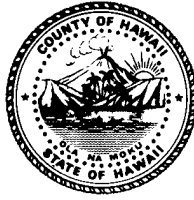


COUNTY OF HAWAI‘I



STATE OF HAWAI‘I

BILL NO. _____

ORDINANCE NO. _____

DRAFT 2/08/2023(LC)

AN ORDINANCE AMENDING CHAPTER 25, ARTICLES 1, 4, 5, AND 6, OF THE HAWAI‘I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO TRANSIENT ACCOMMODATION RENTALS AND VACATION NODES.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I:

SECTION 1. Chapter 25, article 1, section 25-1-5, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by repealing the definition of “short term vacation rental”.

~~["“Short term vacation rental” means a dwelling unit of which the owner or operator does not reside on the building site, that has no more than five bedrooms for rent on the building site, and is rented for a period of thirty consecutive days or less. This definition does not include the short term use of an owner’s primary residence as defined under section 121 of the Internal Revenue Code.”]~~

SECTION 2. Chapter 25, article 1, section 25-1-5, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by adding the following new definitions to be appropriately inserted and to read as follows:

“Event” means a formal congregation of guests that may or may not include the engagement of professional services that is not typical in residential areas.

“Gathering” means an informal congregation of guests typical of residential areas.

“Hosted” means a transient accommodation with an operator residing onsite during rental operations.

“Hosting platform” means a business or person that provides a marketplace through which transient accommodation rentals may be offered for rent.

“Operator” means any person:

(1) Operating a transient accommodation, whether as:

(A) Owner or proprietor; or

(B) Lessee, sub lessee, mortgagee in possession, licensee, or otherwise, or

(2) Engaging or continuing in any property management service which involves the actual furnishing of transient accommodation.

(Reference: section 237D-1, Hawai‘i Revised Statutes.)

“Principal Home” means a principal home as defined in section 19-71(e) Hawai‘i County Code.

“Transient” or “transients” 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:

- (1) Nonpaying guests of the family occupying the unit;
- (2) Clients in health care facilities;
- (3) Full-time students enrolled in an educational institution in the County of Hawai‘i;
- (4) Employees who receive room and/or board as part of their salary or compensation including agricultural workers;
- (5) Occupants of group living facility, authorized by the department of health;
- (6) Military personnel;
- (7) Health care workers temporarily employed at a medical facility in the County of Hawai‘i;
- (8) Low-income renters receiving rental subsistence from state or federal governments whose rental periods are for durations shorter than sixty days; or
- (9) Occupants of lodging provided by nonprofit corporations or associations for religious, charitable or education purposes; provided that no income is produced, even if the income is used for or in furtherance of the exempt activities of such religious, charitable, or educational corporation or association.

“Transient accommodation” means the furnishing of a room, apartment, suite, single-family dwelling, or the like to a transient or transients for less than one hundred and eighty consecutive days for each letting in a:

- (1) Hotel;
- (2) Apartment hotel;
- (3) Motel;
- (4) Lodge;
- (5) Condominium, or unit as defined in chapter 514B, Hawai‘i Revised Statutes;
- (6) Timeshare;
- (7) Cooperative apartment;
- (8) Dwelling unit, or rooming house that provides living quarters, sleeping, or housekeeping accommodations; or
- (9) Other place in which lodgings are regularly furnished to transients.

(Reference section 237D-1, Hawai‘i Revised Statutes.)

“Un-hosted” means a transient accommodation without an operator located onsite during rental operations.

“Vacation node” means a designated area exempted from the requirement of nonconforming use certificate for transient accommodation rentals.

SECTION 3. Chapter 25, article 4, sections: 25-4-16; 25-4-16.1; 25-4-16.2; and 25-4-16.3, of the Hawai‘i County Code 1983 (2016 Edition, as amended), are repealed.

SECTION 4. Chapter 25, article 4, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by adding the following new division to read as follows:

“Division 1.1. Use Regulations – Transient Accommodation Rentals.

