

October 5, 2011
FLOOR AMENDMENT

**BILL NO. 2410, Draft 1, RELATING TO THE PERMITTING PROCESS FOR
TRANSIENT ACCOMMODATION UNITS**

INTRODUCED BY: Nadine Nakamura

1. Amend Bill No. 2410, Draft 1 by amending the first sentence in Section 3 of the bill to read as follows:

“SECTION 3. Chapter 8 of the Kaua‘i County Code 1987, as amended, is hereby amended by the addition of a new Article 28 entitled “Transient Accommodation Unit Certificate Allocation Program” to read as follows:”

2. Amend Bill No. 2410, Draft 1 by amending the definition of “Substantial Sum” in Section 8-28.1 of Section 3 to read as follows:

“Substantial Sum” means an Actual Cost, including architectural, engineering, and construction costs incurred before December 5, 2008 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.”

3. Amend Bill No. 2410, Draft 1 by amending Section 8-28.2 of Section 3 of the bill to read as follows:

“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.] Kaua'i County Code, 1987, as amended. 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.

4. Amend Bill No. 2410, Draft 1 by amending Section 8-28.5 of Section 3 of the bill to read as follows:

“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.] Kaua'i County Code 1987, as amended. 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."

5. Amend Bill No. 2410, Draft 1 by amending Section 8-28.6 of Section 3 of the bill to read as follows:

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

Pursuant to [Hawaii] Hawai'i 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.”

6. Amend Bill No. 2410, Draft 1 by amending Section 5 of the bill to read as follows:

“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, or to subdivisions which have received tentative approval prior to December 5, 2008, 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].”

(Material to be deleted is bracketed. New material is underscored.)

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