DEPARTMENT OF PLANNING AND PERMITTING
**CITY AND COUNTY OF HONOLULU**
650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honoluludpp.org • CITY WEB SITE: www.honolulu.gov

RICK BLANGIARDI
MAYOR

DEAN UCHIDA
DIRECTOR

DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

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DEPT OF PLANNING AND PERMITTING
CITY & COUNTY OF HONOLULU

September 7, 2021

**MEMORANDUM**

TO: Brian Lee, Chair
and Members of the Planning Commission

FROM: Dean Uchida, Director
Department of Planning and Permitting

Digitally signed by Uchida, Dean
Date: 2021.09.07 11:51:16 -10'00'

SUBJECT: Responses to Commissioners' Questions and Revisions to Proposed Bill Amending Chapter 21 (Land Use Ordinance [LUO]), Revised Ordinances of Honolulu, Relating to Transient Accommodations

As a result of the Planning Commission hearing held on September 1, 2021, the Department of Planning and Permitting (DPP) provides responses to questions posed by the Commissioners, as well as proposed amendments based on testimony received and heard on the proposed bill.

## I. Responses to Commissioners' Questions.

1. *Is there a City special fund similar to the one provided under this bill?*

   Yes, there are special funds for Affordable Housing, Clean Water and Natural Lands, and Zoo funds that are provided through real property taxes.

2. *Has there been any community engagement on this bill or planned community engagement*?

   DPP held a public hearing on the proposed administrative rules effecting Ordinance 19-18, during which we received many comments and concerns with the implementation of Ordinance 19-18, which prompted us to reconsider and amend Ordinance 19-18. Also, these Planning Commission hearings as well as any forthcoming City Council hearings will allow the public to provide further input into this bill. We can also provide more information on the bill to the Neighborhood Boards.

3. *How has this short-term rental (STR) bill process been different from the off-street parking amendment process?*

   The process for the Parking and Loading bill involved the following: Five focus groups and multiple interviews were held with members of the business community, advocacy groups and community organizations, real estate agents and planning consultants, public transportation professionals, and City/State staff. A workshop, open to the public, was held at the Blaisdell Center in January 2019. This cooperative relationship with the Governors Institute concluded in June 2019. Three technical memos and a summary of stakeholder engagement, a draft model ordinance, and a draft staff report were produced. DPP also engaged the local development community, including additional research from the Department of Transportation Services, and Ulupono Initiative and their consultants (students from the University of Hawaii and Columbia University, and a consultant named Two-Twelve).

   The off-street parking amendment process was atypical. It involved focus groups consultations, community member interviews, discussions with advocacy groups and community organizations, and workshops. This level of stakeholder consultation should not be expected for all amendments to the Zoning Code. DPP does not view additional public consultation as necessary for this bill given the extent of the ongoing public input during and after Ordinance 19-18, as well as currently with the Planning Commission, and forthcoming with the City Council. We also note that before drafting Ordinance 19-18, DPP engaged with community members and focus groups. The community had very different perspectives on STRs and this contributed to a lack of focus in the Bill that became Ordinance 19-18.

   The proposed amendments to Ordinance 19-18 were a result of comments made during the administrative rules process, internal review of Ordinance 19-18 to address potential problems in the original bill, as well as a response to changes in the community as a result of the pandemic.

4. *Would existing STRs be required to up zone in the Apartment Precinct?*

   STRs with current nonconforming use certificates (NUC) in the Apartment Precinct may continue to operate under their NUCs. Unlawful STRs (those without current NUCs) in the Apartment Precinct are not currently eligible to be used as bed and breakfast (B&Bs) homes or transient vacation units (TVUs) and are not allowed to operate as legal STRs.

   The draft bill specifically makes hotel uses permitted in the Apartment Precinct, subject to compliance with development criteria. A building may be

converted from apartment to hotel, if approved by the majority of unit owners in the manner provided for in a building's governing documents. The owners would need to convert the entire building to hotel/resort within three years of the effective date of the ordinance, and rezone the property to resort.

5. *Are condo-hotels required to enter into the hotel pool?*

   Yes, all existing hotel units are required to be part of a hotel rental pool within 3 years of the ordinance's effective date. Condo-hotels will have to operate in the same manner as regular hotels. The LUO does not currently recognize any difference between condo-hotels and regular hotels and we do not want to treat them differently from regular hotels.

6. *Does the City feel it takes away ownership rights?*

   No. Lawful STRs with current NUCs will be able to continue operating as nonconforming uses. There is no right to operate an illegal STR and, therefore, any further restrictions or enforcement on illegal STRs is legal and does not take away any property rights. The bill will increase property rights by allowing the majority of unit owners in an apartment building in the Apartment Precinct to convert from apartment building use to hotel use, if they wish to do so.

7. *What is the process for up zoning? Majority vote or 100 percent of the AOAO?*

   The required percentage of votes for an AOAO to up zone is based on the AOAO and their by-laws.

8. *Why does the bill require natural persons owning units, not corporations?*

   We want to limit the number of STRs as a secondary market. This requirement limits STR ownership to one per person to discourage mass buying of houses/units for STRs, which drive up the price of housing.

   Notably, those currently operating multiple STRs erroneously believe that they are required to sell their additional STRs under this bill, when they are merely restricted to *operating* only one STR. It would benefit the community if they rented their remaining units on a long-term basis.

9. *How will timeshares be treated?*

   Timeshares are not affected by this bill. They will continue to be allowed only in the A-2, Resort, and Resort Mixed Use Precinct Districts.

10. *Is there an estimate of the number of STRs, legal or not legal, as whole homes or rooms, etc.?*

    Currently there are approximately 759 active NUC's and 34 of these are B&B's. We have no data on the number of illegal STRs currently operating on Oahu.

11. *What is problematic with the current ordinance?*

    DPP continues to have problems enforcing against illegal STRs, the lottery may be considered unfair in application, the 1,000-foot radius among STRs would be difficult to implement, and the siting of new STRs in the residential district goes against proper land use designations. The current ordinance provides violators seven days to take down an advertisement, rather than allowing DPP to immediately cite the illegal advertisement when advertised. Fines are too low and are simply a cost of business for STR owner/operators. The date of service for process and who is considered a violator is unclear. There is no dedicated enforcement staff for administering, monitoring, and enforcing the STR program.

## II. <u>Proposed Amendments Based on Testimony</u>.

DPP has reviewed the written and verbal testimony on the proposed bill, and appreciates the input and views shared by so many individuals. Based on the testimony, we submit the following proposed changes to the bill for your consideration. Attached you will find a revised draft bill for your consideration that includes the following edits (highlighted in yellow):

- Added definition for "Transient Occupants" renters for less than 180 days, but excludes: temporary employees of health care facilities, full-time students, full-time remote workers, military personnel and family in transition, homeowners in transition, etc. Except for family members, all other rental agreements for less than 180 days must have prior approval from the department. Owners of the units will be required to provide supporting documentation, when requested by the department, to verify tenants qualify for the less than 180 day exemptions listed above.

- To allow for greater opportunities for STRs in the resort areas, we recommend that STRs be permitted in all resort zoned areas specified in the ordinance.

- To retain a portion of workforce and long-term housing in the A-1 and A-2 Apartment Districts identified in the ordinance, we recommend the total number of B&B homes and TVUs not exceed 50 percent of the total dwelling units in a multifamily dwelling.

- To avoid any issues with regulating rental rates, we recommend deleting the provision requiring hotels and third party booking services restricting discounted rental rates to condo hotel units or guests by owners.