Section 25-4-16. Transient accommodation rentals; where permitted.

- (a) Transient accommodation rentals shall be permitted in the following districts and nodes:

 - (1) V, CG, CN, CV, PD, and CDH districts;
 - (2) Residential and commercial zoning districts, situated in the general plan resort and resort node areas;
 - (3) RM district, for multiple family dwellings within a condominium property regime as defined and governed by chapters 514A or 514B, Hawai‘i Revised Statutes; and
 - (4) Vacation nodes established through article 6, division 7.
- (b) In addition to areas permitted in subsection (a), transient accommodation rentals shall also be permitted subject to the following requirements:

 - (1) Transient accommodation rentals shall be permitted when the rented dwelling is hosted and serves as the principal home of the owner. This includes bedrooms in the first dwelling or first farm dwelling, guesthouses, and detached bedrooms, provided that the owner does not live in a guesthouse or detached bedroom. Transient accommodation rentals are permitted in ohana units with a nonconforming use certificate pursuant to section 25-4-16.5. Transient accommodation rentals are not permitted in additional farm dwellings, or second dwellings.
 - (2) Transient accommodation rentals shall be permitted with a nonconforming use permit pursuant to section 25-4-16.5.
- (c) Private covenants prohibiting use of any unit as a short-term vacation rental shall not be invalidated by the registration of transient accommodation rental under this chapter.

Section 25-4-16.1. Transient accommodation rental registration.

- (a) Registration of transient accommodation rentals.

 - (1) Un-hosted transient accommodation rentals that were previously registered as short term vacation rentals shall not be required to reregister, however, they will be required to renew annually under section 25-4-16.2
 - (2) Un-hosted transient accommodation rentals, where such use is permissible pursuant to this section, shall be registered with the director and owners of such rentals shall pay a one-time fee in accordance with the schedule established in section 25-4-16.10 prior to use of such rental.
 - (3) Owners of hosted transient accommodation rentals in operation on or before {Date to Be Determined} who have submitted a registration application on or before {Date to Be Determined}, shall be allowed to continue to operate until such time as their application is approved or denied by the department subject to the standards in section 25-4-16.8 and fines in section 25-4-16.10.

- (4) Transient accommodation rentals shall only be established within a dwelling that has been issued final permit approval by the building division for building, electrical, and plumbing work. If final approval has not been issued, the director may issue a conditional registration for up to one year to acquire the necessary approvals, provided that the owner identifies the rental as unpermitted in all advertisements and rental contracts.
- (5) Owners of transient accommodation rentals must have State of Hawai'i general excise tax and transient accommodations tax licenses in effect and Hawai'i County real property taxes paid in full.
- (6) Owners of a transient accommodation rental shall register by submitting a form to the planning department in a format prescribed by the director. The registration form, at a minimum, shall require:
 - (A) Certification that the transient accommodation rental has the requisite amount of parking pursuant to section 25-4-51;
 - (B) Submittal of a site plan showing the location of all structures on the site and requisite parking, a floor plan showing the location of the rooms for rent, and evidence that all construction has been permitted and passed final inspection pursuant to chapter 5;
 - (C) Contact information for the property owner and, if the operator of the transient accommodation rental is different from the property owner, then also for the operator, including a physical address for service of process to the operator;
 - (D) The operator must submit a copy of a current, valid real estate broker's license or real estate sales person's license, if required pursuant to chapter 467, Hawai'i Revised Statutes;
 - (E) Verification that notification letters have been sent to all owners and lessees of record of all lots of which any portion is within three hundred feet of any point along the perimeter boundary of the transient accommodation rental property. The notification letter shall provide detailed information about the transient accommodation rental operation including number of units being rented; maximum number of guests permitted; number and location of required parking spaces; contact information for the operator and instructions on how to submit complaints to the planning department about the subject rental operation.
- (7) Upon change in ownership, a change of ownership form, verification of notification as specified in section 25-4-16.1(5)(E) and a change of registration fee in accordance with the schedule established in section 25-4-16.10 shall be submitted to the planning department by the new owner within ninety days of the change in ownership.
- (8) Any transient accommodation rental that has not lawfully registered as set forth in this section shall be considered an unpermitted use and subject to the penalties set forth in section 25-4-16.10 until such time as proper registration and compliance with applicable requirements of this section are obtained.
- (b) Exceptions.

