

COUNTY OF KAUA'I
PLANNING DEPARTMENT
LIHU'E, KAUA'I

SUBJECT TO CHANGE

DIRECTOR'S REPORT

HEARING DATE: February 17, 2015

PROJECT: Zoning Amendment ZA-2015-4

APPLICANT: County of Kaua'i

FINDINGS

I. ACTIONS REQUIRED:

In accordance with Section 8-3.4 of the Kaua'i County Code, a Zoning Amendment is required to amend the text of Chapter 8 of the Kaua'i County Code.

II. PROJECT DESCRIPTION AND USE:

The attached proposed bill for an ordinance is being initiated by the County of Kaua'i and is hereby submitted to the Planning Commission for review and recommendation.

The proposed draft bill amends Chapter 8 (Comprehensive Zoning Ordinance) of the Kaua'i County Code (K.C.C.), 1987 (as amended), to establish a process to permit Homestays in the Commercial Districts, Resort Zoning Districts and Residential Zoning Districts

Please refer to the attached proposed draft bill for further details.

III. LEGAL REQUIREMENTS:

In accordance with Section 8-3.4 of the K.C.C., the public hearing for this matter is scheduled on February 24, 2015.

IV. APPLICANT'S REASONS/JUSTIFICATION:

Please refer to the attached proposed draft bill.

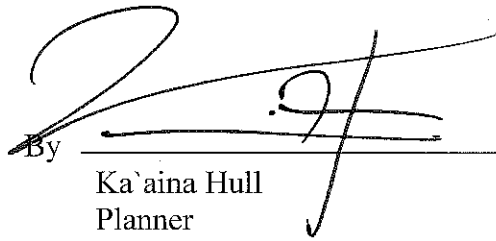
V. FINDINGS:

AGENCY COMMENTS:


(forthcoming)

F. 4. b. 1.

FEB 24 2015

By  _____
Ka'aina Hull
Planner

Approved:

By  _____
Michael A. Dahilig
Director of Planning

Date 2/18/2015

ARTICLE 1. GENERAL PROVISIONS

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Sec. 8-1.5 Definitions

When used in this Chapter the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

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“Census Designated Place (C.D.P.)” means a statistical entity, defined for each decennial census according to Census Bureau guidelines, comprising a densely settled concentration of population that is not within an incorporated place, but is locally identified by a name. C.D.P.s are delineated cooperatively by State and County officials and the Census Bureau, following Census Bureau guidelines.

“Homestay Quota System” means the quota system for generally permissible homestay units within the County of Kauai. The quotas are established through the following criteria:

- (a) For those C.D.P.s that have a resident population of at least one thousand (1000) residents, generally permissible homestays shall be limited in quantity in each respective C.D.P. at a ratio of one (1) homestay unit per every three hundred (300) residents of a respective C.D.P.
- (b) The most recent decennial Census shall establish the applicable boundaries for each respective C.D.P.

[“Homestay” means a 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.]

“Homestay, Major” means an owner occupied dwelling unit in which overnight accommodations are provided to transient guests within the same dwelling unit in which the owner resides or in a guest house and meets the following criteria:

- (a) transient accommodations are provided for visitors for twenty-nine (29) days or less;
- (b) the homestay operations comprises no more than five (5) bedrooms for transient accommodations; and,
- (c) the primary residential structure(s) used for the homestay operation is the owner’s primary residence, and the respective owner currently benefits under Sec. 5A-11 of this Code for a homeowner’s exemption for the homestay site.

“Homestay, Minor” means an owner-occupied dwelling unit in which overnight accommodations are provided to transient guests within the same dwelling unit in which the owner resides or in a guest house and meets the following criteria:

- (a) transient accommodations are provided for visitors for twenty-nine (29) days or less;
- (b) the homestay operations comprises no more than two (2) bedrooms for transient accommodations; and,
- (c) the primary residential structure(s) used for the homestay operation is the owner’s primary residence, and the respective owner currently benefits under Sec. 5A-11 of the Code for a homeowner’s exemption for the homestay site.

“Tentative Action Date, Minor Homestay” means thirty (30) days from the date the Planning Department accepts application for a minor homestay.

ARTICLE 2. DESIGNATION OF DISTRICTS, METHOD AND EFFECT OF ESTABLISHMENT OF DISTRICTS, AND ZONING MAPS

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Table 8-2.4 TABLE OF USES										
Sec.	USE	ZONING DISTRICT								
		Residential		RR	Commercial		Industrial		AG	O
		R-1 to R-6	R-10 to R-20		CN	CG	IL	IG		

...

