CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

FILED
MAR 5 2017
PURSUANT TO ROH Sec. 1-2.4

ORDINANCE _____

BILL 22 (2015)

A BILL FOR AN ORDINANCE

TO AMEND CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED (THE LAND USE ORDINANCE), RELATING TO REGULATION OF CERTAIN VISITOR ACCOMMODATIONS.

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

SECTION 1. Findings and Purpose.

(a) The ordinance (No. 89-154) currently codified in Section 21-4.110-1, Revised Ordinances of Honolulu 1990 as amended (ROH), was enacted to allow preexisting transient vacation units (TVUs) that were operating in certain residential- and apartment-zoned areas to continue to operate, provided that they obtain nonconforming use certificates (NUCs) and meet certain conditions. Since the ordinance was enacted in December 1989, numerous TVUs have been operating illegally in residential- and apartment-zoned areas without the required NUC. Further, the neighbors of some TVUs have complained to the City about noise, illegal parking, and other problems associated with such establishments. The purpose of the proposed ordinance is to require that advertisements for legal TVUs include certain information that would facilitate the City's efforts to locate illegal TVUs, and improve enforcement measures against illegal TVUs in residential and other districts.

(b) The ordinance (No. 89-154) currently codified in Section 21-4.110-2, ROH, was enacted to allow bed and breakfast homes (B&Bs) that have been in operation since December 28, 1989 to continue to operate, provided that they obtain NUCs and meet certain conditions. In comparison, since the ordinance was enacted in December 1989, the number of complaints from neighbors of B&B homes relating to noise, illegal parking and other problems has been significantly less than those received from neighbors of TVUs. However, as a safeguard against the proliferation of similar problems with B&Bs, the purpose of the proposed ordinance is to require that advertisements for legal B&Bs include certain information that would facilitate the City's efforts to locate illegal B&Bs and to improve enforcement measures against illegal B&B operations.

(c) The ordinance (No. 89-154) currently codified in Section 21-4.110-1(d) and 21-4.110-2(d) requires strict compliance for the renewal of a NUC, even if an applicant could show good cause for non-compliance. In some cases, the applicants have appealed the denial of the application to the Zoning Board of Appeals (ZBA) and those appeals were sustained by the ZBA. The purpose of the proposed ordinance is to preserve the limited resources of the department by

allowing exceptions to the conditions of approval where good cause is established.

(d) The ordinance (No. 99-12) currently codified in Section 21-4.110-1 (d), ROH, prescribes the renewal schedule for the NUC renewal between September 1 and October 15 of every even-numbered year. Since the renewal packages are mailed in May of the renewal year, there is a period of more than three months before renewal certificates are issued. The purpose of the proposed ordinance is to amend the renewal schedule in an effort to expedite the renewal process, thereby identifying any compliance problem well in advance of the expiration date and to minimize impact of a failure to notify the DPP of a change in ownership. Further, since many applicants do not reside on Oahu, the proposed amendment will require the applicant to identify a licensed agent on island.

SECTION 2. Section 21-4.110-1, ROH, is amended to read as follows:

"**Sec. 21-4.110-1 Nonconforming use certificates <u>and advertisements</u> for transient vacation units.**

(a) The purpose of this section is to treat certain transient vacation units which have been in operation since prior to October 22, 1986 as nonconforming uses and to allow them to continue, subject to obtaining a nonconforming use certificate as provided by this section <u>and subject to compliance with the requirements in this section.</u>

(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.

(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of

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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) The owner, operator, [or] proprietor, or licensed rental agent of any transient vacation unit who has obtained a nonconforming use certificate under this section shall submit an application [shall apply] to renew the nonconforming use certificate no later than September 30 of each year. [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. If the applicant does not reside on Oahu, the application shall include the name, address, and phone number of an on-island licensed agent for receipt of any notices or complaints, which shall be kept current with the department. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate[.]; except where the applicant establishes good cause for failing to meet conditions of renewal. In such situations, an additional fee of $1,000 shall be assessed against the applicant upon approval of each application. In no case shall an application for renewal received 45 days after the expiration of the renewal period be approved. 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) The owner, operator, [or] proprietor, or licensed rental agent 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.