Registration as a transient accommodation rental shall not be required if:

 - (1) The rental is not being provided to transient or transients as defined by this chapter.
 - (2) There is an emergency declaration enabling temporary shelter for displaced persons;
 - (3) The dwelling is the principal home of the operator and is provided as a home exchange and no financial exchange occurs;

- (4) The dwelling is the principal home of the operator and meets the temporary home stay conditions pursuant to section 25-4-16.4; or
- (5) The dwelling is being provided to a tenant subject to chapter 521, Hawai'i Revised Statutes, (Residential Landlord-Tenant Code.)
- (c) Any property owner that claims an exception set forth in this section where there is prima facie evidence to the contrary, shall be considered in violation of this chapter and subject to the penalties set forth in section 25-4.16.10.

Section 25-4-16.2. Transient accommodation rental annual renewal.

- (a) All transient accommodation rental owners shall apply for an annual renewal and pay an annual renewal fee in accordance with the schedule established in section 25-4-16.10 to be submitted to the director on or prior to the date that the transient accommodation rental registration was originally processed by the department. In addition to any requirements established by the department's rules, all renewal applications shall include:
 - (1) A tax clearance certificate issued by the State of Hawai'i, Department of Taxation that certifies the payment of general excise and transient accommodation taxes for rentals during the previous year; and
 - (2) Evidence that real property taxes and County of Hawai'i transient accommodation taxes for the rental were paid in full during the previous year.
- (b) If the renewal is submitted within ninety days after the due date, a late renewal fee of \$100 shall be assessed.

Section 25-4-16.3. Transient accommodation changes of information.

Owners shall notify the director by submitting a change of information form when:

- (1) A transient accommodation rental establishment permanently ceases to operate for any reason;
- (2) The operator or the contact information for the operator has changed; or
- (3) The number of bedrooms included in the transient accommodation rental has changed.

Section 25-4-16.4. Temporary homestay.

- (a) A homeowner may let their principal home as a transient accommodation rental under the following conditions:
 - (1) The rental is their principal home for more than three hundred days out of the year;
 - (2) The rental is provided for less than thirty total days and no more than fourteen consecutive days over a calendar year; and
 - (3) The homeowner acquires a temporary transient accommodation rental registration number from the department of planning if advertising on hosting platforms.
- (b) During the period of the temporary homestay the standards in section 25-4-16.8 and penalties in section 25-4-16.10 shall apply.

Section 25-4-16.5. Transient accommodation rental nonconforming use certificate.

- (a) An initial hosted nonconforming use certificate shall only be issued for transient accommodation rentals with an onsite operator who resides on the property during transient accommodation rental operations.
 - (1) An applicant seeking a hosted nonconforming use certificate where the transient accommodation rental is a permitted ohana unit located on the same property as the

owner's principal home, shall have the burden of proof in establishing that the ohana unit was in use as a transient accommodation rental on or before {Date To Be Determined Upon Introduction}.

