

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,  
KAUAI COUNTY CODE, 1987, AS AMENDED, RELATING TO  
THE PERMITTING PROCESS FOR TRANSIENT ACCOMMODATION UNITS

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

SECTION 1. Purpose. The purpose of this ordinance is to authorize the Planning Commission of the County of Kauai to process and issue zoning permits, use permits, subdivision approvals, and variance permits for “transient accommodation units” pursuant to the provisions of Article III, Section 3.19 of the Kauai County Charter (“Charter”).

SECTION 2. Findings. The Council of the County of Kauai (“Council”) finds that by amendment to the Charter which became effective on December 5, 2008, a new Section 3.19 was added to the Charter in order to establish growth rates for Transient Accommodation Units derived from the Visitor Unit Demand study conducted for the General Plan.

The Council further finds that Charter Section 3.19 provides that the permits for transient accommodation units may be issued by the Council or, if authorized by the Council by ordinance, by the Planning Commission.

The Council further finds that it would be more efficient and appropriate if the Planning Commission were authorized by ordinance to implement Charter Section 3.19.

The Council further finds that the term “transient accommodation unit” as used in Charter Section 3.19 applies to: transient vacation rentals; time share units; and hotel units or dwelling units (except as otherwise provided herein).

The Council further finds that as of December 5, 2008, there were 9,203 “transient accommodation units” within the County of Kauai, according to the State Visitor Plant Inventory.

The Council further finds that it would be unfair and inequitable, and in violation of applicable legal principles, to apply Charter Section 3.19 to any resort projects which are under construction or where substantial sums have been expended on such projects in reliance on or pursuant to the Visitor Destination Ordinance or Zoning Ordinance which authorized such project.

SECTION 3. Chapter 8 of the Kaua'i County Code, 1987, as amended, is hereby amended by the addition of a new Article 28 to read as follows:

"Sec. 8-28.1 Definitions.

The definitions contained in Chapter 8, including those contained in Sec. 8-1.5, as amended, are incorporated into this Article 28. In addition, for purposes of this Article 28, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Actual Cost" means the amount actually paid or expenditure actually incurred, as opposed to estimated cost, replacement cost, or market value. Actual Cost may be established through receipts, paid invoices, contractual liabilities, or any other documentation or evidence sufficiently establishing the payment or expenditure of money.

"Allocation Base Year" means the year prior to the start of the Allocation Cycle.

"Allocation Base Year Transient Accommodation Unit Target" means the number of Transient Accommodation Units in the County of Kaua'i on December 5, 2008, increased by 1.5% per year on a compounded annual basis, for the number of years between the Allocation Base Year and 2008.

"Allocation Cycle" means a recurring five year period beginning January 1 of the first year and ending December 31 of the fifth year.

"Eligible Resort Project" means a development project that requires a zoning permit, use permit, subdivision application and/or variance permit and situated on one or more lots or parcels:

a. Approved prior to December 5, 2008, pursuant to a zoning amendment ordinance; and

b. Located in one or more zoning districts which were approved prior to December 5, 2008, pursuant to a zoning amendment ordinance designating such zoning districts.

"Improvements" mean all buildings, structures, landscaping and physical alterations to land, including but not limited to: waterlines, water tanks, water wells, and related facilities; streets, highways, and related facilities; workforce or affordable housing units, and related facilities; sewer lines, wastewater treatment plans, and related facilities; recreational equipment, parks, trails, common areas, and related facilities; drainage lines,

detention and retention basins, and related facilities; electrical and communication utility lines, poles, and related facilities; gas utility lines and related facilities; and grubbing and grading activities.

“Off Site Improvements” mean Improvements constructed outside of an Eligible Resort Project.

“On Site Improvements” mean Improvements constructed within an Eligible Resort Project.

“Permitted Project” means a project to develop more than one Transient Accommodation Unit that has received all requisite zoning permits, use permits, subdivision approvals, and variance permits as described in Section 8-28.2 on or before December 5, 2008; or projects that received all necessary permits and approvals as required by law before August 17, 1972.”

“Project VDA Ordinance” means one or more Visitor Destination Area amendment ordinances which established the existing VDA boundary for an Eligible Resort Project.

“Project Zoning Ordinance” means one or more zoning amendment ordinances which established the existing zoning districts within an Eligible Resort Project.

“Substantial Sum” means an Actual Cost, including architectural, engineering, and construction costs incurred to satisfy a condition or requirement of a zoning amendment, use permit, zoning permit, subdivision approval, or variance permit, that exceeds five hundred thousand dollars (\$500,000.00), or twenty percent (20%) of the Real Property Assessment of the Land Value for the Eligible Resort Project for the 2008-2009 tax year as determined by the Department of Finance of the County of Kaua’i, whichever is less. Substantial Sum does not include any costs incurred before the approval of the Project VDA Ordinance or Project Zoning Ordinance applicable to the Eligible Resort Project.