- To allow the continued existing long-term use of a hotel unit, we recommend permitting persons occupying a hotel unit, as a principal place of residence, to continue as a nonconforming use until the person no longer occupies the hotel unit.

- To clarify the definition and use of condominium hotels, we recommend that the definition of "condominium hotel" mean a hotel in which one or more hotel units are separate real property interest created by a Declaration of Condominium Property Regime, and that condominium hotels and hotel units in condominium hotels be regulated in the same manner as hotels, and that converting a hotel unit into a condominium hotel unit does not change the permissible uses of the unit.

- To retain a portion of workforce and long-term housing in the Waikiki Apartment and Apartment Mixed Use Precincts, we recommend no new STRs be allowed in these Precincts. Here are the options for existing projects in these areas:

  - An existing apartment building with several units being used as legal (NUC) and illegal STRs:
    i. Allow for existing NUC STRs and all others as apartment rentals; or
    ii. Convert to a Hotel.

  - An existing non-conforming Condo-Hotel/Hotel being used as a Hotel, STRs, and Long-term rentals and/or residents:
    i. Allow existing NUC STRs and all others continued use as a non-conforming Hotel;
    ii. Convert to a 100 percent Hotel;
    iii. Convert to a Hotel except for existing NUC STRs and allow existing long-term rentals to continue as non-conforming.

- Based on a request of Councilmember Andrea Tupola, we recommend permitting STRs in the Makaha Valley resort zones.

Thank you for this opportunity to provide responses to Commissioners' questions and explanation for further proposed amendments.

Attachment

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

# A BILL FOR AN ORDINANCE

RELATING TO TRANSIENT ACCOMMODATIONS

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

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

In 2019, the City passed Ordinance 19-18, allowing a limited number of new bed and breakfast homes and requiring certain short-term rentals to comply with registration requirements, development standards and other regulations. However, some of the provisions in Ordinance 19-18 have proven themselves to be impractical and have resulted in enforcement problems. To address these problems, it is necessary to improve upon Ordinance 19-18 by simplifying the City's approach to regulating short-term rentals and other transient accommodations.

The purpose of this Ordinance is to better protect the City's residential neighborhoods and housing stock from the negative impacts of short-term rentals by providing a more comprehensive approach to the regulation of transient accommodations within the City and creating additional sources of funding for the administration and enforcement of the City's short-term rental and transient accommodations laws.

SECTION 2. Section 8-7.1, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

**"Sec. 8-7.1 Valuation - Considerations in fixing**.

(a) The director of budget and fiscal services shall cause the fair market value of all taxable real property to be determined and annually assessed by the market data and cost approaches to value using appropriate systematic methods suitable for mass valuation of real property for ad valorem taxation purposes, so selected and applied to obtain, as far as possible, uniform and equalized assessments throughout the city.

(b) So far as practicable, records shall be compiled and kept which shall show the methods established by or under the authority of the director, for the determination of values.

(c) (1) Real property shall be classified into the following general classes, upon consideration of its highest and best use, and upon other criteria set forth in this section:

(A) Residential;

(B) Hotel and resort;

(C) Commercial;

(D) Industrial;

(E) Agricultural;

(F) Preservation;

(G) Public service;

(H) Vacant agricultural

(I) Residential A; and

(J) Bed and breakfast home.

(2) In assigning real property to one of the general classes, the director shall give major consideration to the districting established by the city in its general plan and zoning ordinance, specific class definitions or criteria set forth in this section, and such other factors which influence highest and best use.

Notwithstanding the city's zoning district classification, the director shall assign to the agricultural class any real property classified as tree farm property under HRS Chapter 186.

(3) When real property is subdivided into condominium units, each unit and its appertaining common interest:

(A) Shall be deemed a parcel and assessed separately from other units; and

(B) Shall be classified as follows:

(i) If the unit has a single, legally permitted, exclusive actual use, it shall be classified upon consideration of the unit's actual use into one of the general classes in the same manner as real property; or

(ii) If the unit has multiple, legally permitted uses; it shall be classified:

(aa) Upon consideration of the unit's highest and best use into one of the general classes in the same manner as real property; or

(bb) Residential, only upon approved dedication as provided in Section 8-7.5 when the unit is legally permitted multiple exclusive uses including residential use; or

(iii) If the unit is a condominium parking unit or a condominium storage unit, it shall be classified residential, only upon approved dedication when the unit is used in conjunction with a unit in residential use within the project.

(4) Notwithstanding any provision contained in this subsection, a condominium unit that is used at any time during the assessment year as a time share unit, shall be classified for the following tax year as hotel and resort[~~ unless:~~

~~(A) The unit is on property zoned as apartment, apartment mixed use, apartment precinct, or apartment mixed use precinct;~~

~~(B) The property on which the unit is located does not include a lobby with a clerk's desk or counter with 24-hour clerk service facilities for registration and keeping of records relating to persons using the property; and~~

~~(C) The unit is part of a condominium property regime established pursuant to HRS Chapter 514A, as it read prior to its repeal on January 1, 2019, or HRS Chapter 514B.~~

~~If the requirements of paragraphs (A), (B) and (C) are met, the time share unit shall be classified as residential. For purposes of this subdivision, "assessment year" means the one-year period beginning October 2nd of the previous calendar year and ending October 1st, inclusive, of the calendar year preceding the tax year, and "time sharing" has the same meaning as defined in Section 21-10.1~~].

(5) "Vacant agricultural" means a parcel, or portion thereof, that would otherwise be classified agricultural by the director upon major consideration of the districting established by the city in its general plan and zoning ordinance and of such other factors that influence highest and best use, but which parcel, or portion thereof:

(A) Has no residential buildings; and

(B) Is not dedicated for agricultural purposes.

If a portion of a parcel is dedicated as vacant agricultural, the remainder of the parcel that is zoned agricultural must be dedicated for agricultural use.

(6) Notwithstanding any provision contained in this subsection, all real property actually used by a public service company in its public service business shall be classified public service. For purposes of this subsection, "public service company" means a public utility, except airlines, motor carriers, common carriers by water, and contract carriers, where:

(A) "Public utility" includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use, for the transportation of passengers or freight, or the conveyance or transmission of telecommunications messages, or the furnishing of facilities for the transmission of intelligence by electricity by land or water or air within the state, or between points within the state, or for the production, conveyance, transmission, delivery, or furnishing of

light, power, heat, cold, water, gas, or oil, or for the storage or warehousing of goods, or the disposal of sewage; provided that the term:

(i) Includes any person insofar as that person owns or operates a private sewer company or sewer facility;

(ii) Includes any telecommunications carrier or telecommunications common carrier;

(iii) Does not include any person insofar as that person owns or operates an aerial transportation enterprise;

(iv) Does not include persons owning or operating taxicabs, as defined in this subsection;

(v) Does not include common carriers transporting only freight on the public highways, unless operating within localities or along routes or between points that the Public Utilities Commission of the State of Hawaii finds to be inadequately serviced without regulation under this chapter;

(vi) Does not include persons engaged in the business of warehousing or storage unless the Public Utilities Commission of the State of Hawaii finds that regulation thereof is necessary in the public interest;

(vii) Does not include:

(aa) The business of any carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the state and the carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally; and

(bb) The business of any carrier by water, substantially engaged in interstate or foreign commerce, transporting passengers on luxury cruises between

points within the state or on luxury round-trip cruises returning to the point of departure;

(viii) Does not include any person who:

(aa) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from non-fossil fuel sources; and

(bb) Provides, sells, or transmits all of that power, except such power as is used in its own internal operations, directly to a public utility for transmission to the public;

(ix) Does not include a telecommunications provider only to the extent determined by the Public Utilities Commission of the State of Hawaii, pursuant to applicable state law;

(x) Shall not include any person who controls, operates, or manages plants or facilities developed pursuant to applicable state law for conveying, distributing, and transmitting water for irrigation and such other purposes that shall be held for public use and purpose; and

(xi) Shall not include any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:

(aa) The services of the facility shall be provided pursuant to a service contract between the person and a state or county agency and at least 10 percent of the wastewater processed is used directly by the state or county which has entered into the service contract;

(bb) The primary function of the facility shall be the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility that is owned by a state or county agency;

(cc) The facility shall not make sales of water to residential customers;

(dd) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this subparagraph, "recycled water" and "reclaimed water" mean treated wastewater that by design is intended or used for a beneficial purpose; and

(ee) The facility shall not be engaged, either directly or indirectly, in the processing of food wastes;

(B) "Motor carrier" means a common carrier or contract carrier transporting freight or other property on the public highways, other than a public utility or taxicab;

(C) "Contract carrier" means a person other than a public utility or taxicab which, under contracts or agreements, engages in the transportation of persons or property for compensation, by land, water, or air;

(D) "Carrier" means a person who engages in transportation, and does not include a person such as a freight forwarder or tour packager who provides transportation by contracting with others, except to the extent that such person oneself engages in transportation;

(E) "Taxicab" means and includes:

(i) Any motor vehicle used in the movement of passengers on the public highways under the following circumstances, namely, the passenger hires the vehicle on call or at a fixed stand, with or without baggage for transportation, and controls the vehicle to the passenger's destination; and

(ii) Any motor vehicle having seating accommodations for eight or less passengers used in the movement of passengers on the public highways between a terminal, i.e., a fixed stand, in the city of Honolulu, and a terminal in a geographical district outside the limits of the city of Honolulu, and vice versa,

without picking up passengers other than at the terminals or fixed stands; provided that passengers may be unloaded at any point between terminals; and provided further that this definition relating to motor vehicles operating between terminals shall pertain only to those motor vehicles whose operators or owners were duly licensed under any applicable provision of law or ordinance and doing business between such terminals on January 1, 1957;

(F) "Telecommunications carrier" or "telecommunications common carrier" means any person that owns, operates, manages, or controls any facility used to furnish telecommunications services for profit to the public, or to classes of users as to be effectively available to the public, engaged in the provision of services, such as voice, data, image, graphics, and video services, that make use of all or part of their transmission facilities, switches, broadcast equipment, signaling, or control devices; and

(G) "Telecommunications service" or "telecommunications" means the offering of transmission between or among points specified by a user, of information of the user's choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium, and does not include cable service as defined under applicable state law.

(d) Whenever land has been divided into lots or parcels as provided by law, each such lot or parcel shall be separately assessed.

(e) When a parcel of land that has been classified as agricultural is improved with a single-family dwelling and has been granted a home exemption for the tax year, that portion of the parcel that is used for residential purposes shall be classified as residential. This classification shall:

(1) Apply only to that portion used for residential purposes;

(2) Not exceed 5,000 square feet of land and the buildings and improvements on that land; and

(3) Remain in effect only so long as the property qualifies for a home exemption.

(f) When a parcel of land that has been classified as preservation is improved with a single-family dwelling and has been granted a home exemption for the tax year, that portion of the parcel which is used for residential purposes shall be classified as residential. This classification shall:

(1) Apply only to that portion used for residential purposes;

(2) Not exceed 5,000 square feet of land and the buildings and improvements on that land; and

(3) Remain in effect only so long as the property qualifies for a home exemption.

(g) (1) In determining the value of buildings, consideration shall be given to any additions, alterations, remodeling, modifications or other new construction, improvement, or repair work undertaken upon or made to existing buildings as the same may result in a higher assessable valuation of said buildings; provided, however, that any increase in value resulting from any additions, alterations, modifications, or other new construction, improvement or repair work to buildings undertaken or made by the owner occupant thereof pursuant to the requirements of any urban redevelopment, rehabilitation, or conservation project under the provisions of Part II of HRS Chapter 53, shall not increase the assessable valuation of any building for a period of seven years from the date of certification as hereinafter provided.

(2) It is further provided that the owner occupant shall file with the director, in the manner and at the place which the director may designate, a statement of the details of the improvements certified in the following manner:

(A) In the case of additions, alterations, modifications or other new construction, improvement or repair work to a building that is undertaken pursuant to any urban redevelopment, rehabilitation or conservation project as hereinabove mentioned, the statement shall be certified by the mayor or any governmental official designated by the mayor and approved by the council, that the additions, alterations, modifications, or other new construction, improvements,

or repair work to the buildings were made and satisfactorily comply with the particular urban development, rehabilitations, or conservation act provision; or

(B) In the case of maintenance or repairs to a residential building undertaken pursuant to any health, safety, sanitation or other governmental code provision, the statement shall be certified by the mayor or any governmental official designated by the mayor and approved by the council, that:

(i) The building was inspected by them and found to be substandard when the owner or occupant made the claim; and

(ii) The maintenance or repairs to the buildings were made and satisfactorily comply with the particular code provision.

(h) (1) Notwithstanding the provisions of subsection (c)(2), properties operating as transient vacation units [~~in accordance with Section 21-4.110-1, and which have a valid nonconforming use certificate, shall be classified based on their underlying zoning~~] must be classified as hotel and resort.

(2) [~~Real Property operating as transient vacation units as otherwise permitted under Chapter 21 must be classified as hotel and resort.~~]Notwithstanding the provisions of subsections (c)(2), properties operating as bed and breakfast homes must be classified as bed and breakfast home.

[~~(3) For purposes of this subsection, "transient vacation unit means the same as defined in Section 21-10.1.~~]

(i) "Residential A" shall mean a parcel, or portion thereof, which:

(1) Is improved with no more than two single family dwelling units; and

(A) Has an assessed value of $1,000,000 or more;

(B) Does not have a home exemption; and

(C) Is zoned R-3.5, R-5, R-7.5, R-10 or R-20 or is dedicated for residential use;

(2) Is vacant land zoned R-3.5, R-5, R-7.5, R-10 or R-20 and has an assessed value of $1,000,000 or more; or

(3) Is a condominium unit with an assessed valuation of $1,000,000 or more and does not have a home exemption.

Residential A excludes any parcel, or portion thereof, improved with military housing located on or outside of a military base.

(j) For purposes of this [~~sub~~]section, "bed and breakfast home" has the same meaning as defined in Section 21-10.1, and includes bed and breakfast homes with current nonconforming use certificates.

(k) For the purposes of this section, "transient vacation unit" shall have the same meaning as defined in Section 21-10.1, and includes transient vacation units with current nonconforming use certificates."

SECTION 3. Article 2A of Chapter 21, Revised Ordinances of Honolulu 1990, as amended, is repealed.

SECTION 4. Section 21-1.40, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

Sec. 21-1.40 Appeals.