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(f) The owner, operator, proprietor, or licensed rental agent of a transient vacation unit for which a nonconforming use certificate is required, shall include, in all advertisements for occupancy of the unit, the nonconforming use certificate number and street address and/or tax map key number, including, if applicable, any apartment or unit number of the transient vacation unit. In the event that the owner, operator, proprietor, or licensed rental agent thereof advertises multiple units in an advertisement, the nonconforming use certificate numbers, addresses, and, if applicable, the apartment or unit numbers, of all units being advertised shall be included in the advertisement. For the purpose of this subsection, an "advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by, at the direction of, or for the benefit of the owner, operator, proprietor, or licensed rental agent of a transient vacation unit in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and the internet.

SECTION 3. 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] Nonconforming use certificates and advertisements for Bed and Breakfast homes.

(a) The purpose of this section is to prohibit bed and breakfast homes, while permitting certain bed and breakfast homes which have been in operation since prior to December 28, 1989 to continue to operate as provided by this section[.] and subject to compliance with the requirements in this section.

(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, 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) The owner, operator, [or] proprietor, or licensed rental agent of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate no later than September 30 of each year. [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 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[.]; except where the applicant establishes good cause for failing to meet conditions of renewal. In such situations, an additional fee of $1,000 shall be assessed against the applicant upon approval of each application. In no case shall an application for renewal received 45 days after the expiration of the renewal period be approved. 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) 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 occupation shall not apply to bed and breakfast homes.

(f) 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.

(g) The owner, operator, [or] proprietor, or licensed rental agent 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.

(h) The owner, operator, proprietor, or licensed rental agent of a bed and breakfast home for which a nonconforming use certificate is required, shall include, in all advertisements for occupancy of the unit, the nonconforming use certificate number and street address and/or tax map key number of the bed and breakfast home. For the purpose of this subsection, an "advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by, at the direction of, or for the benefit of the owner, operator, proprietor, or licensed rental agent of a bed and breakfast home in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and the internet.

SECTION 4. Chapter 21, Article 4, ROH, is amended by adding a new Section 21-4.110-3 to read as follows:

"**Sec. 21-4.110-3 Advertisement of illegal activities prohibited—Notice and penalty for violation.**

(a) Any advertisement for transient vacation units or bed and breakfast homes is prohibited (1) unless the owner, operator, proprietor, or licensed rental agent have obtained nonconforming use certificates pursuant to the provisions of ROH Sections 21-4.110-1 and 21-4.110-2 or the transient vacation units are permitted pursuant to ROH Section 21-5.640 and (2) the advertisement meets the requirements of ROH Sections 21-4.110-1(f), 21-4.110-2(h), or 21-5.640(b), as appropriate. For the purpose of this subsection, an "advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by, at the

direction of, or for the benefit of the owner, operator, proprietor, or licensed rental agent in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and the internet.

(b) Failure to comply with the provisions of paragraph (a) above shall result in the issuance of a Notice of Violation to the owner of the property being advertised. Removal or corrective action must be completed within seven (7) days of the receipt of a violation notice. Failure to do so shall subject the owner to a Notice of Order with civil fines as provided in subsection (c).

(c) Any person in violation of this section shall be subject to the following civil fines:

(1) For a first violation, an initial fine of up to $10,000; and daily fines up to $10,000 per day until the violation is corrected.

(2) For recurring violations, an initial fine not less than $5,000 but not more than $10,000; and daily fines not less than $5,000 but not more than $10,000 per day until the violation is corrected. Recurring violations occur when the previous violation has been corrected and a subsequent infraction of the same code occurs.

Nothing in this subsection shall preclude the department from seeking any other remedy against a violator of this section.

(d) Except as otherwise provided in this section, the provisions of ROH Section 21-2.150-2 shall apply to administrative enforcement for violations of ROH Sections 21-4.110-1(f), 21-4.110-2(h), 21-4.110-3(a), 21-4.110-4, and 21-5.640.

