



ORDINANCE NO.864

1. Requirements of Ordinance.
2. Who can apply
3. Registration of TVRs within VDA
4. Issuance of Certificates outside of VDA
5. Development Standards for all TVRs

"Homestay" means an owner-occupied dwelling unit in which overnight accommodations are provided to transient guests for compensation for one hundred eighty (180) days or less, within the same dwelling unit in which the owner or lessee resides or in a guest house."

"Transient Vacation Rental" means a dwelling unit which is provided to transient occupants for compensation or fees, including club fees, or as part of interval ownership involving persons unrelated by blood, with a duration of occupancy of one hundred eighty (180) days or less.

"Applicant" means any person having a controlling interest (75% or more of the equitable and legal title) of a lot; any person having a stated term of not less than five (5) years; or any person who has full authorization of another having the controlling interest or recorded lease for a stated term of not less than five (5) years.

"Owner" means the holders of at least seventy-five percent (75%) of the equitable and legal title of a lot.

REGISTRATION OF TVRs IN VDA
AND
ISSUANCE OF NCUCs FOR TVRs OUTSIDE THE
VDA

Section 8-17.9. Registration of all Transient Vacation Rentals.

(a) All transient vacation rentals lawfully existing in Visitor Destination Areas on the effective date of this ordinance shall register with the Director of Finance on a form prescribed by the Director of Finance no later than one hundred eighty (180) days after the effective date of this ordinance. Any new transient vacation rental established in Visitor Destination Areas subsequent to the effective date of this law shall register with the Director of Finance prior to any such use of said rental.

(b) No single-family transient vacation rental shall operate outside a Visitor Destination Area without a Nonconforming Use Certificate obtained under Section 8-17.10.

ISSUANCE OF NCUC FOR SINGLE FAMILY TVR_s

Section 8-17.10. Nonconforming Use Certificates for Single-Family Vacation Rentals

- (a) The purpose of this section is to provide a process to identify and register those single-family transient vacation rentals as nonconforming uses which have been in lawful use prior to the effective date of this ordinance and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section.
- (b) The owner, operator or proprietor of any single-family transient vacation rental which is operating outside of a Visitor Destination Area on the effective date of this ordinance shall by March 30, 2009 obtain a nonconforming use certificate for single family vacation rentals.
- (c) No nonconforming use certificate shall be issued by the Planning Director unless the use as a single-family rental is a legal use under the Comprehensive Zoning Ordinance, and the applicant demonstrates to the satisfaction of the Planning Director that a dwelling unit was being used as a vacation rental on an ongoing basis prior to the effective date of this ordinance and was in compliance with all State and County land use and planning laws, including but not limited to, HRS Chapter 205, the Comprehensive Zoning Ordinance, Shoreline Management Area, Flood Plain Management and Shoreline Setback laws at the effective date of this ordinance, up to and including, the time of application for a nonconforming use certificate. The Planning Director, in making the decision, shall take into consideration, among other things, the following guidelines:
- (1) The applicant had a State of Hawaii General excise tax license and transient accommodations tax license for the purpose of the lawful operation of single-family transient vacation rentals for a period long enough to demonstrate actual payment of taxes.
 - (2) That prior to the effective date of this ordinance, applicant had deposits for reservations by transient guests in exchange for compensation for use of subject property as a vacation rental.
 - (3) That applicant had transient guests occupy subject property in exchange for compensation prior to the effective date of this ordinance, with a pattern of consistency that evidences an ongoing and lawful enterprise.
- (d) Pursuant to HRS Chapter 205, no nonconforming use certificate shall be issued for any single-family transient vacation rental located on land designated "Agricultural" by State law, unless:
- (1) It was built prior to June 4, 1976, or
 - (2) The Applicant has a special permit under Hawaii Revised Statutes, Section 205.6 which specifically permits a vacation rental and the permit was secured prior to the enactment of this ordinance.
- (e) The owner, operator, or proprietor shall have the burden of proof in establishing that the use is properly nonconforming based on the following documentation which shall be provided to the Planning Director as evidence of a nonconforming use: records of occupancy and tax documents, including all relevant State of Hawaii general excise tax filing, all relevant transient accommodation tax filings, federal and/or State of Hawaii income tax returns for the relevant time period, reservation lists, and receipts showing payment. Other reliable information may also be provided. Based on the evidence submitted, the Planning Director shall determine whether to issue a nonconforming use certificate for the single-family transient vacation rental.
- (f) Failure to apply for a nonconforming use certificate by October 15, 2008 or failure to obtain a nonconforming use certificate by March 20, 2009, shall mean that the alleged nonconforming use is not a bona fide nonconforming use, and it shall be treated as an unlawful use, unless the applicant demonstrates to the satisfaction of the Planning Commission that the alleged vacation rental use meets the criteria under Section 8-17.10(c) and (d). The Planning Director shall prepare an application form which shall be available to the public by March 30, 2008.
- (g) The owner or lessee who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate by July for every year.
- (1) Each application to renew shall include proof that:
 - (A) There is in effect a State of Hawaii general excise tax License and transient accommodations tax license for the Nonconforming use.
 - (B) Notwithstanding any other ordinance or rule to the contrary, the use has been ongoing, with a presumption that if the nonconforming use has occurred less than a total of thirty (30) days, said use has been abandoned, and
 - (C) That at that time of renewal the dwelling unit was in compliance with all State and County land use or planning laws, including, but not limited to, HRS Chapter 205, the Comprehensive Zoning Ordinance, Shoreline Management Area, Flood Plain Management, and Shoreline Setback laws.
 - (2) Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificates.
 - (3) Applicant shall pay a renewal fee of One Hundred Fifty (\$150.00) which shall be deposited into the County General Fund.