“Transient Accommodation Unit” means any and all of the following:

- a. A hotel unit in an Apartment-Hotel, a Hotel, or a Motel;
- b. A hotel unit located in a Visitor Destination Area;
- c. A hotel unit located in a Resort District;
- d. A Time Share Unit or any other type of similarly-used fractional ownership dwelling unit or hotel unit;
- e. A Transient Vacation Rental;
- f. A Single-Family Transient Vacation Rental; and/or
- g. A Multi-Family Transient Vacation Rental.

“Transient Accommodation Unit Certificate” means an authorization issued to a Transient Accommodation Unit allowing it to be developed and used.

“Transient Accommodation Unit Inventory” shall mean the State’s Official Census of Visitor Accommodations, also known as the Annual Visitor Plant Inventory, for Kaua’i County.

Sec. 8-28.2 Applicability.

(a) Except as otherwise provided, this Article shall be applicable to any of the following permits if such permits would allow the development of more than one Transient Accommodation Unit on any lot or parcel entitled to more than one dwelling unit:

- (1) Use permits issued pursuant to Article 9, Article 18 or Article 20;
- (2) Zoning permits issued pursuant to Article 19;
- (3) Variances issued pursuant to Article 21; and
- (4) Subdivision approvals issued pursuant to Chapter 9 located within the Visitor Destination Area.

(b) The provisions of Section 8-28-.3 shall not apply to:

- (1) the development, construction, reconstruction, repair, renovation, or use of a Permitted Project;
- (2) a Permitted Project that is the subject of a proposed modification, if the proposed modification does not increase the number of permitted Transient Accommodation Units and the Planning Director determines that the proposed modification does not require a new zoning permit, use permit, subdivision approval or variance permit; or
- (3) a Permitted Project that is the subject of a proposed modification, if the proposed modification reduces the number of permitted Transient Accommodation Units by thirty-three percent (33%) of what was previously approved by the Planning Commission or Planning Director; provided, however, that such modification, as determined by the Director, does not create additional impacts other than those addressed by conditions outlined in the Permitted Project.

(c) Individual lots entitled to more than one Transient Accommodation Unit in a previously approved subdivision shall not be exempt from the provisions of Section 8-28.2 and 8-28.3 with regard to any other permits, including zoning permits, use permits, subdivision approvals or variances, as required by law to construct, develop or use a Transient Accommodation Unit on the owner's lot or parcel unless the project is exempt as an Eligible Resort Project pursuant to Section 8-28.5.

(d) Notwithstanding any other provision contained in this Article 28, the boundaries of a Permitted Project may be amended by consolidating the Permitted Project with one or more adjacent lots ("Adjacent Lot(s)") pursuant to Chapter 9 of the KCC. Provided, however, the number of Transient Accommodation units being applied for on the Permitted Project's property and the Adjacent Lot(s) shall not exceed the number of Transient Accommodation units authorized by the Planning Commission for the Permitted Project prior to the consolidation. Upon consolidation under these terms, the Permitted Project on the new lot or parcel shall not be subject to Section 8-28.3.

#### Sec. 8-28.3 Availability of Transient Accommodation Unit Certificates.

(a) In order to construct, develop, or use a Transient Accommodation Unit, an applicant:

(1) must be issued a Transient Accommodation Unit Certificate by the Planning Commission; and

(2) must obtain all necessary permits and approvals by the Planning Commission.

(b) The total number of Transient Accommodation Unit Certificates available for issuance during an Allocation Cycle shall be equal to five point one percent (5.1%) of the Transient Accommodation Unit Inventory in the Allocation Base Year (i.e., a one percent compounded annual growth rate during the five year Allocation Cycle), provided that this number shall be:

(1) decreased by fifty percent (50%) if the Transient Accommodation Unit Inventory in the Allocation Base Year exceeds the Allocation Base Year Transient Accommodation Unit Target, or

(2) increased by fifty percent (50%) if the Transient Accommodation Unit Inventory in the Allocation Base Year is less than the Transient Accommodation Unit Inventory in the Allocation Base Year of the previous Allocation Cycle and the Transient

Accommodation Unit Inventory in the Allocation Base Year is less than the Allocation Base Year Transient Accommodation Unit Target.

(c) The Planning Commission, upon recommendation by the Planning Department, must adopt the total number of Transient Accommodation Unit Certificates available for issuance to all prospective applicants in the applicable Allocation Cycle before March 1 of the first year of the Allocation Cycle.

(d) If fractional Transient Accommodation Unit Certificates would result from the computations contained in this section, then the number shall be rounded up to the next whole number.

#### Sec. 8-28.4 Transient Accommodation Unit Certificate Allocation Process.

(a) Applications for more than one Transient Accommodation Unit Certificate must be contemporaneously submitted with a complete application for a permit set forth in Section 8-28.2. These applications shall only be received by the Planning Department on or after the first business day following the Planning Commission's adoption of the number of available Transient Accommodation Unit Certificates for the Allocation Cycle. Applications shall not be accepted by the Planning Commission when Transient Accommodation Unit Certificates are no longer available in the applicable Allocation Cycle.

(b) Transient Accommodation Unit Certificates shall be allocated in chronological order.

(c) Should an application exceed the number of available Transient Accommodation Unit Certificates established by the Planning Commission in the applicable Allocation Cycle, the applicant may apply for either a zoning, use, subdivision or variance permit for more than one Transient Accommodation Unit pursuant to Charter Section 3.19(a) and (b).