- (2) An applicant seeking a hosted nonconforming use certificate where the transient accommodation rental has been managed by an onsite operator, shall have the burden of proof in establishing that the property was in use as a transient accommodation rental on or before November 15, 2022 and that the operator was residing on the property. Evidence of such use on or before November 15, 2022 may include tax documents for the relevant period, a lease or contract with the onsite operator, or other reliable information.
- (3) Hosted transient accommodation rentals who have submitted a hosted nonconforming use certificate application on or before {Date To Be Determined Upon Introduction}, shall be allowed to continue to operate until such time as their application is approved or denied by the department subject to the standards in section 25-4-16.8 and fines in section 25-4-16.10.
- (4) If at any time a transient accommodation rental with a hosted nonconforming use certificate granted under section 25-4-16.5(b)(1) or (2) becomes un-hosted, the transient accommodation rental registration and the hosted nonconforming use certificate shall be revoked and a fine shall be imposed in accordance with the schedule in established in section 25-4-16.10.
- (b) No additional nonconforming use certificates shall be issued for un-hosted transient accommodation rentals. Previously issued nonconforming use certificates for un-hosted short term vacation rentals may continue to be renewed under section 25-4-16.5.

Section 25-4-16.6. Annual renewal and transfer of nonconforming use certificates.

- (a) Nonconforming use certificates must be renewed every year on or before the expiration date indicated on the certificate. For nonconforming use certificate renewals submitted within ninety days after the due date, a late renewal fee of \$100 shall be assessed. Nonconforming use certificates overdue by more than ninety days will not be accepted and failure to file a nonconforming use certificate renewal application by the nonconforming use certificate's expiration date shall be considered voluntary forfeiture of the certificate, rendering the certificate ineligible for renewal.
- (b) At the time of renewal, the applicant shall pay a renewal fee in accordance with the schedule established in section 25-4-16.10 to the director of finance.
- (c) Renewal of a nonconforming use certificate shall be denied if the director finds that the transient accommodation rental has been abandoned pursuant to section 25-4-62.
- (d) Renewal of a nonconforming use certificate may be denied if the director verifies any of the following:
 - (1) The applicant has violated pertinent laws, such as not securing and finalizing necessary building permits for the dwelling;
 - (2) The owner is delinquent in payment of State of Hawai'i general excise tax, transient accommodations tax, or County property taxes, transient accommodation taxes, fees, fines, or penalties assessed in relation to the transient accommodation rental;
 - (3) Evidence of non-responsive management, such as issuance of a notice of violation, police reports, or verified neighbor complaints of noise or other disturbances relating to the short-term rental operations;

- (4) The renewal request and renewal fee were not received within ninety days of the expiration date indicated on the certificate; or
- (5) Any violation of standards set forth in section 25-4-16.8.
- (e) Hosted nonconforming use certificates granted pursuant to section 25-4-16.5(b)(1) may only be transferred upon change in ownership if the new owner intends to use the property as their principal home.
- (f) Hosted nonconforming use certificates granted pursuant to section 25-4-16.5(b)(2) may only be transferred upon change in ownership if the new owner provides evidence of an onsite operator in the form of a lease or contract with an onsite operator.
- (g) Upon change in ownership, a change of ownership form, verification of notification as specified in section 25-4-16.1(a)(5)(E) and evidence required under section 25-4-16.6(f), if applicable, shall be submitted to the planning department by the new owner within ninety days of the change in ownership.

Section 25-4-16.7. Notice of denial of a nonconforming use certificate application or renewal, and appeal.

- (a) Notice of a decision by the director to deny a nonconforming use certificate or renewal of a nonconforming use certificate shall be transmitted in writing to the property owner.
- (b) Within thirty days after the receipt of a notice of denial, the owner may appeal to the board of appeals as provided by section 6-9.2, County Charter, and sections 25-2-20 through 25-2-24.

Section 25-4-16.8. Transient accommodation rental operation standards.