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

(a) The date of mailing or service shall be the date on which an action of the director is placed into the United States mail, for actions of the director that do not need to be served by registered or certified mail;

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

(c) For actions of the director that are served by physical delivery to a person or a person's residence, place of employment, or usual place of business,

the date of service shall be the date of delivery, as established by an acknowledgment of service signed by the person taking delivery of the director's action or a sworn declaration made by the person responsible for effecting the service of the director's action by the means identified in this paragraph;

(d) For actions of the director that are served by physical posting of a copy of an action of the director upon the property where the violation has occurred, the date of the service shall be the date of posting, as established by a sworn declaration made by the person responsible for effecting the service of the director's action by the means identified in this paragraph;

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

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

(g) For persons who have made a written request notice of a director's action concerning a particular project, property, or applicant before the director's action is issued, the date of service shall be determined according to paragraphs (a) through (f) of this section; and

(h) For persons who have requested notice of a director's action concerning a particular project, property, or applicant after the director's action has been issued to the applicant, the date of service shall be the earlier of date on which the director's action was served upon the applicant in accordance with subsections (a) through (f), or, the date on which the director's action was served on the person requesting notice of the director's action in accordance with subsections (a) through (f).

SECTION 5. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, as amended, is repealed.

# A BILL FOR AN ORDINANCE

SECTION 6. Article 2 of Chapter 21, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-2.150-2 to read as follows:

"Sec. 21-2.150-2 Administrative enforcement.

(a) Enforcement authority. In addition to seeking criminal prosecution under Section 21-2.150-1, the director may enforce violations of this chapter, administrative rules that are adopted by the director to administer this chapter, and the conditions of any permits or approvals granted under the same by issuing an enforcement order authorized by this section.

(b) Persons responsible for violations. The owners of real property, buildings, and premises that are used in violation of the legal authorities identified in subsection (a) shall be liable for any violations on their property and are responsible for complying with any enforcement order issued by the director concerning the same. In addition, persons that have possession or control of the real property, building, or premises on which a violation exists may be held liable for the violation and held responsible for complying with the director's order. Persons who cause, contribute to, or benefit from a violation, in whole or in part, may also be held liable for such violations and will be responsible for complying with enforcement orders issued by the director. For the purposes of this section, "persons" means natural persons or legal persons including but not limited to trusts, corporations, partnerships, and limited liability companies.

(c) Joint and several liability. If the director determines that more than one person is liable for a violation, the director may issue one enforcement order to all responsible persons or separate orders to persons or groups of persons that are responsible for the violation. Persons that are issued an order pursuant to this section are jointly and severally liable for the violations described in the director's order, such that each person will be independently liable for the full extent of the violation and responsible for complying with the order.

(d) Service of enforcement orders issued by the director. The director may serve an enforcement order issued pursuant to this section by registered or certified mail, with return receipt requested, addressed to the last known address of each violator identified in the order. The director may also serve an order issued under this section by delivering a copy of the order to the violator in person, or by leaving a copy of the order at the violator's residence, place of employment, or usual place of business, or by physically posting a copy of the order in a prominent location on the property in a conspicuous manner which is likely to be discovered, only if due diligence was used in attempting to serve the person

personally or by registered or certified mail. If the director is not able to serve the order by any of the methods described in this section, the director may then serve the order on one or more violators by publishing a copy of the order once each week for two consecutive weeks in a daily or weekly publication that is in circulation within the City. Where one or more violators that are identified in an order have the same mailing address, place of residence, place of employment or usual place of business, the delivery of one copy of the order shall be effective upon all persons named in the order that can be served at the place where the order has been delivered.

(e) Types of enforcement orders. The director may issue the following types of enforcement orders: (1) notice of violation and order to correct; (2) notice of order and imposition of fines; (3) consent order; and (4) order to show cause.

(f) Notice of violation and order to correct. The director may issue a notice of violation and order to correct to the persons identified in subsection (b). In addition to any other information or requirements deemed appropriate by the director, a notice of violation and order to correct shall:

(1) Identify the persons to whom the order is addressed;

(2) State the address or location of the violation;

(3) Identify the specific ordinance, rule, or condition that has been violated;

(4) Provide a concise description of the violation;

(5) State the actions that are necessary to correct the violation;

(6) Order the violator to correct the violation by a specific date;

(7) Identify the penalties that will be imposed for the violation if it is not corrected by the deadline for correction established pursuant to subsection (e)(6); and

(8) Order the violator to send a written notification to the director reporting the correction of the violation when the violator believes that the violation is cured.

(g) Notice of order and imposition of fines. The director may issue a notice of order and imposition of fines to the persons identified in subsection (b). In addition to

any other information or requirements deemed appropriate by the director, a notice of order and imposition of fines shall:

(1) Identify the persons to whom the order is addressed;

(2) State the address or location of the violation;

(3) Identify the specific ordinance, rule, or condition that has been violated;

(4) Provide a concise description of the violation;

(5) State the actions that are necessary to correct the violation;

(6) Order the person to correct the violation by a specific date;

(7) Require the persons to pay a civil fine of up to $25,000.00 per violation identified in the order;

(8) Require the persons to pay a civil fine of up to $25,000.00 per day, for each day the violation remains uncorrected after the deadline for correction established pursuant to subsection (f)(6);

(9) Order the violator to send a written notification to the director reporting the correction of the violation when the violator believes that the violation is cured; and

(10) Inform the violator that the order can be appealed to the Zoning Board of Appeals in accordance with Section 21-1.40.

(h) Consent Orders. The director is authorized to enter into consent orders, based on reasonable assurances of voluntary compliance from persons that have been issued a notice of violation and order to correct. A consent order shall be signed by the director and the persons who have agreed to voluntarily correct a violation, state the specific actions to be taken to correct the violation, and state the dates by which each action will be completed. The director may enforce the terms of consent orders pursuant to this section, including judicial enforcement pursuant to subsection (n). The failure to comply with the requirements of a consent order shall be punishable by a civil fine of up to $100,000.00 per violation, with each day(s) of noncompliance treated as a separate violation.

(i) Order to show cause. Whenever the director has cause to believe that a violation is taking place or threatening to take place, the director may issue an order to show cause to the persons identified in subsection (b). An order to show cause shall:

(1) Be accompanied by a proposed notice of violation and order to correct or notice of order and imposition of fines;

(2) Require the respondents to appear before the director at a specified place and time and admit to the facts in the proposed order or show cause as to why the proposed notice of violation and order to correct or notice of order and imposition of fines should not be issued; and

(3) Inform the respondents that they have the right to hire an attorney and be represented by an attorney in the show cause proceedings before the director.

Persons that are served with an order to show cause will be required to appear before the director in a show cause hearing and shall have the burden of proving that the proposed notice of violation and order to correct or notice of order and imposition of fines should not be issued because it is based on an erroneous findings of material fact, an incorrect interpretation of the law, arbitrary and capricious decision-making, or an abuse of discretion. If the respondents to a show cause order are not able to prove that the proposed notice of violation and order to correct or notice of order and imposition of fines should not be issued, the director may issue the proposed notice of violation and order to correct or notice of order and imposition of fines to the respondents or allow the respondents to enter into a consent order with the department. If a respondent to a show cause order does not appear before the director at the required place and time, the facts in the proposed notice of violation and order to correct or notice of order and imposition of fines will be deemed admitted by the respondent and the director may issue the proposed notice of violation and order to correct or notice of order or order and imposition of fines to the respondent that has failed to appear at the show cause hearing.

(j) Duration of violation. A violation that is identified in an enforcement order issued under this section will continue until it is deemed corrected by the director. The director may impose separate or additional penalties for each day that a violation remains uncorrected after the date the deadline for correction state in the enforcement order. However, separate enforcement orders will not be required to impose additional penalties for ongoing violations.

