

**COUNTY OF KAUAI
PLANNING DEPARTMENT
LIHU'E, KAUAI**

SUBJECT TO CHANGE

SUPPLEMENT #1 TO DIRECTOR'S REPORT

HEARING DATE: April 14, 2015

PROJECT: Zoning Amendment ZA-2015-4

APPLICANT: County of Kauai

FINDINGS

I. ACTIONS REQUIRED:

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

II. PROJECT DESCRIPTION AND USE:

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

The proposed draft bill amends Chapter 8 (Comprehensive Zoning Ordinance) of the Kauai County Code (KCC), 1987 (as amended), to establish a process to review and process homestay applications.

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 was scheduled on February 24, 2015, and it was deferred to April 14, 2014.

IV. APPLICANT'S REASONS/JUSTIFICATION:

Please refer to the attached proposed draft bill (see Exhibit A).

V. FINDINGS:

On February 24, 2015, the Planning Department submitted to the Planning Commission a draft ordinance (see Exhibit C) to establish a process to permit Homestays in the Commercial Zoning Districts, Resort Zoning Districts and Residential Zoning Districts.

The draft bill separated the process into Major and Minor permits, with both permits having an administrative review process in all those previously listed zoning districts with the exception of

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the Residential Zoning District. Major Permits in those Residential Zoning District outside of Visitor Designation Areas (VDAs) would require a Use Permit and Planning Commission review and action.

The Department stands by the merits and proposals recommended in the original draft bill submitted to the Planning Commission on February 24, 2015; however, recent developments within the Department of Planning's Enforcement Division have necessitated amendments to the draft ordinance in order to expedite the adoption of a clear and specific standard and review parameters under which homestay applications can be processed.

In response to community outcries over the lack of enforcement actions against illegal single-family transient vacation rentals (TVRs), over the past two (2) years, the Department has multiplied its efforts to take action against illegal TVR operations. The Department began conducting thorough investigations into illegal TVR operations, issuing cease and desist notices, levying fines, and forwarding cases onto the Prosecuting Attorney's Office for prosecution.

These enforcement actions have resulted in several illegal TVRs shutting down, particularly those illegal TVRs that failed to go through the non-conforming use certificate review process and are located outside of the VDA and/or the Resort Zoning District (which are the only two (2) areas that TVRs are allowed without a non-conforming use certificate). Unable to find a legal avenue to continue operating their TVRs, many of these operations have realized that the limited definition of a Homestay in Chapter 8 of the KCC—and lack of any associated standards—serves as a possible loophole in applying for pseudo-TVR operations outside of the VDA and Resort Zoning District.

Because of the growing awareness of this loophole, it is necessary to establish a clear definition of homestays in the KCC.

AGENCY COMMENTS:

(forthcoming)

V. EVALUATION:

In reviewing the proposed draft ordinance, the following should be considered:

1. Under general land use regulations, the distinguishing factor between single-family transient vacation rentals (TVRs) and homestays is established by where the owner of the dwelling used for transient purposes resides. In the case of a TVR, the owner of the dwelling does not reside in the dwelling while it is being used for transient

accommodations. In the case of the homestay, the owner does reside in the dwelling while it is being used for transient accommodation purposes.

2. In the case of homestay operations, the presence of the owner at the site acts as a self-regulating mechanism. That is to say, activities that could significantly impact surrounding neighbors are often prohibited by the owners of homestays because such activities are just as, if not more, impactful on the owner who is residing onsite. The noise and other impacts often associated with TVRs (where no property owner is present) are often not found at homestay operations because of the owner's presence and self-regulation.

3. Pursuant to Section 8-1.5 of the KCC, the term "homestay" means the following:

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.

4. The above referenced and current definition of a homestay does not ensure that the owner of a specific property reside onsite and act in a self-regulating manner of the operation.
5. The above referenced and current definition of a homestay lacks clear and specific standards under which a homestay operation should be reviewed.
6. The homestay definition should be amended to state the following:

"Homestay," 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 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.

7. By amending the definition to reflect the standards established above, the Department can ensure that homestay operators are the actual owners residing at the dwelling during transient use and should act as a self-regulating mechanism.
8. To ensure that there is not an overage of applications for homestay operations—both for land use carrying capacity as well as departmental processing capabilities—on a

first-come-first-serve basis, no more than ten (10) applications for homestay operations should be reviewed by the Planning Commission each calendar year.