- (a) The operator shall comply with the following transient accommodation rental operation standards, which shall be prominently displayed within the dwelling:
 - (1) A realtor's license in the State of Hawai'i, if required of the operator pursuant to chapter 467, Hawai'i Revised Statutes.
 - (2) The operator shall physically reside in the County of Hawai'i during all transient accommodation rental operations for which they are responsible and shall be reachable by guests, neighbors, and County agencies on a twenty-four hour, seven days-per-week basis. The owner shall notify the planning department of any changes to the operator's contact information forthwith. A copy of the registration as well as the operator's name and phone number, shall be displayed in a conspicuous place on the premises that is readily visible to any occupants.
 - (3) In hosted rentals, the operator shall physically reside on the same property as the rental and use it as their permanent address for legal purposes. The operator shall reside on the property during all transient accommodation activities. In emergency or unforeseen circumstances, the operator may request a temporary exception from this standard from the director.
 - (4) The registration and the nonconforming use or hosted nonconforming use certificates if applicable shall be displayed in a conspicuous place on the premises that is readily visible to an inspector. 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, readily visible common area instead.
 - (5) The guest limit for adult occupants in transient accommodation rentals shall be established at initial registration of the property and shall be limited to the lesser of

- two adults per bedroom and an additional two adults for the unit as a whole or one guest per every two hundred square feet of living space.
- (6) All overnight guests shall be registered with the operator and shall, in the rental agreement with the operator, agree to comply with the terms of use of the property.
 - (7) Gatherings are limited to two times the guest limit.
 - (8) Weddings, wedding receptions, or events are prohibited unless allowed by special permit or use permit.
 - (9) Applicants shall comply with the terms of special use or use permit conditions to mitigate the impacts of the event on surrounding properties, including but not limited to: event size; type of event; temporary structures; use of sound amplifying devices; parking requirements; and additional insurance coverage.
 - (10) Quiet hours shall be from 10:00 p.m. to 7:00 a.m., during which time the noise from the transient accommodation rental shall not disturb adjacent neighbors. Sound that is audible beyond the property boundaries during non-quiet hours shall not exceed the standards set forth in title 11, chapter 46, Hawai'i Administrative Rules. For the purposes of this section, audible means sound perceptible by a person without the use of a sound detection device or audio aides.
 - (11) Off-street parking shall meet the requirements set forth in section 25-4-51 and applicable parking standards in this chapter and all guest vehicles shall be parked in the designated onsite parking area.
 - (12) All print and internet advertising of transient accommodation rentals, including listings with a rental service or real estate firm, shall include the registration number, and the nonconforming use certificate number or hosted nonconforming use certificate number.
 - (13) Any commercial signage that advertises a transient accommodation rental shall comply with the requirements of section 22-2.6 and chapter 3 of the Hawai'i County Code.
- (b) It is the responsibility of the transient accommodation rental operator to also comply with any private covenants defining rules and standards applicable to a transient accommodation rental.

“Section 25-4-16.9. Prima facie evidence; transient accommodation rentals.

- (a) The following shall constitute prima facie evidence that a transient accommodation rental is operating on a property and the conditions under which it is operating:
 - (1) Advertising of any sort that offers a property as a transient accommodation rental;
 - (2) The ability of the planning department to book the rental under any of the conditions defined by this section as requiring transient accommodation rental registration;
 - (3) Hawai'i County transient accommodation tax receipts; or
 - (4) In the event that the County enters into a contract with third party hosting platforms to provide transient accommodation rental listing information, a report provided by the engaged third party.
- (b) The burden of proof shall be on the owner or operator to establish either that the property is not being used as a transient accommodation rental or that it is being used for such purpose legally.

Section 25-4-16.10. Transient accommodation rental fee schedule.