SECTION 5. Chapter 21, Article 4, ROH, is amended by adding a new Section 21-4.110-4 to read as follows:

"**Sec. 21-4.110-4 Advertisement as prima facie evidence of violation.**

(a) An advertisement for a transient vacation unit, together with a complaint from the public, shall be prima facie evidence that a property is being used as a transient vacation unit in violation of ROH Chapter 21 restrictions for such use and shall result in the issuance of a Notice of Violation to the owner of the property being advertised.

(b) An advertisement for a bed and breakfast home, together with a complaint from the public, shall be prima facie evidence that a property is being used as a bed and breakfast home in violation of ROH Chapter 21 restrictions on such use and

shall result in the issuance of a Notice of Violation to the owner of the property being advertised.

(c) For the purpose of this subsection, an "advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by, at the direction of, or for the benefit of the owner, operator, proprietor, or licensed rental agent in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and the internet."

SECTION 6. 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.**

(a) Time sharing and transient vacation units shall be permitted in the A-2 medium density apartment zoning district provided:

[(a)] (1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and

[(b)] (2) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community.

(b) The owner, operator, proprietor, or licensed rental agent of a transient vacation unit does not require a nonconforming use certificate and is a permitted use in the following districts

(1) Resort, or

(2) Waikiki Special District Resort Mixed Use Precinct, or

(3) A-2 medium density apartment district, as provided in subsection (a) above.

The owner, operator, proprietor, or licensed rental agent of a transient vacation unit shall include, in all advertisements for occupancy of the unit, the street address and/or tax map key number, including, if applicable, any apartment or unit number of the transient vacation unit. In the event that the owner, operator, proprietor, or rental agent thereof advertises multiple units in an advertisement, the addresses and/or tax map key, and, if applicable, the apartment or unit numbers, of all units being advertised, shall be included in the advertisement. For the purpose of this subsection, an "advertisement"

includes any written, graphic, or pictorial statement or broadcast disseminated by, at the direction of, or for the benefit of the owner, operator, proprietor, or licensed rental agent of a transient vacation unit in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and the internet.

SECTION 7. Chapter 21, Table 21-3, ROH ("Master Use Table"), is amended by amending the "Dwellings and Lodgings" category to read as follows:

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DWELLINGS AND LODGINGS																					
Boarding facilities							P	P	P	P	P	P				P	P				
Consulates					P/c	P/c	P	P	P	P	P	P	P	P	P	P	P				
Duplex units						P	P	P	P	P	P	P	P			P					
Dwellings, owner's or caretaker's, accessory														Ac	Ac		Ac	Ac	Ac	Ac	Ac
Dwellings for cemetery caretakers	Ac		Ac																		
Dwellings, detached, one-family				P	P	P	P	P	P	P	P	P	P			P					
Dwellings, detached, two-family						P	P	P	P	P	P	P	P			P					
Dwellings, multifamily							P	P	P	P	P	P	P			P/c	P				
Farm dwellings		P/c	P/c																		
Group living facilities		C	C	C	C	C	C	C	C	C	C	C				C	Cm				
Guest houses (R-20 only)					Ac																
Hotels													P			C Cm	P		Cm		Cm
Roomers/Rooming				Ac	Ac	Ac															
Special needs housing for the elderly							C	C	C	C	C	C				C	C				
Time sharing								P/c					P								
Transient vacation [unit] units								P/c					(P)P/c								
Vacation cabins	Cm																				

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SECTION 8. Chapter 21, Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct, Permitted Uses and Structures"), is amended 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	Resort-Commercial	Public
Amusement and recreational facilities, indoor		P	P	
Amusement facilities, outdoor		C		
Antennas, receive-only	Ac	Ac	Ac	Ac
Art galleries and museums	C (Museums only)	P	P	
Automobile rental establishments (excluding repair facilities and open parking lots)		P	P	
Automobile service stations, excluding repair facilities			P	
Bars, cabarets, nightclubs, taverns[1]		P	P	
Boarding facilities	P	P	P	
Broadcasting facilities		P	P	
Business services		P	P	
Commercial parking lots and garages		P	P	
Convenience stores	P-AMX	P	P	
Dance or music schools		P	P	
Day-care facilities	C	P	P	
Dwellings, multifamily[2]	P	P	P[3]	
Eating establishments[1]	P-AMX	P	P	
Financial institutions	P-AMX	P	P	
Group living facilities	C	C	C	
Historic structures, use of	C	Cm	Cm	Cm
Home occupations	Ac	Ac	Ac	
Hotels		P		
Joint development	Cm	Cm	Cm	
Joint use of parking	Cm	Cm	Cm	
Laboratories, medical		P	P	