(k) Procedure for closing violations. Persons that are subject to an enforcement order issued by the director are responsible for notifying the director of the correction of any violations identified in the enforcement order. Notifications sent to the director shall be in writing, dated, and signed by the person reporting the correction to the director. When a violator informs the director that a violation is corrected, the director shall promptly review the violation and respond to the violator by acknowledging the violation is corrected or by identifying the additional actions that are necessary to correct the violation. If a person subject to an enforcement order corrects a violation and fails to promptly notify the director of the violation's correction, the date of correction will be the date on which the director is provided written notice of the correction unless the violator is able to establish, to the satisfaction of the director, that the violation was corrected on an earlier date.

(l) Additional penalties for illegal short-term rentals. In addition to the enforcement actions and penalties authorized by subsections (a) through (i), if the director determines that a person has violated any of the provisions in this chapter relating to bed and breakfast homes or transient vacation units, any rule adopted by the department pertaining to bed and breakfast homes or transient vacation units, or the conditions of any nonconforming use certificate or certificate of registration issued by the department for a bed and breakfast home or transient vacation, the director may impose an additional civil fine on the responsible persons, in an amount up to the highest daily rate at which the bed and breakfast home or transient vacation unit in issue has been advertised or offered for rent as a bed and breakfast home or transient vacation unit. When a bed and breakfast home or transient vacation unit is advertised or offered for rent for less than 180 consecutive days without displaying or specifying the daily rates for the rental, the additional penalty authorized by this section shall be determined by pro rating the rental price for the property based on any known advertisement or offer for the rental of the dwelling unit for less than 180 days and the total rental price for the same, excluding any taxes passed on to the renter. The additional civil fine authorized by this section may be imposed as a daily fine, applicable to each day a dwelling unit is used, advertised, or offered as a bed and breakfast home or transient vacation unit in violation of the provisions in this chapter relating to bed and breakfast homes or transient vacation units, the department's rules relating to bed and breakfast homes or transient vacation units, or the conditions of a nonconforming use certificate or certificate of registration issued by the department.

(m) Opportunity for contested case hearing. Notwithstanding anything to the contrary, no civil fine or penalty authorized by this chapter shall be due and

owing to the city until the opportunity for a contested case hearing pursuant to Section 21-1.40 has expired or been exhausted.

(n) Judicial enforcement of enforcement orders. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any enforcement 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."

SECTION 7. Section 21-2.150-3, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"Sec. 21-2.150-3 [~~Depository of~~] Deposit and use of fees, [~~and~~] civil penalties, and taxes relating to bed and breakfast homes or transient vacation units.

(a) Notwithstanding any other ordinance to the contrary, [~~payments of~~] fees and civil penalties relating to bed and breakfast homes [~~or~~] and fees and civil penalties relating to 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 administration and enforcement of the provisions of this chapter relating to bed and breakfast homes and transient vacation units.

(b) Notwithstanding any ordinance to the contrary, beginning in the 2022 tax year and in all tax years thereafter, up to $3,125,000.00 in real property taxes collected annually by the city for the bed and breakfast tax classification and the hotel and resort tax classification shall be placed into the special fund identified in subsection (a) and used by the Department of Planning and Permitting for the administration and enforcement of the provisions of this chapter relating to bed and breakfast homes and transient vacation units."

SECTION 8. Table 21-3, Revised Ordinances of Honolulu 1990, as amended, is amended by amending the "bed and breakfast homes" and "transient vacation units" entries to read as follows:

## "TABLE 21-3 MASTER USE TABLE

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

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

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

SECTION 9. Table 21-3, Revised Ordinances of Honolulu 1990, as amended, is amended by amending the footnotes to Table 21-3 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] Bed and breakfast homes and transient vacation units allowed by Table 21-3 are subject to the development standards and location restrictions established in Article 5, and limited to the Resort Zoned District identified in Sec. 21-5.730.1 (a). Notwithstanding any contrary provisions in this chapter, bed and breakfast homes and transient vacation units that do not have [~~are prohibited and may not operate without~~] a valid nonconforming use certificate or certificate of registration are not allowed in areas where the applicable development plan or sustainable communities plan prohibits [~~or does not permit~~] the establishment of new bed and breakfast homes or transient vacation units; provided that this note shall not prohibit the renewal of a valid certificate of registration originally issued prior to a subsequent development plan amendment that prohibits bed and breakfast homes or transient vacation units in a development plan area.

SECTION 10. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, as amended, 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 permit certain transient vacation units that have been in operation since prior to October 22, 1986, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a transient vacation unit who holds 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 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.

(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 [~~21-5.730(c)~~] 21-5.730.4 shall apply to advertisements for transient vacation units operating under a nonconforming use certificate pursuant to this section.[~~"~~]

SECTION 11. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

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

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

(b) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule: (1) between 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 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.

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

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

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

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

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

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

(5) The provisions of Section [~~21-5.730(c)~~] 21-5.730.4 shall apply to advertisements for the bed and breakfast home.

(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 12. Section 21-5.360, Revised Ordinances of Honolulu 1990, as amended, is repealed.

SECTION 13. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-5.360 to read as follows:

"Sec. 21-5.360 Hotels and Hotels Units.

(a) Hotel units must be used or offered to provide ~~dwelling or lodging~~ transient accommodations to ~~transient~~ guests. Hotel units may not be used as transient vacation units or bed and breakfast homes.

(b) Hotel units must be booked by guests through a centralized hotel booking system that is managed by the hotel operator or through the hotel front desk, provided that this section will not prohibit the booking of hotel units through third party services or technologies that make bookings though the central hotel operated booking system or hotel front desk.

(c) ~~Rental rates for all hotel units must be determined by the hotel operator or the manager of the hotel's centralized booking service. Hotels and third party booking services may not provide discounted rental rates to the owners of condominium hotel units or hotel guests arranged for by the owners of condominium hotel units unless the same discounted rates are available to members of the general public that are not condominium hotel unit owners or guests of condominium hotel unit owners. This section does not apply to bookings for hotel units that are part of a legally established time-share program.~~

(d) Hotels and hotel units that have existing certificates of occupancy for hotel uses shall comply with subsection~~s~~ (b) ~~and (c)~~ within two years of the effective date of this ordinance. Hotels and hotel units that obtain certificates of occupancy for hotel uses after the effective date of this ordinance must comply with the subsections (b) ~~and (c)~~ immediately."

(e) Persons occupying a hotel unit as a principal place of residence on the effective date of this ordinance shall be allowed to continue the use of the hotel unit as a principal place of residence as a nonconforming use. For the purposes of this subsection, the nonconforming use of the hotel unit as a principal place of residence shall extend throughout the entire hotel unit and terminate when the persons occupying the hotel unit on the effective date of this ordinance no longer occupy the hotel unit as their principal place of residence.

SECTION 14. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-5.360.1 to read as follows:

"Sec. 21-5.360.1 Condominium hotels.

Condominium hotels and hotel units in condominium hotels are regulated in the same manner as hotels and hotel units. Converting a hotel unit into a condominium hotel unit does not change the permissible uses of the unit. Units in a condominium-hotel must be part of the hotel's room inventory, available for rent to the general public. ~~Hotels and third-party booking services may not provide discounted rental rates to the owners of condominium hotel units or hotel guests arranged for by the owners of condominium hotel units unless the same discounted rates are available to members of the general public that are not condominium hotel unit owners or guests of condominium hotel unit owners.~~ The use of a condominium-hotel unit as a primary residence or usual place of abode is not allowed except as provided in Sec. 21-5.360(e). ~~prior to the adoption of this ordinance shall be allowed as a non-conforming use is not allowed~~.