9. As previously stated, The Department stands by the merits and proposals recommended in the original draft bill submitted to the Planning Commission on February 24, 2015 (see Exhibit C); however, recent developments within the Department of Planning's Enforcement Division have necessitated amendments to the draft ordinance in order to expedite the adoption of a clear and specific standard and review parameters under which homestay applications can be processed. As such, the Department is proposing a draft ordinance that will establish a specific homestay definition and a processing cap.
10. The Department shall subsequently propose the original draft ordinance to the Planning Commission for a public hearing and review and action.
11. Provided for Commission review is also the original draft ordinance in Ramseyer format to reflect the current proposed changes (see Exhibit B). The Department is also providing a clean new draft ordinance (see Exhibit A) that clearly reflects the Department's current proposal.
12. Ultimately, the Department is proposing a bifurcation of Zoning Amendment ZA-2015-4. New draft ordinance language (see Exhibit D) that can be utilized with the same Findings and Purpose will be submitted to the Planning Commission for a public hearing and review and action and will reflect the original draft bill absent the new proposed draft bill language found in Exhibit A.
13. For the record, it should also be noted that while homestay applications have to be currently processed under the existing and limited definition of a homestay, for any application received that does not reflect the draft ordinance's proposed definition, at a minimum the Department will be recommending to the Planning Commission that any approval of such an application should be conditioned whereby the homestay operation meets the draft ordinance's definition. In so doing, the Planning Commission can be assured that the owner self-regulation that generally occurs with homestay operations will occur and mitigate potential impacts that come with transient accommodations located outside of the VDA and Resort Zoning Districts.

VI. CONCLUSION:

Based on the foregoing findings and evaluation, it is hereby concluded that the proposed amendments to Chapter 8 of the KCC can assist in expediting the adoption of a specific standard and review parameters under which homestay applications can be processed should be

considered.


VII. RECOMENDATION:

Based on the foregoing evaluation and conclusion, it is hereby recommended that Zoning Amendment ZA-2015-4 be approved.

Attached as Exhibit A is the proposed draft bill. The proposed amendments on the attached draft bill are done in Ramseyer format: words, phrases, or sections to be repealed are bracketed and stricken; additional words, phrases, or sections are underscored.

By 
Ka'aina Hull
Acting Deputy Director of Planning

Approved and Transmitted to the Commission:

By 
Michael A. Dahilig
Director of Planning

Date 4.7.15

EXHIBIT A

ORDINANCE NO. _____

BILL NO. _____

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO HOMESTAYS

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

SECTION 1. Findings and Purpose: The Council finds the 2000 Kauai General Plan recognized the need "to develop a clear policy regarding B&Bs and vacation rentals." The General Plan recommended an implementing action to amend the CZO to facilitate the permitting of existing, nonconforming alternative visitor accommodations. The Council complied with the policy of the General Plan and grandfathered existing single-family transient vacation rentals (SFTVRs) that registered and met the prior use requirements established in Article 17 of the CZO. In Ordinance No. 864, the Council further found that:

This bill does not apply to a bed and breakfast unit ("Homestay"). It is the intentions of the Council to address these units as a separate matter after establishing a regulatory framework for single-family transient vacation rentals. Homestays are presently regulated through the use permit process.

Although the Council bifurcated the issues of homestays and SFTVRs, it is now appropriate to adopt a clear and specific standard and review parameters under which homestay applications can be processed.

The purpose of this bill is to identify an enforceable definition and processing parameters under which homestay operations can be permitted with a Use Permit.

SECTION 2. Chapter 8, Kauai County Code 1987, as amended, is hereby amended by amending Subsection 8-1.5 as follows:

[**"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" 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 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.

ARTICLE 18. HOMESTAYS

Sec. 8-18.1 General Provisions for Homestays

- (a) On a first-come-first-serve basis of applications deemed complete by the Planning Department, no more than ten (10) applications for homestay operations shall be reviewed by the Planning Commission each calendar year.

SECTION 3. If any provision of this Ordinance or the application thereof to any person 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.

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 need not be included.

SECTION 5. This Ordinance shall take effect upon its approval.

