

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,  
KAUAI COUNTY CODE 1987, AS AMENDED,  
RELATING TO THE COMPREHENSIVE ZONING ORDINANCE  
AND SINGLE-FAMILY TRANSIENT VACATION RENTALS**

**BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:**

SECTION 1. Findings and Purpose. The Council of the County of Kauai hereby finds that recent unprecedented events have caused major upheaval in the national and world economy, producing a significant reduction in visitor arrivals to Kauai and a negative impact on Kauai's economy, small businesses and families. These events include volatile oil prices and the financial disaster caused by the subprime mortgage crisis and failure of long standing financial institutions. In a briefing of the County Council on October 1, 2008, Kauai Visitor Bureau Executive Director Sue Kanoho reported that Kauai Visitors Bureau and the Hawaii Tourism Authority are now focusing on visitors who CAN come to Kauai, as opposed to those who WANT to come. Some of the visitors who can come to Kauai want to stay in single family transient vacation rentals in rural settings.

The Council finds that Ordinance 864, the law regulating single family vacation rentals, passed by the County Council and signed into law by Mayor Bryan Baptiste on March 7, 2008, was necessary to stop the uncontrolled proliferation of single family transient vacation rentals outside Visitor Destination Areas (VDAs). However, because the County has not yet completed its study identifying agricultural lands of importance to the county and state, certain vacation rentals on "Agriculture"-distriected land that were in existence prior to enactment of Ordinance 864, and are potentially on non-Ag lands are not eligible for "non-conforming use" status because of county inaction.

The Council finds that the Planning Department uses enforcement agreements where there is an apparent violation, that the Planning Department has not been fault-less, and that the public interest could be upheld by such an agreement if properly done. The Council finds that the Planning Department can presently, without any change in the law, negotiate enforcement agreements with owners of single-family transient vacation rentals. However, the Council also finds that it would be conducive to fair and equal application of the law to outline certain parameters for such agreement.

The Council finds it would be reasonable to permit single-family transient vacation rentals on agricultural lands to continue to operate where it can be proved that they were in existence and legal operation prior to enactment of Ordinance 864

except for the State requirements for farm dwellings. This grace period would be allowed only until the County's agricultural land planning study and related regulations are completed and implemented; if the land continues to be classified "Agricultural" once the study is complete and regulations and re-classifications are in place, the owner would not be eligible for a "non-conforming" use status if the laws governing Agricultural lands do not allow such, but if it is no longer "Agriculture" or the owner secured a special permit under Hawai'i Revised Statutes, Section 205-6, the use could be allowed to continue either through a "non-conforming use" status or through a special permit under state law. This grace period would be limited to those single family transient vacation rentals in legal operation (except for the farm dwelling requirement) prior to March 7, 2008 and because it is so limited, would be consistent with the policy of Ordinance 864 to stop the uncontrolled proliferation of single-family transient vacation rentals outside the Visitor Destination Areas. This assumes that the Planning Department applies a rigorous process in verifying eligibility for "non-conforming use" status and prevents proliferation of single-family transient vacation rentals outside the Visitor Destination Areas by strict administration of the "non-conforming use" standards.

The purpose of this bill is to establish guidelines for enforcement agreements with owners of single-family transient vacation rentals on Agriculture land that legally pre-existed Ordinance 864 except for the farm dwelling requirements and to establish new deadlines for single family transient vacation rentals on agricultural lands.

SECTION 2. Section 8-17.10, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"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 transient vacation 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 transient 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, Special 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 Hawai'i 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 Hawai'i Revised Statutes, Section 205.6 which specifically permits a vacation rental and the permit was secured prior to the enactment of this ordinance.

(e) In cases in which a single-family transient vacation rental located on land designated "Agricultural" by State law does not qualify for a nonconforming use certificate under Sec. 8-17.10(d), the following shall apply: upon a finding by the Planning Director that the applicant has met the requirements of Sec. 8-17.10(c), except for the requirement of a "farm dwelling" under HRS, Chapter 205-4.5, the Planning Department may enter into an enforcement agreement with applicant agreeing not to enforce this ordinance's prohibition against single-family transient vacation rentals without nonconforming use certificates in non-VDA areas, provided that the enforcement agreement contains, at a minimum, provisions to which all parties agree that:

(1) no rights existing at time of enactment of this ordinance will be extinguished or diminished during the non-enforcement period, nor shall new rights be created during this non-enforcement period, and neither the applicant nor the County shall be deemed to have waived existing rights or made any admissions as to existing rights by entering into said enforcement agreement; and

(2) the enforcement agreement shall terminate upon identification of Kaua'i's agricultural lands of importance to the State pursuant to HRS Chapter 205 or identification of agricultural lands of importance to the County and adoption of ordinance(s) regulating said lands, or the owner has

obtained a special permit under HRS Section 205-6 or March 15, 2011, whichever comes first; and

(3) upon expiration of the enforcement agreement, if the subject dwelling unit is located on lands designated "Agricultural" by State or county law, the applicant, owner, successor, or permitted assigns shall abide by the laws that apply to said lands, or if the subject dwelling unit is located on lands designated other than "Agricultural" by State and County law, or has received a special permit under HRS 205-6, a nonconforming use certificate shall be issued therefor by the Planning Department.

[(e)] (f) 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 Hawai'i general excise tax filings, all relevant transient accommodations tax filings, federal and/or State of Hawai'i 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)] (g) 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.

(h) Sections 8-17.10(b) and 8-17.10(g) notwithstanding, owners of transient vacation rentals on agricultural land shall apply for an enforcement agreement within 90 (ninety days) of enactment of this ordinance or the transient vacation rental use shall be 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).

[(g)] (i) The owner or lessee who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate by July 31 for every other year.

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

(A) There is in effect a State of Hawai'i 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 the 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] Special 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.

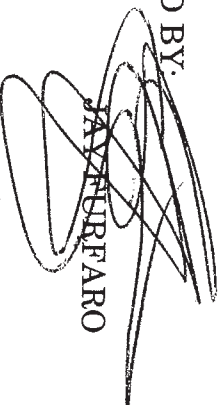
(3) Applicant shall pay a renewal fee of One Hundred Fifty Dollars (\$150.00) which shall be deposited into the County General Fund.”

SECTION 4. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Kaua'i County Code 1987, the brackets, bracketed material and underscoring shall not be included.

SECTION 5. If any provision of this ordinance or the application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provision of this ordinance are severable.

SECTION 6. This ordinance shall take effect upon its approval.

INTRODUCED BY:

  
JAVIER FARO

DATE OF INTRODUCTION:

Lihue, Kaua'i, Hawaii