SECTION 15. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-5.360.2 to read as follows:

"Sec. 21-5.360.2 Specialty Hotels.

(a) Transit related Hotels. Hotels shall be permitted in the I-2 intensive industrial district and IMX-1 industrial-commercial mixed use district provided:

(1) They are within one-half mile by the usual and customary route of vehicular travel from the principal entrance of an airport utilized by commercial airlines, having regularly scheduled flights. For Honolulu International Airport, the principal entrance shall be the intersection of Paiea Street and Nimitz Highway.

(2) They have frontage on a major or secondary street or highway.

(3) They have a minimum lot area of 15,000 square feet and minimum lot width of 70 feet.

(4) The maximum floor area ratio shall be 2.0.

(5) Parking requirements of at least one space per two lodging or dwelling units shall be provided.

(6) Front yards shall have a minimum depth of 10 feet, and except for necessary driveways and walkways, shall be maintained in landscaping.

(7) Signs shall conform to the sign requirements applicable within B-2 community business district regulations.

(b) Business travel hotels. Hotels shall be permitted in the BMX-3 community business district provided:

(1) They are located within the Primary Urban Center Development Plan, the Ewa Development Plan, or the Central Oahu Sustainable Communities Plan areas as established by Chapter 24.

(2) Hotel with more than 180 dwelling and/or lodging units shall require a conditional use permit (Major).

(3) When eating or drinking establishments, meeting facilities, retail establishments or other commercial establishments are on the same zoning lot, these uses shall be treated as separate permitted uses for purposes of this chapter.

(4) Multifamily dwellings and hotel use shall not be permitted on the same floor level.

(5) No hotel unit shall be used as a time share.

SECTION 16. Section 21-5.730, Revised Ordinances of Honolulu 1990, as amended, is repealed.

SECTION 17. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-5.730.1 to read as follows:

"Bed and breakfast homes and transient vacation units.

(a) Bed and breakfast homes and transient vacation units are permitted in the portions of the A-2 medium-density apartment zoning district located in the Gold Coast area of the Waikiki Special District shown in Exhibit A and in the portions of the A-1 low-density apartment zoning district, ~~and~~ A-2 medium-density apartment zoning district located in the Kuilima and Ko'olina Resort areas shown in Exhibits C and -B, respectively, Resort zoned property in Makaha Valley, and the Resort Mixed Use Precinct in the Waikiki Special District, subject to the restrictions and requirements in Article 5 of this chapter.

(b) The provisions of this chapter shall not eliminate or supersede private restrictive covenants or other restrictions that prohibit the use of real property as a bed and breakfast home or transient vacation unit.

(c) Notwithstanding any law to the contrary, for the A-1 and A-2 apartment zoned districts identified in 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."

SECTION 18. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-5.730.2 to read as follows:

"Sec. 21-5.730.2 Registration, eligibility, application, renewal and revocation.

(a) Registration required. Bed and breakfast homes and transient vacation units must be registered with the department. Each natural person, as distinguished from legal persons and legal entities, may own no more than one dwelling or lodging unit that is registered as a bed and breakfast home or transient vacation unit. Bed and breakfast homes and transient vacation units that have a valid nonconforming use certificate issued under Sections 21-4.110-1 or 21-4.110-2 will be counted as registered dwelling units for the purposes of this section. Legal entities other than natural persons are not eligible to register a bed and breakfast home or transient vacation unit with the department.

(b) Duration of registration and registration fees. Registration shall be effective for a period of one year beginning on the date a certificate of registration is issued by the department and must be renewed annually before expiration. The application cost for an initial registration is $5,000.00 and the application cost for renewing a registration is $2,500.00

(c) Application requirements. Applications shall be made in a form prescribed by the department and demonstrate the applicant's ability to operate the proposed bed and breakfast home or transient vacation unit in compliance with Sections 21-5.730.1 and 21-5.730.3. The director shall adopt rules pursuant to Chapter 91, HRS, detailing information required to be submitted with an initial application under this Section, which shall include, but not be limited to:

(1) The property owner's general excise tax and transient accommodations tax license numbers for the proposed rental;

(2) A title report for the property that will be used to operate the bed and breakfast home or transient vacation unit. The title report must be issued

or updated within thirty (30) days of its submission to the department and identify all persons that own an interest in the property;

(3) A certificate of insurance showing that the property has the insurance coverage required by Section 21-5.730.3;

(4) For a proposed bed and breakfast home only, evidence that the property owner has obtained or been approved for a homeowner exemption pursuant to Section 8-10.4; and

(5) The informational binder required pursuant to Section 21-5.730.3, which does not need to include a certificate of registration for the proposed bed and breakfast home or transient vacation unit at the time of submission to the director for the purposes of this paragraph.

(d) Issuance of certificate of registration. Upon determining that the requirements of Sections 21-5.730.1 through 21-5.730.3 have been met, the director may cause a certificate of registration to be issued to the owner of the property on which the bed and breakfast home or transient vacation unit will be located. Certificates of registration will be personal to the owner, will not run with the land, and may not be transferred to any other person.

(e) Applications for renewing certificates of registration. The holder of a current certificate of registration may apply to renew their certificate of registration up to three months prior to the expiration of the same, but in no case after their certificate of registration has expired. Renewal applications shall be made in a form prescribed by the department and update any information that was previously provided to the department that is no longer accurate or correct. The director shall adopt rules pursuant to Chapter 91, HRS, detailing information and requirements for renewal applications. In addition to any requirements established by the department's rules, applications for the renewal of certificates of registration shall include:

(1) A tax clearance certificate issued by State of Hawaii, Department of Taxation which certifies the payment of general excise and transient accommodations taxes for rentals during the previous tax year;

(2) A tax clearance certificate issued by the City Department of Budget and Fiscal Services that certifies that real property taxes were assessed at the rates required by Section 8-7.1 and paid in full during the preceding tax year;

(3) If there has been any change in the ownership of the property used for the bed and breakfast home or transient vacation unit, an updated title report issued within thirty (30) days of its submission to the department; and

(4) A certificate of insurance documenting that the owner has maintained the insurance coverage required by Section 21-5.730.3 throughout the entire term of the preceding registration period.

(f) Registration renewal. The director may approve an application for the renewal of a certificate of registration and issue a new certificate of registration to the owner of the property used as a bed and breakfast home or transient vacation unit if the director determines that the applicant and property continue to meet the requirements of Sections 21-5.730.1 and 21-5.730.3.

(g) Revocation and nonrenewal. If the owner of the property for a bed and breakfast home or transient vacation unit receives more than two enforcement orders for violations of Section 21-5.730.1 or 21-5.730.3 within a one-year period or otherwise demonstrates that they are not able to operate a bed and breakfast home or transient vacation unit without causing significant negative impacts to people and areas in the vicinity of their rental, the director may revoke their certificate of registration by issuing a revocation order to the property owner. The director may also refuse to renew a certificate of registration if an applicant has been issued one or more enforcement orders for violating Sections 21-5.730.1 or 21-5.730.3 within one year of applying for a certificate renewal and has not adequately addressed the violation to the satisfaction of the director. The authority to revoke a certificate of registration or refuse to renew a certificate of registration granted to the director by this section shall be in addition to and not in lieu of other authority granted to the director by this Chapter."