<u>TRANSIENT ACCOMMODATION RENTAL FEE SCHEDULE</u>	
<u>One-time fees</u>	
<u>Initial registration</u>	<u>\$---</u>
<u>Initial registration (principal home)</u>	<u>\$---</u>
<u>Initial hosted nonconforming use certificate</u>	<u>\$---</u>
<u>Initial hosted nonconforming use certificate (principal home)</u>	<u>\$---</u>
<u>Change in registration fee</u>	<u>\$---</u>
<u>Annual renewal fees</u>	
<u>Registration annual renewal fee per bedroom</u>	<u>\$---</u>
<u>Registration annual renewal fee per bedroom (principal home)</u>	<u>\$---</u>
<u>Nonconforming use certificate annual renewal fee</u>	<u>\$---</u>
<u>Hosted nonconforming use certificate annual renewal fee (principal home)</u>	<u>\$---</u>
<u>Hosted nonconforming use certificate annual renewal fee</u>	<u>\$---</u>
<u>Penalty fees</u>	
<u>Late renewal fee</u>	<u>\$100</u>
<u>Operating without a registration</u>	<u>\$10,000</u>
<u>Operating without a required nonconforming use certificate</u>	<u>\$10,000</u>
<u>Operating without a required hosted nonconforming use certificate</u>	<u>\$10,000</u>
<u>Violations of standards in section 16-4-16.7</u>	<u>\$10,000</u>
<u>Operating an un-hosted transient accommodation rental with a hosted nonconforming use certificate</u>	<u>\$10,000</u>

Section 25-4-16.11. Complaints, violations, and public information.

The director shall:

- (1) Receive and track complaints regarding transient accommodation rentals;
- (2) Establish and maintain administrative rules for determining if complaint is valid and there has been a violation;
- (3) Provide information about rules, policies, and procedures pertaining to transient accommodation rentals to property owners, managers, neighbors, and the general public; and
- (4) Maintain a public list of all transient accommodation rentals that have registered or received a nonconforming use certificate and any violations associated with the property.

Section 25-4-16.12. Transient accommodation rental enforcement account.

- (a) The “short-term vacation rental enforcement fund” created pursuant to section 10-12, Hawai‘i County Charter, shall be renamed the “transient accommodation rental enforcement fund.” This fund shall be administered by the director.
- (b) The purpose of the fund is to support efforts to enforce the County’s transient accommodation rental law.
- (c) This account shall be funded by all fees and fines collected in connection with the administration and enforcement of the County’s transient accommodation rental law.

- (d) The funds in this account shall be utilized to pay for expenses that facilitate enforcement of the County's transient accommodation rental enforcement law.

Section 25-4-16.13. Transient accommodation rental administrative enforcement.

- (a) In addition to the fines in accordance with the schedule established in section 16-4-16.10 and any criminal fines, if the director finds that any persons have violated the provisions of section 25-4-16.8, the director shall impose additional fines in the amount of two times the highest daily rate at which the transient accommodation rental has been advertised.
- (c) The owner and operator shall be jointly and severally liable for all fees and fines imposed in connection with the transient accommodation rental.

Section 25-4-16.14. Notice of violation and appeal.

- (a) Notice of a violation of the transient accommodation rental standards shall be transmitted in writing to the operator within ten days of the director's determination that a violation has been committed. The written notice of violation shall be provided via certified mail.
- (b) Service of the notice of violation upon the operator shall be effective as though served upon the operator and the property owner. In the event that the operator is not the property owner, a copy of the notice of violation shall also be mailed to the property owner at the address of the property owner on file with the real property tax division of the County of Hawai'i.
- (c) Within thirty days after the transmittal of the notice of violation and order, any person adversely affected by the notice of violation and order may appeal the notice of violation and order to the board of appeals as provided by section 6-9.2, Hawai'i County Charter and sections 25-2-20 through 25-2-25, Hawai'i County Code. An appeal to the board of appeals shall not stay the provisions of the order pending the final decision of the board of appeals.

Section 25-4-16.15. Suspension and nonrenewal of transient accommodation rental registrations and nonconforming use certificates.

- (a) If the owner or operator of a transient accommodation rental receives two or more enforcement actions in violation of section 25-4-16.8 within a twelve-month period, the director shall suspend their transient accommodation rental registration and their nonconforming use certificate if applicable, for a period of two years.
- (b) The director may also refuse to renew a certificate of registration if the applicant has not addressed an enforcement violation.

Section 25-4-16.16. Property tax assessment for transient accommodation rentals.