(a) The purpose of this section is to provide a process to identify and register those single-family transient vacation rentals as nonconforming uses which have been in lawful use prior to the effective date of this ordinance and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section.

(b) The owner, operator or proprietor of any single-family transient vacation rental which is operating outside of a Visitor Destination Area on the effective date of this ordinance shall by March 30, 2009 obtain a nonconforming use certificate for single family vacation rentals.

(c) No nonconforming use certificate shall be issued by the Planning Director unless the use as a single-family rental is a legal use under the Comprehensive Zoning Ordinance, and the applicant demonstrates to the satisfaction of the Planning Director that a dwelling unit was being used as a vacation rental on an ongoing basis prior to the effective date of this ordinance and was in compliance with all State and County land use and planning laws, including but not limited to, HRS. Chapter 205, the Comprehensive Zoning Ordinance, Shoreline Management Area, Flood Plan Management and Shoreline Setback laws at the effective date of this ordinance, up to and including, the time of application for a nonconforming use certificate. The Planning Director, in making the decision, shall take into consideration, among other things, the following guidelines:

(1) The applicant had a State of Hawaii General excise tax license and transient accommodations tax license for the purpose of the lawful operation of single-family transient vacation rentals for a period long enough to demonstrate actual payment of taxes.

(2) That prior to the effective date of this ordinance, applicant had deposits for reservations by transient guests in exchange for compensation for use of subject property as a vacation rental.

(3) That applicant had transient guests occupy subject property in exchange for compensation prior to the effective date of this ordinance, with a pattern of consistency that evidences an ongoing and lawful enterprise.

1. Must be legal use
2. Use as a TVR on an “on-going” basis
3. Must comply with land use laws
4. “Guidelines”
 - A. GET
 - B. TAT
 - C. Deposits
 - D. Had paying guests

(d) Pursuant to HRS Chapter 205, no nonconforming use certificate shall be issued for any single-family transient vacation rental located on land designated "Agricultural" by State law, unless:

(1) It was built prior to June 4, 1976, or

(2) The Applicant has a special permit under Hawaii Revised Statutes, Section 205.6 which specifically permits a vacation rental and the permit was secured prior to the enactment of this ordinance.

1. State Ag land problem
2. Built prior to June 4, 1976
3. State Special Use Permit

(e) The owner, operator, or proprietor shall have the burden of proof in establishing that the use is properly nonconforming based on the following documentation which shall be provided to the Planning Director as evidence of a nonconforming use: records of occupancy and tax documents, including all relevant State of Hawaii general excise tax filing, all relevant transient accommodation tax filings, federal and/or State of Hawaii income tax returns for the relevant time period, reservation lists, and receipts showing payment. Other reliable information may also be provided. Based on the evidence submitted, the Planning Director shall determine whether to issue a nonconforming use certificate for the single-family transient vacation rental.

1. Applicant has burden of proof to show nonconformance
2. Tax records not determinative under State law. HRS Section 46-4. Waikiki Marketplace Inv. Co. v. ZBA
3. Planning Director must make determination.

