nonconforming use certificate number obtained pursuant to Section 21-4.110-1 or Section 21-4.110-2; or



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- (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) Within seven days after receipt of a notice of violation, the owner or operator of a bed and breakfast home or a transient vacation unit shall remove, or cause the removal of, the advertisement identified in the notice, including, without limitation, 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, for each day the advertisement is on public display beyond seven days from the date the notice of violation is received.
- (C) The existence of an advertisement 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.
- (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.



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

(1) Definitions. As used in this subsection:

"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) Operating under a valid nonconforming use certificate pursuant to Section 21-4.110-2; or
- (C) 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) Operating under a valid nonconforming use certificate pursuant to Section 21-4.110-1.

(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 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;



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- (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 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 consecutive days.
- (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;
- (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 address where the director may mail a response to the complaint.
- (2) Within 30 days after receiving a written complaint reporting a violation of the provisions of this section, the director must 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);



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- (B) Entering a finding of no violation, which will be appealable 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."

SECTION 10. Section 21-5.640, Revised Ordinances of Honolulu 1990, is amended to read as follows:

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

Time sharing [~~and transient vacation~~] units [~~shall be~~] are 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."

SECTION 11. Table 21-6.1, Revised Ordinances of Honolulu 1990 ("Off-street Parking Requirements"), is amended by amending the "Commerce and Business" category to add an entry for "bed and breakfast homes" to read as follows:

"

Table 21-6.1 Off-street Parking Requirements	
Use¹	Requirement²
COMMERCE AND BUSINESS	
<u>Bed and breakfast homes⁷</u>	<u>1 per guest bedroom⁸</u>

"



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SECTION 12. The footnotes for Tables 21-6.1 ("Off-street Parking Requirements"), 21-6.2 ("Off-street Parking Requirements BMX 4 Central Business Mixed Use"), and 21-6.3 ("Off-street Parking Requirements Waikiki Special District"), Revised Ordinances of Honolulu 1990, are amended to read as follows:

"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.
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 bed and breakfast homes in the resort district, resort mixed use precinct of the Waikiki special district, the A-1 low-density apartment district and A-2 medium-density apartment district pursuant to Section 21-5. (a), and bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2.
8. This requirement is in addition to the off-street parking requirement applicable to the dwelling unit being used as a bed and breakfast home."



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SECTION 13. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended:

- a. By adding a "bed and breakfast homes" entry and revising 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
<u>Bed and breakfast homes</u>	<u>P/c</u>	<u>P/c</u>	
Transient vacation units		[P] <u>P/c</u>	

"

- b. By amending the "Ministerial uses" note to the table to read as follows:

"Ministerial uses:

- Ac = Special accessory use. Also see: Article 10, Accessory use; and Section 21-5.330, Home occupations
- P = Permitted principal use
- P/c = Permitted use subject to standards in Article 5
- P9 = Permitted principal use subject to standards enumerated in Article 9; see Section 21-9.80-5(d), 21-9.80-6(d), or 21-9.80-8(d)
- P-AMX = Within the apartment precinct, a permitted principal use only within the apartment mixed use subprecinct"

SECTION 14. Chapter 21, Article 10, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definitions of "bed and breakfast home" and "transient vacation unit," and adding new definitions of "booking service" and "hosting platform" 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 for compensation, for periods of less than 30 days, in the same detached dwelling as that occupied by an owner, lessee, operator, or proprietor of the detached dwelling. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services, or labor of guests.



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"Booking service" means any reservation or payment service provided by a person that facilitates a transaction between an owner, operator, or proprietor of a bed and breakfast home or transient vacation unit, and a prospective user of that bed and breakfast home or transient vacation unit, and for which the person collects or receives, directly or indirectly through an agent or intermediary, a fee from any person in connection with the reservation or payment services provided for by the transaction.

"Hosting platform" means a person that collects or receives a fee from any person for booking services through which an owner, operator, or proprietor of a bed and breakfast home or transient vacation unit may offer use of the bed and breakfast home or transient vacation unit. Hosting platforms typically, but not necessarily, provide booking services through an online platform that allows the owner, operator, or proprietor to advertise the bed and breakfast home or transient vacation unit through a website provided by the hosting platform, and the hosting platform conducts a transaction by which potential users arrange the use of and payment for the bed and breakfast home or transient vacation unit, whether the payment is made directly to the owner, operator, or proprietor, or to the hosting platform.

"Transient vacation unit" means a dwelling unit or lodging unit ~~[which]~~ that is advertised, solicited, offered, or provided, or a combination of any of the foregoing, for compensation to transient occupants for less than 30 days, other than a bed and breakfast home. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services, or labor of ~~[employees]~~ transient occupants."

SECTION 15. An owner, operator, or proprietor of a transient vacation unit or a bed and breakfast home who holds a valid nonconforming use certificate issued pursuant to Sections 21-4.110-1 or 21-4.110-2 on the effective date of this ordinance shall be allowed to continue to operate the transient vacation unit or bed and breakfast home and renew the nonconforming use certificate pursuant to those respective sections. The owner, operator, or proprietor of the transient vacation unit or the bed and breakfast home shall cease its operation upon the expiration and nonrenewal of the nonconforming use certificate, provided that the owner, operator, or proprietor of a bed and breakfast home may thereafter apply to register the bed and breakfast home pursuant to the provisions of this ordinance.



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SECTION 16. No later than six months after the effective date of this ordinance, the Department of Planning and Permitting shall:

- (1) Establish and implement specific procedures by which the public may submit written or verbal complaints and investigation requests to the Department regarding potential violations of applicable laws regarding bed and breakfast homes and transient vacation units. The procedures must include the establishment and staffing of a telephone hotline for verbal complaints and investigation requests from the public;
- (2) Establish and implement specific procedures by which the Department investigates public complaints in a timely manner, efficiently obtains evidence pursuant to the investigations, and notifies the complaining parties of the status and results of the investigation; and
- (3) Conduct community outreach to educate the public regarding the complaint and investigative process, and publicize the availability of the hotline.

SECTION 17. No later than 10 days after the Department of Planning and Permitting receives the monthly reports from hosting platforms pursuant to Section 21-2A.30, the Department of Planning and Permitting shall prepare and submit a report to the Council showing, by Council district, for the month covered by the corresponding hosting platform reports:

- (1) The total number of bed and breakfast home listings in each district; and
- (2) The total number of transient vacation unit listings in each district.

SECTION 18. In SECTIONS 2 through 4 and 6 through 14 of this 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. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.



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SECTION 19. 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 can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.



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SECTION 20. This ordinance takes effect on August 1, 2019; provided that SECTIONS 5, 6, 10, 11, 12, and 17, and the following amendments to the Revised Ordinances of Honolulu in SECTIONS 9 and 13 of this ordinance, take effect on October 1, 2020:

SECTION 9 – Section 21-5.__(a) and Section 21-5.__(b); and

SECTION 13 – Table 21-9.6(A) – addition of a "bed and breakfast homes" entry.

INTRODUCED BY:

Ernest Martin (br)

DATE OF INTRODUCTION:

November 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