SECTION 19. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-5.730.3 to read as follows:

"Sec. 21-5.730.3 Use and development standards for bed and breakfast homes and transient vacation units. All bed and breakfast homes and transient vacation units except those that are allowed to operate in accordance with a nonconforming use certificate issued under Sections 21-4.110-1 or 21-4.110-2 must comply with the following standards and requirements.

(a) Occupancy limits and sleeping arrangements. All overnight guests at the bed and breakfast home or transient vacation unit must be registered with the owner or operator of the bed and breakfast home or transient vacation unit. Sleeping

accommodations for all guests must be provided in bedrooms, and no more than two adults may use any bedroom in the bed and breakfast home or transient vacation unit for sleeping purposes. The total number of adult overnight guests at a bed and breakfast home or transient vacation unit shall not exceed twice the number of bedrooms provided to guests for sleeping accommodations.

(b) Onsite parking required. All parking for bed and breakfast homes and transient vacation units must be provided on all-weather surfaces on the same zoning lot as the bed and breakfast home or transient vacation unit unless the rental is located in a multifamily dwelling with off-site parking approved by the department. Persons associated with bed and breakfast homes and transient vacation units (e.g., overnight guests, owners, operators, service providers and visitors) may not park their vehicles on or along public streets abutting the zoning lot on which the bed and breakfast home or transient vacation unit is located.

(c) Smoke and carbon monoxide detectors required. All bedrooms provided to guests and hallways connected to guest bedrooms must be equipped with functioning smoke and carbon monoxide detectors.

(d) Noise restrictions and quiet hours. Between the hours of 10:00 p.m. and 7:00 a.m., no noise from a bed and breakfast home or transient vacation unit may be audible from common areas in a multifamily dwelling or from areas outside of the zoning lot on which the bed and breakfast home or transient vacation unit is located. For the purposes of this subsection, audible means perceivable by a person without the use of sound detecting technologies or audio aides.

(e) Current tax licensing required. The owner of the property on which a bed and breakfast home or transient vacation unit is located must have, and keep current at all times, general excise and transient accommodations tax licenses for their bed and breakfast home or transient vacation unit.

(f) Insurance coverage required. The owner of a bed and breakfast home or transient vacation unit must maintain a minimum of $1,000,000.00 in commercial general liability insurance at all times. In addition to any supplemental insurance coverage selected by the owner, such insurance coverage must include coverage for:

(1) Bodily injury and property damage arising out of the condition of the premises or the negligent acts of the business and persons providing services to the business. For the purposes of this subsection, bodily injury

shall include mental injuries and emotional distress whether or not such harm is accompanied by other physical or bodily harm;

(2) Personal and advertising injury arising out of liability for libel, malicious prosecution, wrongful eviction, wrongful entry, public disclosure of private facts, and invasion of privacy; and

(3) Necessary and reasonable medical, surgical, ambulance, hospital, professional nursing and funeral expenses for a person injured or killed in an accident taking place on the insured's premises.

(g) Gatherings restricted. The property on which a bed and breakfast home or transient vacation unit is located may not be used for gatherings of ten or more people who are not registered as overnight guests at the bed and breakfast home or transient vacation unit unless the director designates the bed and breakfast home or transient vacation unit as eligible for gatherings.

(1) Gatherings eligible property. The director may only designate a property with a bed and breakfast home or transient vacation unit as eligible for gatherings if the type of gatherings proposed by the applicant are permitted as a principal or accessory use of the zoning lot on which the bed and breakfast home or transient vacation unit is located.

(2) If the director finds that the circumstances of the property and the applicant's proposed measures to mitigate the impacts of gatherings on nearby people and properties reasonably ensure that the proposed gatherings will not result in significant negative impacts to nearby people or properties, the director may designate the bed and breakfast home or transient vacation unit as eligible for gatherings.

(3) Conditions of approval. The director may impose any conditions deemed necessary to mitigate the impacts of gatherings on nearby persons and properties at the time the director designates a property as eligible for gatherings, or upon a reconsideration of the director's decision to designate the property as eligible for gatherings. Standard conditions for properties designated as eligible for gatherings may include restrictions on the number of people allowed at the property, restrictions on the types of gatherings allowed at the property, restrictions or prohibitions on the use of sound amplifying devices, parking requirements, and requirements for additional insurance coverages.

(h) Informational binder required. The owner of a bed and breakfast home or transient vacation unit shall create a binder labeled "For the Safety and Convenience of You and Your Neighbors" and cause the same to be placed and maintained in a conspicuous location within the bed and breakfast home or transient vacation unit at all times. The binder should provide guests with guidance on being respectful of neighbors and information that will help guests to respond appropriately to emergencies. The binder must be provided for review and inspection to the director upon request. The informational binder required by this subsection must include the following documents and information:

(1) A floor plan of the dwelling unit used as a bed and breakfast home or transient vacation which identifies the location of all bedrooms provided to guests, the maximum occupancy of each bedroom, and the location of all fire exits.

(2) For bed and breakfast homes and transient vacation units that are not located in a multifamily dwelling, a parking plan that shows the location and number of parking stalls that are available to persons associated with the bed and breakfast home or transient vacation unit (e.g., owners, guests, visitors and service providers), or for bed and breakfast homes or transient vacation units located within a multifamily dwelling, a parking plan that identifies the location and number of parking stalls within the multifamily dwelling building that may be used by persons associated with the bed and breakfast home or transient vacation unit. Parking plans for multifamily dwellings may be provided in narrative form without illustrations or graphics; parking plans for all other bed and breakfast homes and transient vacation units must contain illustrations, drawn to scale, which show the size of designated parking spaces and their location on the zoning lot for the bed and breakfast home or transient vacation unit.

(3) Instructions for trash collection and disposal, which include the dates and times of scheduled trash collections.

(4) A copy of the house rules for the bed and breakfast home or transient vacation unit. House rules for all bed and breakfast homes or transient vacation units must impose quiet hours between 10:00 p.m. and 7:00 a.m. and prohibit the parking of vehicles associated with the bed and breakfast home or transient vacation unit in all areas other than the parking spaces identified in the parking plan required by paragraph (h)(2).

(5) A list of emergency contacts, which must include a 24-hour phone number for the owner of the bed and breakfast home or transient vacation unit, the Honolulu Police Department, the Honolulu Fire Department, the Hawaii Poison Control Center, and the website address for the Hawaii Emergency Management Agency.

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

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

(8) A copy of the certificate of registration for the bed and breakfast home or transient vacation unit issued by the department."

SECTION 20. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-5.730.4 to read as follows:

"Sec. 21-5.730.4 Advertisements, regulation, and prohibitions.

(a) Definitions. As used in this Section:

"Advertisement" means the display or transmission of any communication that may cause a reasonable person to understand that a dwelling unit or property is available for rent. Advertisements include, by way of example and without limitation, written and spoken words, e-mails, text messages, electronic and hard copy publications, flyers, handbills, signs, websites, and expressive images.

"Person" means a natural person or legal person, and includes all types of business and legal entities, including, by way of example and without limitation, associations, corporations, estates, individuals, limited liability companies, non-profit organizations, partnerships, and trusts.

(b) Regulation of advertisements for bed and breakfast homes and transient vacation units. Advertisements for all bed and breakfast homes and transient vacation units are subject to this subsection.

(1) 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 the tax map key number and the nonconforming use

certificate number or the registration number assigned to the bed and breakfast home or transient vacation unit.