Introduced by:

DATE OF INTRODUCTION:

LĪHU'E, KAUA'I, HAWAII

EXHIBIT B

ORDINANCE NO. _____

BILL NO. _____

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO HOMESTAYS

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

SECTION 1. Findings and Purpose: The Council finds the 2000 Kauai General Plan recognized the need "to develop a clear policy regarding B&Bs and vacation rentals." The General Plan recommended an implementing action to amend the CZO to facilitate the permitting of existing, nonconforming alternative visitor accommodations. The Council complied with the policy of the General Plan and grandfathered existing single-family transient vacation rentals (SFTVRs) that registered and met the prior use requirements established in Article 17 of the CZO. In Ordinance No. 864, the Council further found that:

This bill [Ordinance No. 864] does not apply to a bed and breakfast unit ("Homestay"). It is the intentions of the Council to address these units as a separate matter after establishing a regulatory framework for single-family transient vacation rentals. Homestays are presently regulated through the use permit process.

Although the Council bifurcated the issues of homestays and SFTVRs, it is now appropriate to adopt a clear and specific standard and review parameters under which homestay applications can be processed ~~create regulatory framework to permit Homestays with a ministerial permit unless an adjacent landowner objects to the Homestay operation, which would then trigger the need for a discretionary use permit issued by the Planning Commission.~~

The purpose of this bill is to ~~create a regulatory framework~~ identify an enforceable definition and processing parameters under which ~~for homestay operations to can be permitted under a quota system based on 2010 Census statistics with a Use Permit.~~

SECTION 2. Chapter 8, Kauai County Code 1987, as amended, is hereby amended by amending Subsection 8-1.5 as follows:

"Census Designated Place (CDP)" 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. CDP's are delineated cooperatively by State and County officials and the United States 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 CDPs 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 CDP.~~
- ~~(b) The most recent decennial Census shall establish the applicable boundaries for each respective CDP.~~

[**“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 guests renting the unit 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 guests renting the unit 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.

SECTION 3. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by amending Subsection 8-2.4 as follows:

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

SECTION 4. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by amending Subsection 8-4.7 as follows:

- (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 dwelling 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 Article 18 of this Code.~~

SECTION 45. — Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by a new Article 18 as follows:

ARTICLE 18. HOMESTAYS

Sec. 8-18.1 General Provisions for Homestays

- ~~(a) A homestay operation shall operate under the following provisions:~~
 - ~~(1) Transient accommodations are provided for guests renting the unit 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 for 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 in the homestay~~

~~unit, 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) does not constitute a homestay operation.~~
- ~~(c) Homestay operations are prohibited in the Agriculture and Open Zoning Districts.~~
- ~~(d) On a first-come-first-serve basis of applications deemed complete by the Planning Department, no more than ten (10) applications for homestay operations shall be reviewed by the Planning Commission each calendar year.~~

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 Sec. 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);~~
- ~~(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 list shall provide essential information to the visitor and shall seek to reduce negative impacts on the surrounding neighborhood. This list 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 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 provisions:~~

- ~~(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. 8-18.4 Homestays within the Residential Zoning Districts not included within the Visitor Designation Area

~~— Except as provided in Sec. 8-18.5 through 8-18.8, a homestay is permissible in the Residential Zoning Districts not included within the VDA only with a Use Permit.~~

Sec. 8-18.5 Permitted Minor Homestay Locations in Residential Zoning Districts not included within the Visitor Designation Area

~~— Minor homestays shall be permissible in Residential Zoning Districts that are located within a specific CDP but are not located within a VDA in accordance with the following regulations:~~

- ~~(a) At a ratio of one (1) minor homestay per lot of record; and~~
- ~~(b) Located within a CDP that has a resident population of at least one thousand (1000) residents.~~

Sec 8-18.6 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. 8-18.7 of this Section 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 action 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. 8-18.7 Objection(s) to a Minor Homestay Application in the Residential Zoning Districts not included in a Visitor Designation Area

~~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 Article's provisions shall be subject to those zoning enforcement procedures established under Sec. 8-3.5 of this Code.~~

SECTION 5 6. If any provision of this Ordinance or the application thereof to any person 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.

SECTION 6 7. 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 need not be included.

SECTION 7 8. This Ordinance shall take effect upon its approval.