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SECTION 9. Section 21-10.1, Revised Ordinances of Honolulu 1990, as amended ("Definitions") is amended by amending the definitions of "corporate retreat" and "transient vacation unit" to read as follows:

(a) "Corporate retreat" means a transient vacation unit which is provided [with or without monetary compensation] by [a] any business, including, but not limited to a sole proprietorship, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, corporation, non-profit corporation, or limited liability company [or corporation], or any other legal entity under any other structure, [including a nonprofit corporation,] to transient occupants, including but not limited to employees, directors, executives, or shareholders of the business[, company or corporation] and their families."

(b) "Transient vacation unit", including but not limited to corporate retreats, means a dwelling unit or lodging unit which is provided [for compensation] to transient occupants, other than the owner, and the owner's immediate family 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.]

SECTION 10. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances does not need to include the brackets, the bracketed material, or the underscoring.

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Table 21-9.6(A)
Waikiki Special District Precinct
Permitted Uses and Structures

Use or Structure	Precinct			
	Apartment	Resort Mixed Use	Resort-Commercial	Public
Marina accessories		P	P	
Medical clinics	P-AMX	P	P	
Meeting facilities	C	P	P	
Neighborhood grocery stores	Cm	N/A	N/A	
Offices		P	P	
Off-site parking facilities	Cm	Cm	Cm	
Personal services	P-AMX	P	P	
Photographic processing		P	P	
Photographic studios		P	P	
Public uses and structures	P	P	P	P
Real estate offices	P-AMX	P	P	
Retail establishments	P-AMX	P	P	
Schools, language		P	P	
Schools, vocational, provided they do not involve the operation of woodwork shops, machine shops or similar industrial features		P	P	
Theaters		P	P	
Time sharing		P		
Transient vacation units[4]		P		
Travel agencies	P-AMX	P	P	
Utility installations, Type A	P9	P9	P9	P9
Utility installations, Type B	Cm	Cm	Cm	Cm

Ministerial uses:
Ac = Special accessory use. Also see: Article 10, Accessory use; and Section 21-5.330, Home occupations
P = Permitted principal use
P9 = Permitted principal use subject to standards enumerated in Article 9; see Section 21-9.80-5(d), 21-9.80-6(d), 21-9.80-7(d) or 21-9.80-8(d)
P-AMX = Within the apartment precinct, a permitted principal use only within the apartment mixed use sub precinct

Discretionary uses:
Cm = Requires an approved Conditional Use Permit - minor subject to standards in Article 5; no public hearing required
C = Requires an approved Conditional Use Permit - major subject to standards in Article 5; public hearing required

Other:
N/A = Not applicable as a land use category in that precinct, since it is already regulated under another land use category.

Note: An empty cell in the above matrix indicates that use or structure is not permitted in that precinct.
[1] Provided a solid wall 6 feet in height shall be erected and maintained on any side or rear boundary adjoining the apartment precinct.
[2] Provided that where these uses are integrated with other uses, pedestrian access shall be independent from the other uses, and no building floor shall be used for both dwelling and commercial purposes.
[3] Multifamily dwelling units shall only be permitted between Ala Wai Boulevard and Kuamoo Avenue in the resort commercial precinct.
[4] Advertisements for transient vacation units shall be subject to Section 21-5.640(b)

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 22 (2015)

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SECTION 11. This ordinance shall take effect 30 days after its approval.

INTRODUCED BY:

(br)

DATE OF INTRODUCTION:

MAR 5 2015

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

FILED
MAR 5 2017
PURSUANT TO ROH Sec. 1-2.4

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