(f) Failure to apply for a nonconforming use certificate by October 15, 2008 or failure to obtain a nonconforming use certificate by March 30, 2009, shall mean that the alleged nonconforming use is not a bona fide nonconforming use, and it shall be treated as an unlawful use, unless the applicant demonstrates to the satisfaction of the Planning Commission that the alleged vacation rental use meets the criteria under Section 8-17.10(c) and (d). The Planning Director shall prepare an application form which shall be available to the public by March 30, 2008.

1. Apply by October 15, 2008 and
2. Obtain NCUC by March 30, 2009
3. Rebuttal presumption that you are not a nonconforming use if fail to meet these deadlines.

(g) The owner or lessee who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate by July for every year.

(1) Each application to renew shall include proof that:

(A) There is in effect a State of Hawaii general excise tax License and transient accommodations tax license for the Nonconforming use.

(B) Notwithstanding any other ordinance or rule to the contrary, the use has been ongoing, with a presumption that if the nonconforming use has occurred less than a total of thirty (30) days, said use has been abandoned, and

(C) That at that time of renewal the dwelling unit was in compliance with all State and County land use or planning laws, including, but not limited to, HRS Chapter 205, the Comprehensive Zoning Ordinance, Shoreline Management Area, Flood Plain Management, and Shoreline Setback laws.

1. Must renew every July.
2. Must supply tax payment information.
Questionable
3. If not renting 30 days or more
presumption of abandonment.
Questionable.
4. In compliance with land use laws.

(2) Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificates.

(3) Applicant shall pay a renewal fee of One Hundred Fifty (\$150.00) which shall be deposited into the County General Fund.

DEVELOPMENT STANDARDS FOR TVRS

Section 8-17.8. Single Family Transient Vacation Rentals.

(a) Notwithstanding any underlying zoning designation and with the exception of properties on the National or State Register of Historic Places, single-family transient vacation rentals are prohibited in all areas not designated as Visitor Destination Areas.

(b) Development Standards for Single-Family Vacation Rentals permitted within Visitor Destination Areas and Holders of Nonconforming Use Certificates. Development standards shall be the same as those for single-family detached dwellings in Sections 8-3.5 through 8-3.8, inclusive, with the following additions:

(1) Applicant shall designate a contact person or owner's representative who shall be available on a 24-hour, 7-days-per-week basis. Applicant shall provide the name and contact information to the Planning Department, the Kauai Visitors Bureau and the public.

(2) One outdoor sign no larger than the one square foot shall be posted in a visible place on a wall, fence, or post immediately inside or on the front boundary of the property where it is easy to see, for the purpose of providing the current Nonconforming Use Certificate number or the Registration Number and the 24/7 phone number. No other signs shall be allowed and there shall be no direct illumination of the required sign. The numbers on the sign shall be no smaller than two inches (2") in height.

(3) The applicant shall provide a list of requirements and information entitled "For the Safety and Comfort of You and Your Neighbors." This shall provide essential information to the visitor and shall seek to reduce the negative impacts on the surrounding neighborhood. This information piece shall be provided to the Planning Department at time of application and shall be posted in a conspicuous place in the guest's sleeping quarters along with a copy of the Nonconforming Use Certificate or the Registration Number, whichever the case may be, for the current year. The list shall include but not be limited to, suggested curfews, guidance with respect to the character of the neighborhood and gatherings and noise, and what to do in case of emergency and natural disaster.

(4) All print and internet advertising, including listings with a rental service or real estate firm, shall include the Nonconforming Use Certificate or the Registration Number.

(5) A copy of the Nonconforming Use Certificate or the Registration Number for the current year shall be displayed in the back of the front door of the sleeping quarters.

(6) A site plan and floor plan shall be filed with the application, and no interior lockouts shall be permitted.

(7) Multi-family Vacation Rentals allowed under this ordinance shall comply with Sections 8-17.8(b)(1) through (5).

(a) Notwithstanding any underlying zoning designation and with the exception of properties on the National or State Register of Historic Places, single-family transient vacation rentals are prohibited in all areas not designated as Visitor Destination Areas.

(b) Development Standards for Single-Family Vacation Rentals permitted within Visitor Destination Areas and Holders of Nonconforming Use Certificates. Development standards shall be the same as those for single-family detached dwellings in Sections 8-3.5 through 8-3.8, inclusive, with the following additions:

(1) Applicant shall designate a contact person or owner's representative who shall be available on a 24-hour, 7-days-per-week basis. Applicant shall provide the name and contact information to the Planning Department, the Kauai Visitors Bureau and the public.