- (a) When any portion of a dwelling is rented, leased or used as a homestay for less than one hundred eighty days at a time during the assessment year, the entire property will be ineligible for the real property homeowner tax classification pursuant to section 19-53. The real property tax homeowner exemption will apply proportionally to the area exclusively occupied by the homeowner pursuant to section 19-71.
- (b) When the entire dwelling is rented, leased, or used as a homestay for less than one hundred eighty days at a time during the assessment year, the entire property will be ineligible for the real property homeowner exemption and the real property homeowner tax classification pursuant to sections 19-71 and 19-72.

- (c) If there is more than one dwelling on a property, and the owner resides in one dwelling and rents, leases, or homestays another dwelling for anything other than affordable rental housing (which requires an application be submitted to the real property tax division), the entire property is ineligible for the real property homeowner tax classification pursuant to section 19-53. The real property tax homeowner exemption will apply proportionally to the area exclusively occupied by the homeowner pursuant to section 19-71.
- (d) One hundred eighty days as referred to in this section is the consecutive total of days rented to a single tenant. Advertising or application for a transient accommodation rental or nonconforming use certificate will be considered as prima facie evidence.

Section 25-4-16.17. Director duties in event of emergency.

In the event of a declared emergency, natural or manmade, where a significant number of hosted nonconforming use transient accommodation rentals are permanently lost within any given judicial district, the director shall assess the effect of such loss upon the affected district and if deemed necessary, initiate legislative and administrative opportunities to restore hosted transient accommodation rental capacity to primary residents who relocate within the affected district.”

SECTION 5. Chapter 25, article 6, of the Hawai‘i County Code 2016 (1983 Edition, as amended) is amended by adding a new division 7, “Vacation Nodes,” to be appropriately inserted and to read as follows:

“Division 7. Vacation Nodes.

Section 25-6-70. Purpose.

The purpose of a vacation node is to provide a mechanism to designate a particular area as a suitable location for transient accommodation rentals in areas not included in section 25-4-16(a). Creation of this vacation node designation is intended to spare transient accommodation rental operators from the requirement that they file for a nonconforming use certificate.

Section 25-6-71. Criteria for establishing a vacation node.

- (a) A vacation node may be granted if the following criteria are satisfied:
 - (1) The proposed amendment is consistent with the State land use boundary urban designation;
 - (2) The parcel or parcels affected are suitable for designation as a vacation node and the designation will not conflict with any existing uses or designations;
 - (3) The proposed vacation node designation will not place a substantial burden that would compromise the use of existing public infrastructure or services; and
 - (4) The proposed designation will not negatively impact surrounding residents or the environment in the form of noise, light, air, soil, or water pollution.
- (b) Preference for designating an area as a vacation node shall be given to areas that:
 - (1) Are underserved by hotel and resort facilities and do not have undeveloped and appropriately zoned properties within a fifteen mile radius;

- (2) Where one-third of the transient accommodation rentals do not conform to the regulations for the zoning district in which they are located;
- (3) Are proximate to outdoor or commercial recreational facilities, such as: beaches; County and National Parks; golf courses; event venues; and similar facilities.

Section 25-6-72. Who may initiate establishment of a vacation node.

Requests to establish a vacation node may be initiated by the director, council, or a property owner or their designee.

Section 25-6-73. Request initiated by the director.

- (1) The director shall submit the proposal to the commission with the director's recommendations, and justifications for the director's recommendations for the commission's review and recommendation.
- (2) The commission shall conduct and complete at least one public hearing on the proposal within sixty days from the date of receipt of the proposal from the director. Notice of the hearing by publication shall be provided by the commission in accordance with section 25-2-5.
- (3) The commission shall transmit the director's proposal together with its recommendations through the mayor to the council within thirty days from the close of the hearing. The commission shall recommend approval in whole or in part, with or without modifications, or rejection of such proposal.
- (4) In the event that the commission fails to act on the proposal within the thirty day period from the close of the hearing, such inaction shall be considered to be an unfavorable recommendation by the commission. The amendment shall then be submitted through the mayor to the council with such unfavorable recommendation.