(d) Applications for Transient Accommodation Units pursuant to this Section shall be processed as provided in this Chapter, and in Chapter 9.

(e) Transient Accommodation Unit Certificates shall not be issued until the application under Section 8-28.2 submitted contemporaneously has received final approval.

(f) Should an applicant fail to commence substantial construction of twenty percent (20%) of the Transient Accommodation Unit estimated cost of the value of the improvements as determined by the building permit within four (4) years from the date the certificate was issued, the certificate shall

lapse. Notwithstanding the above, the Planning Commission, for good cause shown, may extend the certificate for one (1) year at a time. The Planning Commission may grant up to three (3) extensions.

Sec. 8-28.5 Exemption for Eligible Resort Projects.

(a) The purpose of this section is to provide a process for identifying, and for registering Eligible Resort Projects that are exempt from Section 8-28.3(a)(1).

(b) The owner of any Eligible Resort Project shall have one (1) year from the effective date of this ordinance to file an application with the Planning Director to register an Eligible Resort Project as exempt from Section 8-28.3(a)(1). The application shall include an itemization of Actual Costs with reference to exhibits containing proof of expenditures actually made before December 5, 2008.

(c) The Planning Director shall approve and register as exempt any Eligible Resort Project, or portion thereof, which meets the criteria in Section 8-28.5(c)(1) and either Section 8-28.5(c)(2) or 8-28.5(c)(3) below:

(1) The Eligible Resort Project must be composed of one or more lots or parcels that are located in a Visitor Destination Area that was approved and established prior to December 5, 2008, pursuant to a Project VDA Ordinance or the Eligible Resort Project must be composed of one or more lots or parcels that are located in zoning districts that were approved and established prior to December 5, 2008, pursuant to a Project Zoning Ordinance.

(2) Either the owner or the owner's predecessor-in-interest must have obtained the governmental approvals for and expended Substantial Sums on any of the following prior to December 5, 2008:

(A) Any On Site Improvements or Off Site Improvements authorized by the Project VDA Ordinance or the Project Zoning Ordinance; or

(B) Any On Site Improvements or Off Site Improvements required to be constructed pursuant to the conditions of approval contained in the Project VDA Ordinance or the Project Zoning Ordinance.

(3) The owner or the owner's predecessor-in-interest must have complied with Article 3 of the Housing Policy for the County of Kaua'i (Ordinance No. 860), or paid an in-lieu fee or dedicated land

pursuant to an affordable housing agreement with the County, prior to December 5, 2008, in fulfillment of any workforce housing or affordable housing condition contained in the Project VDA Ordinance or the Project Zoning Ordinance.

(d) The owner shall have the burden of proof by a preponderance of the evidence in establishing that the Eligible Resort Project is exempt.

(e) The Planning Director shall have one hundred and twenty (120) days after acceptance of a completed application to approve or deny the registration of an Eligible Resort Project as exempt. If the Planning Director denies the application, the owner may appeal to the Planning Commission pursuant to the procedures set forth in Chapter 9 of the Rules of Practice and Procedures of the Planning Commission, as amended from time to time.

(f) In making a decision on any application, the Planning Director shall find that the owner or the owner's predecessors-in-interest have expended Substantial Sums where the Actual Cost of On Site Improvements and Off Site Improvements as of December 5, 2008 exceeds Twenty percent (20%) of the Real Property Assessment of the Land Value for the Eligible Resort Project for the 2008-2009 tax year as determined by the Department of Finance of the County.

(g) An Eligible Resort Project that has obtained an exemption under Section 8-28.5(c) is not exempt from obtaining any other permits required by law.

(h) Notwithstanding any other provision contained in this Article 28, the boundaries of an Eligible Resort Project which is exempt under this Section 8-28.5 ("Exempt Project") may be amended by consolidating the Exempt Project with one or more adjacent lots ("Adjacent Lot(s)") pursuant to Chapter 9 of the KCC. Provided, however, the number of Transient Accommodation units being applied for on the Exempt Project's property and the Adjacent Lot(s) shall not exceed the number of Transient Accommodation units approved by the Zoning Amendment or Planning Commission for the Exempt Project prior to the consolidation. Upon consolidation under these terms, the Exempt Project on the new lot or parcel shall be exempt pursuant to the provision of this Section 8-28.5.

#### Sec. 8-28.6 Promulgation of Rules and Regulations.

Pursuant to Hawaii Revised Statutes Chapter 91, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article."



SECTION 4. If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 5. This ordinance shall take effect thirty (30) days after its approval. The requirements of this ordinance shall not affect any application which has been approved by the County Council or the Commission prior to the effective date of this ordinance, unless there is a subsequent approval required prior to a building permit, in which case, that subsequent application shall be subject to the relevant requirements of this ordinance, excluding subdivisions which have received tentative approval prior to the approval date of this ordinance.

Introduced by: /s/ NADINE K. NAKAMURA  
(By Request)

DATE OF INTRODUCTION:

**July 6, 2011**

Līhu'e, Kaua'i, Hawai'i

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