(2) One outdoor sign no larger than the one square foot shall be posted in a visible place on a wall, fence, or post immediately inside or on the front boundary of the property where it is easy to see, for the purpose of providing the current Nonconforming Use Certificate number or the Registration Number and the 24/7 phone number. No other signs shall be allowed and there shall be no direct illumination of the required sign. The numbers on the sign shall be no smaller than two inches (2") in height.

(3) The applicant shall provide a list of requirements and information entitled "For the Safety and Comfort of You and Your Neighbors." This shall provide essential information to the visitor and shall seek to reduce the negative impacts on the surrounding neighborhood. This information piece shall be provided to the Planning Department at time of application and shall be posted in a conspicuous place in the guest's sleeping quarters along with a copy of the Nonconforming Use Certificate or the Registration Number, whichever the case may be, for the current year. The list shall include but not be limited to, suggested curfews, guidance with respect to the character of the neighborhood and gatherings and noise, and what to do in case of emergency and natural disaster.

(4) All print and internet advertising, including listings with a rental service or real estate firm, shall include the Nonconforming Use Certificate or the Registration Number.

(5) A copy of the Nonconforming Use Certificate or the Registration Number for the current year shall be displayed in the back of the front door of the sleeping quarters.

(6) A site plan and floor plan shall be filed with the application, and no interior lockouts shall be permitted.

(7) Multi-family Vacation Rentals allowed under this ordinance shall comply with Sections 8-17.8(b)(1) through (5).

(1) Applicant shall designate a contact person or owner's representative who shall be available on a 24-hour, 7-days-per-week basis. Applicant shall provide the name and contact information to the Planning Department, the Kauai Visitors Bureau and the public.

(2) One outdoor sign no larger than the one square foot shall be posted in a visible place on a wall, fence, or post immediately inside or on the front boundary of the property where it is easy to see, for the purpose of providing the current Nonconforming Use Certificate number or the Registration Number and the 24/7 phone number. No other signs shall be allowed and there shall be no direct illumination of the required sign. The numbers on the sign shall be no smaller than two inches (2") in height.

1. Must provide name to Planning Department, Public and Kauai Visitor's Bureau.
2. Sign to be placed on a wall, fence or post immediately inside the front boundary. Query as to apartment buildings.
3. Sign no larger than one square foot.
4. Certificate/Registration No. and contact number to be on sign. Numbers on the sign no smaller than 2". Letters could be smaller.

(3) The applicant shall provide a list of requirements and information entitled "For the Safety and Comfort of You and Your Neighbors." This shall provide essential information to the visitor and shall seek to reduce the negative impacts on the surrounding neighborhood. This information piece shall be provided to the Planning Department at time of application and shall be posted in a conspicuous place in the guest's sleeping quarters along with a copy of the Nonconforming Use Certificate or the Registration Number, whichever the case may be, for the current year. The list shall include but not be limited to, suggested curfews, guidance with respect to the character of the neighborhood and gatherings and noise, and what to do in case of emergency and natural disaster.

(4) All print and internet advertising, including listings with a rental service or real estate firm, shall include the Nonconforming Use Certificate or the Registration Number.

1. Provide “For Your Safety and Comfort of You and Your Neighbors” form.
2. At a minimum must have four areas covered:
 - a. suggested curfew
 - b. guidance with reference to character of the neighborhood
 - c. gatherings and noise and
 - d. what to do in case of emergency and natural disaster.
3. All advertising must include Registration or Certificate No.

5) A copy of the Nonconforming Use Certificate or the Registration Number for the current year shall be displayed in the back of the front door of the sleeping quarters.

(6) A site plan and floor plan shall be filed with the application, and no interior lockouts shall be permitted.

(7) Multi-family Vacation Rentals allowed under this ordinance shall comply with Sections 8-17.8(b)(1) through (5).

1. Where do we place a copy of the certificate?
 - a. In the guest's sleeping quarters
 - b. In the back of the "front door" of the sleeping quarters.
 - c. What is a "sleeping quarter" the house or the bedroom?
2. Site plans and floor plans should be filed with application. Do plans need to be stamped?
3. No lockouts
4. Apartment buildings need to comply with requirements but, no site plans and floor plans required of them.