8-2.4([p]u)(1)	Homestay, Major; pursuant to Article 18 of this Chapter	<u>U</u>	<u>U</u>	<u>P</u>	<u>P</u>	<u>P</u>				
8-2.4([p]u)(2)	Homestay, Minor; pursuant to Article 18 of this Chapter	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>				
8-2.4([p]u)(3)	VDA Homestay, Major pursuant to Article 18 of this Chapter	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>				
8-2.4([p]u)(4)	VDA Homestay, Minor; pursuant to Article 18 of this Chapter	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>				

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ARTICLE 4. RESIDENTIAL DISTRICTS (R)

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8-4.7 Permits Required

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- (b) Class II Permit. A Class II Permit must be obtained for construction or development on a parcel that is not located in a Constraint District or Special Treatment District, where the construction does not require a use permit or a variance permit and:
 - (1) consists of two (2) to ten (10) dwelling units, provided that where the construction or development is to be carried out on a parcel large enough to qualify for eleven (11) or more selling units, the Planning Director may require a Class III or Class IV Zoning Permit if he determines that additional construction or development on the parcel in excess of ten (10) dwelling units is probable in the near future; or
 - (2) consists of one (1) dwelling unit on a parcel large enough to qualify for more than one (1) dwelling unit[.]; or
 - (3) consists of a minor homestay that meets all the requirements established under Sec. 8-18 of this Code.

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ARTICLE 18. HOMESTAYS

Sec. 8-18.1 General Provisions for Homestays

- (a) A homestay operation shall operate under the following regulations:
 - (1) transient accommodations are provided for visitors for twenty-nine (29) days or less;
 - (2) for a major homestay operation, the operation comprises no more than five (5) bedrooms for transient accommodations; and for a minor homestay operation, the operation comprises no more than two (2) bedrooms for transient accommodations;
 - (3) for the purposes of homestay operations, any room that is advertised to accommodate sleeping purposes of transient guests shall constitute a bedroom
 - (4) the residential structure(s) used for the homestay operation is the owner's primary residence, and the respective owner is benefiting under Sec. 5A-11 of this Code for a homeowner's exemption for the homestay site in the year preceding the date of application;

- (5) During homestay operations, the owner(s) benefiting under Sec. 5A-11 of this Code for a homeowner's exemption for the homestay site must be physically within the County of Kauai, residing at the homestay operation site, and physically available for the needs and concerns of their respective homestay guests; and.
- (6) no other individual or designated representative may act on the owner(s) behalf to meet the requirements of Sec 8-18.1(a)(5).
- (b) Any proposal that does not meet these standards established under Sec. 8-18.1(a) do not constitute a homestay operation.
- (c) Homestay operations are prohibited in the Agriculture and Open Zoning Districts.

Sec 8-18.2 General Provisions for Homestay Quota System

- (a) Any homestay operation that is approved under a Class I or II Zoning Permit are subject to the Homestay Quota System and shall be counted within the Quota System.
- (b) Any homestay operation that is reviewed and/or approved with a Use Permit shall not be subject to the Homestay Quota System and shall not be counted within the Quota System.
- (c) Regardless of whether it is for a major homestay operation or a minor, any application to exceed a C.D.P.'s quota established under the Homestay Quota System's shall require a Use Permit.

Sec 8-18.2 Development Standards for Homestays

Development standards for homestay operations generally permitted or permitted with a Use Permit shall be the same as those for residential dwellings in Section 8-4.5 through 8-4.8 of this Code, inclusive, with the following additions:

- (a) each bedroom used for homestay purposes shall require one (1) additional paved and designated off-street parking stall;
- (b) the residential structure(s) used for the homestay operation shall be serviced by an existing septic system approved by the State Department of Health;
- (c) the owner(s) benefitting under Sec. 5A-11 of this Code for a homeowner's exemption for the respective homestay site shall be available on a 24-hour, 7-days-per-week basis during homestay operations. The owner(s) shall provide the name and contact information to neighbors adjacent to and directly across the subject homestay, the

Planning Department, the Kauai Police Department, the Kauai Civil Defense Agency, and the Kauai Visitors Bureau upon issuance of a homestay zoning permit;

- (d) no other individual or designated representative may act on the owner(s) behalf to meet the requirements of Sec 8-18.2(c) of this Code;
- (e) one (1) outdoor sign no larger than one (1) 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 homestay zoning permit number and the 24-hour contact information. 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;
- (f) the homestay operator 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 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 zoning permit number. 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 cases of emergency and natural disaster;
- (g) all print and internet advertising for homestay operations, including listings with a rental service or real estate firm, shall include the zoning permit number;
- (h) a copy of the zoning permit shall be displayed on the back of the front door of the sleeping quarters; and,
- (i) a site and floor plan shall be filed with the application.