(2) It is unlawful for any person to advertise or cause the advertisement of a dwelling unit that is not a registered bed and breakfast home or transient vacation unit pursuant to Section 21-5.730.2 or operating pursuant to a nonconforming use certificate for a term of less than 180 consecutive days. Any written communication advertising the rental of a dwelling unit that is not registered with the department pursuant to Section 21-5.730.2 or operating pursuant to a nonconforming use certificate must include the following statement: "This property may not be rented for less than 180 consecutive days. Rental prices will not be reduced or adjusted based on the number of days the rental is used or occupied."

(c) Advertisements as evidence of rental activities. An advertisement that does not comply with subsection (b)(2) is prima facie evidence that the property being advertised is used as a bed and breakfast home or a transient vacation unit. If an enforcement order is issued to a property owner for using their property as an illegal bed and breakfast home or transient vacation unit based on an advertisement, the property owner will have the burden of establishing that their property has not been used as a bed and breakfast home or transient vacation unit.

(d) Exemptions. The following are exempt from the provisions of this Section:

(1) Legally established hotels,

(2) Legally established time-sharing units, as provided in Section 21-5.640; and

(3) Publishing companies and internet service providers will not be held responsible for the content of advertisements that are created by third parties."

SECTION 21. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-5.730.5 to read as follows:

"Sec. 21-5.730.5 Violations, complaint, response, and enforcement.

(a) Complaint relating to short-term rentals. Any person may submit a written complaint to the director reporting a suspected violation of the provisions of

Sections 21-5.730.1 through 21-5.730.4. A complaint submitted to the department pursuant to this section must:

(1) Identify the address of the suspected bed and breakfast home or transient vacation unit, including the apartment or unit number of the dwelling unit if it is located in a multifamily dwelling;

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

(3) Identify the provisions of Sections 21-5.730.1 through 21-5.730.4 that have been violated; and

(4) Provide the complainant's name and mailing address.

(b) Response to complaints. Within 30 days of receiving a complaint that complies with subsection (a), the director must provide a written response to the complainant either:

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

(2) Explaining why the complaint does not describe an apparent violation of Sections 21-5.730.1 through 21-5.730.4. A response issued under this subsection may be appealed to the Zoning Board of Appeals pursuant to Section 21-1.40; or

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

SECTION 22. Table 21-9.6(A), Revised Ordinances of Honolulu 1990, as amended, is amended by amending the entries for "bed and breakfast home," "hotel," and "transient vacation unit" as follows:

| "Table 21-9.6(A)<br>Waikiki Special District Precinct<br>Permitted Uses and Structures | | | |
|---|---|---|---|
| Use or Structure | Precinct | | |
| | Apartment | Resort Mixed Use | Public |
| Bed and breakfast homes | [~~Pc~~] | P/c | |
| Hotel* | P/c | P/c ~~P/c~~ | |
| Transient Vacation Units | | P/c | |
| ~~*Ability to up zone to Hotel use in the Apartment Precincts shall sunset three (3) years from the adoption of this ordinance.~~ | | | |

SECTION 23. Chapter 21, Article 10, Revised Ordinances of Honolulu 1990, as amended, is amended by deleting the definitions of "booking service" and "hosting platform."

[~~"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."~~]

SECTION 24. Chapter 21, Article 10, Revised Ordinances of Honolulu 1990, as amended, is amended by amending the definitions of "bed and breakfast home", "hotel", and "transient vacation unit" to read as follows:

""Bed and breakfast home" means a use in which overnight accommodations are advertised, solicited, offered, or provided[~~, or a combination of any of the foregoing,~~] to [~~guests~~] transient occupants, for compensation, for periods of less than [~~30~~] 180 consecutive days[~~,~~] in the same [~~detached~~] dwelling unit [~~as that~~] occupied by [~~an~~] the owner[~~, lessee, operator, or proprietor~~] of the [~~detached~~] dwelling unit. For purposes of this definition:

(1) [~~C~~]compensation includes, but is not limited to, monetary payment, services, or labor of guests;

(2) Accommodations are advertised, solicited, offered or provided to guests for the number of days that are used to determine the price for the rental; and

(3) Month to month holdover tenancies resulting from the expiration of long-term leases of more than 180 days are excluded.

"Hotel" means a building or group of buildings containing lodging and/or dwelling units [~~offering~~] that are used to offer transient accommodations to guests.[~~,~~]. A hotel building or group of buildings must contain [~~and~~] a lobby, clerk's desk or counter with 24 hour clerk service, and facilities for registration and keeping of records relating to hotel guests. A hotel may also include accessory uses and services intended primarily for the convenience and benefit of the hotel's guests, such as restaurants, shops, meeting rooms, and/or recreational and entertainment facilities.

""Transient vacation unit" means a dwelling unit or lodging unit that is advertised, solicited, offered, or provided[~~, or a combination of any of the foregoing, for compensation~~] to transient occupants, for compensation, for periods of less than [~~30~~] 180 consecutive days, other than a bed and breakfast home. For purposes of this definition,

(1) [~~C~~]compensation includes, but is not limited to, monetary payment, services, or labor of guests;

(2) Accommodations are advertised, solicited, offered or provided to guests for the number of days that are used to determine the price for the rental; and

(3) Month to month holdover tenancies resulting from the expiration of long-term leases of more than 180 days are excluded.

# A BILL FOR AN ORDINANCE

SECTION 25. Chapter 21, Article 10, Revised Ordinances of Honolulu 1990, as amended, is amended by adding new definitions for "condominium hotel", "hotel unit" and "transient occupant" to read as follows:

""Condominium hotel" means a hotel in which one or more hotel units are ~~designated for~~ separate real property interests created by a declaration of condominium property regime. ~~separate ownership and the remainder of which is designated for common ownership solely by the owners of the hotel units subject to a condominium property regime.~~"

""Hotel unit" means a dwelling unit or a lodging unit located in a hotel building."

"Transient Occupants" means any visitor or person who owns, rents or uses a lodging or dwelling unit, or portion thereof, for less than one hundred eighty days and whose permanent address for legal purposes is not the lodging or dwelling unit occupied by the visitor. This definition shall not apply to non-paying guests of the family occupying the unit, to patients and clients in health care facilities, temporary employees of health care facilities, full-time students, full-time remote workers, employees who receive room and/or board as part of their salary or compensation, military personnel, homeowners in transition between selling and buying a home, low-income renters receiving rental subsistence from state or federal governments whose rental periods are for durations shorter than sixty days, lodging provided by nonprofit corporations or associations for religious, charitable or education purposes; provided that no rental income is produced, month to month rental agreements with the same tenant, and for any other rental arrangement shorter than one hundred eighty (180) days with prior approval of the department; provided further that except for family members, all other rental agreements for less than one hundred eighty (180) days must have prior approval from the department. Owners of the units will be required to provide supporting documentation, when requested by the department, to verify tenants qualify for the less than 180 day exemptions listed above.

"Transient accommodations" means living accommodations that are offered or made available guests for stays of less than 180 consecutive days.

SECTION 26. 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 27. Severability. If any provision or application of this ordinance is held invalid, the remainder of this ordinance and its application to other persons or circumstances shall not be affected.

# A BILL FOR AN ORDINANCE

SECTION 28. This ordinance shall take effect on _____, 2021.

INTRODUCED BY:

_____

_____

_____

_____

_____

_____

DATE OF INTRODUCTION: _____

_____

_____ _____
Honolulu, Hawaii Councilmembers

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

APPROVED this _____day of_____, 2021

_____
Rick Blangiardi, Mayor
City and County of Honolulu