Introduced by:

DATE OF INTRODUCTION:

LĪHU'E, KAUA'I, HAWAII

EXHIBIT C

ORDINANCE NO. _____

BILL NO. _____

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO HOMESTAYS

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

SECTION 1. Findings and Purpose: The Council finds the 2000 Kaua'i General Plan recognized the need "to develop a clear policy regarding B&Bs and vacation rentals." The General Plan recommended an implementing action to amend the CZO to facilitate the permitting of existing, nonconforming alternative visitor accommodations. The Council complied with the policy of the General Plan and grandfathered existing single-family transient vacation rentals (SFTVRs) that registered and met the prior use requirements established in Article 17 of the CZO. In Ordinance No. 864, the Council further found that:

This bill [Ordinance No. 864] does not apply to a bed and breakfast unit ("Homestay"). It is the intentions of the Council to address these units as a separate matter after establishing a regulatory framework for single-family transient vacation rentals. Homestays are presently regulated through the use permit process.

Although the Council bifurcated the issues of Homestays and SFTVRs, it is now appropriate to create regulatory framework to permit Homestays with a ministerial permit unless an adjacent landowner objects to the Homestay operation, which would then trigger the need for a discretionary use permit issued by the Planning Commission.

The purpose of this bill is to create a regulatory framework for Homestay operations to be permitted under a quota system based on 2010 Census statistics.

SECTION 2. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by amending Subsection 8-1.5 as follows:

"Census Designated Place (CDP)" 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. CDP's are delineated cooperatively by State and County officials and the United States 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 CDPs 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 CDP.
- (b) The most recent decennial Census shall establish the applicable boundaries for each respective CDP.

[**“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 guests renting the unit 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 guests renting the unit 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.

SECTION 3. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by amending Subsection 8-2.4 as follows:

Table 8-2.4 TABLE OF USES

Sec.	USE	ZONING DISTRICT									
		Residential			Commercial		Industrial				
		R-1 to R-6	R-10 to R-20								
				RR	CN	CG	IL	IG	AG	O	
<u>8-2.4(u)(1)</u>	<u>Homestay, Major; pursuant to Article 18 of this Chapter</u>			<u>U</u>	<u>U</u>	<u>P</u>	<u>P</u>	<u>P</u>			
<u>8-2.4(u)(2)</u>	<u>Homestay, Minor; pursuant to Article 18 of this Chapter</u>			<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>			
<u>8-2.4(u)(3)</u>	<u>VDA Homestay, Major pursuant to Article 18 of this Chapter</u>			<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>			
<u>8-2.4(u)(4)</u>	<u>VDA Homestay, Minor; pursuant to Article 18 of this Chapter</u>			<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>			

SECTION 4. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by amending Subsection 8-4.7 as follows:

- (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 Article 18 of this Code.

SECTION 5. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by a new Article 18 as follows:

ARTICLE 18. HOMESTAYS

Sec. 8-18.1 General Provisions for Homestays

- (a) A homestay operation shall operate under the following provisions:
 - (1) Transient accommodations are provided for guests renting the unit 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 for 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 in the homestay unit, 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) does 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 Sec. 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);

- (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 list shall provide essential information to the visitor and shall seek to reduce negative impacts on the surrounding neighborhood. This list 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 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 provisions:

- (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. 8-18.4 Homestays within the Residential Zoning Districts not included within the Visitor Designation Area

Except as provided in Sec. 8-18.5 through 8-18.8, a homestay is permissible in the Residential Zoning Districts not included within the VDA only with a Use Permit.

Sec. 8-18.5 Permitted Minor Homestay Locations in Residential Zoning Districts not included within the Visitor Designation Area

Minor homestays shall be permissible in Residential Zoning Districts that are located within a specific CDP but are not located within a VDA in accordance with the following regulations:

- (a) At a ratio of one (1) minor homestay per lot of record; and
- (b) Located within a CDP that has a resident population of at least one thousand (1000) residents.

Sec 8-18.6 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. 8-18.7 of this Section 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 action 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. 8-18.7 Objection(s) to a Minor Homestay Application in the Residential Zoning Districts not included in a Visitor Designation Area

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 Article's provisions shall be subject to those zoning enforcement procedures established under Sec. 8-3.5 of this Code.

SECTION 6. If any provision of this Ordinance or the application thereof to any person 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.

SECTION 7. 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 need not be included.

SECTION 8. This Ordinance shall take effect upon its approval.

Introduced by:

DATE OF INTRODUCTION:

LĪHUE, KAUAI, HAWAII

EXHIBIT D

ARTICLE 1. GENERAL PROVISIONS

...

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:

...

“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 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; and it 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,

“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 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; and it 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,

“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

...

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

...

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>				

...

ARTICLE 4. RESIDENTIAL DISTRICTS (R)

...

8-4.7 Permits Required

...

- (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.

...

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.