Sec 8-18.3 Complaints against Homestay Operations

Should the Planning Department receive complaints from property owners listed at the Real Property Division of the Department of Finance of the County of Kauai as being within three hundred (300) feet from the nearest point of the premises of a homestay, the Planning Director may require further review by the Planning Commission. For minor homestay operations in the Residential Zoning Districts that are not located within a Visitor Designation Area (V.D.A.), the Planning Director may issue a cease and desist notice and require the landowner to apply for a use permit for a major homestay operation and to meet the requirements of a use permit for a major homestay in the Residential Zoning District prior to re-commencing homestay operations.

Sec. 8-18.4 Renewal of Homestay Zoning Permits

A property owner that has obtained a homestay zoning permit shall apply to renew the zoning permit annually on the date of issuance of the homestay zoning permit in accordance with the following regulations:

- (a) each application to renew shall include proof that there is currently a valid State of Hawaii general excise tax license and transient accommodations tax license for the homestay operation. Failure to meet this condition will result in the automatic denial of the application for renewal of the homestay zoning permit(s). The applicant may reapply for renewal within the annual time allotment by presenting a currently valid State of Hawaii general excise tax license and transient accommodation tax license for the homestay operation;
- (b) each application to renew shall include proof that the primary residential structure(s) used for the homestay operation is the owner's primary residence, and the respective owner is benefiting under Sec. 5A-11 of this Code for a homeowner's exemption for the homestay site in the year preceding the date of renewal;
- (c) upon renewal, the Planning Department may initiate re-inspection of properties for compliance with other provisions of this chapter or other pertinent land use laws, and may withhold approval of a renewal application and issue cease and desist notices to the applicant until all violations have been resolved; and,
- (d) the applicant shall pay a renewal fee of seven hundred fifty dollars (\$750.00) to the Director of Finance.

Sec. 8-18.5 Homestays within the Residential Zoning Districts not included within the Visitor Designation Area (V.D.A.)

Except as provided in Sec. 8-18.6 through 8-18.9, a homestay is permissible in the Residential Zoning Districts not included within the V.D.A. only with a Use Permit.

Sec. 8-18.6 Permitted Minor Homestay Locations in Residential Zoning Districts not included within the Visitor Designation Area (V.D.A.)

Minor homestays shall be permissible in Residential Zoning Districts that are located within a specific C.D.P. but are not located within a V.D.A. in accordance with the following regulations:

- (a) at a ratio of one (1) minor homestay per lot of record; and,
- (b) located within a C.D.P. that has a resident population of at least one thousand (1000) residents.

Sec 8-18.7 Minor Homestay Procedures for Notification

Within seven (7) days of being notified that an applicant's homestay application has been accepted by the Planning Department, the applicant shall either hand deliver written notice or mail by certified mail written notice to eighty-five percent (85 %) of the addresses for the property owners listed at the Real Property Division of the Department of Finance of the County of Kauai for all parcels of real property within three hundred (300) feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager" followed by the name and address of the condominium involved. The notice shall include the following information and shall be in a form approved by the Planning Director:

- (a) location, including but not limited to tax map key(s), physical address, and physical description;
- (b) proposed use of the property for a minor homestay;
- (c) description of the of the minor homestay operation;
- (d) give notice of the neighboring property owner's rights under Sec. 8-18.5 of the K.C.C. to object to the Planning Department against the proposed minor homestay application thereby requiring a use permit, public hearing, and Planning Commission review and action prior to any homestay operation on the subject property;
- (e) the Planning Department's address to which notice of objections must be mailed; and,
- (f) Tentative minor homestay approval date (30 days from the Planning Department's acceptance of the subject minor homestay application) should no objections be received by the Planning Department prior to that date.

Sec. 8-18.8 Objection(s) to a Minor Homestay Application in the Residential Zoning Districts not included in a Visitor Designation Area (V.D.A.)

Any property owner of a parcel of real property within the Residential Zoning District and within three hundred (300) feet from the nearest point of the premises involved in the application for a minor homestay in the Residential Zoning District may object to the use of the subject property for a minor homestay. A notice of objection shall either be hand delivered or mailed by certified mail to the Department of Planning prior to the subject minor homestay's tentative action date.

Should the Department receive an objection(s) from a property owner(s) of a parcel of real property that is located within the Residential Zoning District and is within three hundred (300) feet from the nearest point of the premises involved in the application for a minor homestay prior to the minor homestay's tentative action date, the Planning Director shall deny the subject minor homestay application and classify any proposal for a homestay operation on

the subject property as a major homestay and require the necessary zoning permit(s), including but not limited to a use permit.

Sec 8-18.8 Enforcement of Homestay Operations

Any violation of this sections regulations shall be subject to those zoning enforcement procedures established under Sec. 8-3.5 of this Code.