Section 25-6-74. Request initiated by the council.

Council initiated process.

- (1) The council shall refer any council-initiated proposal to establish a vacation node to the director and the commission with requests for their respective comments and recommendations thereon, prior to the first reading of any such amendment.
- (2) The director and the commission shall each submit comments and recommendations on the proposed amendment to the council within one hundred twenty days from the date that the amendment is transmitted by the council.
- (3) Within the one hundred twenty day review period:
 - (A) The director shall submit comments and any recommendations to both the commission and the council;
 - (B) The commission shall hold at least one public hearing on the proposed amendment;
 - (C) The commission shall transmit the proposed amendment together with its recommendation thereon through the mayor to the council. The commission shall recommend approval in whole or in part, with or without modifications, or rejection of such amendment.
- (4) If the commission fails to act on the amendment within the one hundred twenty day review period, such inaction shall be considered to be an unfavorable recommendation by the commission. The amendment shall then be submitted through the mayor to the council with such unfavorable recommendation.

Section 25-6-75. Request initiated by a property owner.

- (a) A property owner or their designee, may apply to establish a vacation node on a form prescribed by the director. The application shall be accompanied by:

 - (1) A filing fee of \$500;
 - (2) A description of the vacation node in sufficient detail to determine its precise location;
 - (3) Maps and a plot plan of the vacation node, drawn to scale;
 - (4) A statement of the reasons for granting the request;
 - (5) A list of elements of the general plan and community development plan that are relevant to establishment of the proposed vacation node; and
 - (6) Other supportive information, and any other information necessary to a proper determination relative to the request.
- (b) Upon receipt of a properly filed and completed application, the director shall have one hundred twenty days to take one of the following actions:

 - (1) Reject the application to establish a vacation node; or
 - (2) Initiate the process to establish a vacation node.
- (c) If the director rejects an application to establish a vacation node pursuant to subsection (b), the applicant may submit a request to the council to initiate an application to establish a vacation node on the applicant's behalf.
- (d) If the council declines the applicant's request to initiate an application on the applicant's behalf pursuant to subsection (c), the applicant may not submit the same or a substantially similar application for consideration within one year following such denial, unless the applicant submits significant new data or additional reasons that the director determines to be a sufficient basis to consider a new application.

Section 25-6-76. Action on a proposal to establish a vacation node.

- (a) Within ninety days following the close of the public hearing or public hearings as the case may be, or within such longer period as agreed to by the director, the commission shall transmit its recommendations regarding the application to the council. The commission's recommendations shall be accompanied by a statement of factual findings supporting the decision.
- (b) In considering any proposal to establish a vacation node, the council may issue its approval subject to conditions on the applicant for the vacation node. The conditions imposed by the council shall bear a reasonable relationship to the purpose on the vacation node project designation.

Section 25-6-77. Revocation of a vacation node.

Revocation of a vacation node can be initiated at any time by the planning director or the council.

SECTION 6. Sections 25-1-5, 25-5-3(a)(13); 25-5-22(a)(15); 25-5-32(a)(18); 25-5-42(a)(24); 25-5-92(a)(32); 25-5-102(a)(35); 25-5-112(a)(52); and 25-5-122(a)(45), Hawai'i County Code, are amended by substituting the word "transient accommodation rental", or similar term, wherever the word, "short-term vacation rental", or similar term, appears, as the context requires.

SECTION 7. Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

SECTION 8. Severability. If any provision of this ordinance, or the application thereof to any taxpayer or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

DRAFT

SECTION 9. This ordinance shall take effect on {Date to Be Determined upon Introduction}.

INTRODUCED BY:

COUNCIL MEMBER, COUNTY OF HAWAI‘I

COUNCIL MEMBER, COUNTY OF HAWAI‘I

_____, Hawai‘i
Date of Introduction:
Date of 1st Reading:
Date of 2nd Reading:
Effective Date: